

SUPERIOR COURT  
OF THE  
STATE OF DELAWARE

RICHARD F. STOKES  
JUDGE

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Date Submitted: March 12, 2003  
Date Decided: April 25, 2003

RE: *Mattie Clemmons v. Lifecare at Lofland Park; and Unemployment Insurance  
Appeal Board*  
C.A. No. 02A-07-004-RFS

Dear Ms. Clemmons and Counsel:

This is my decision on Mattie Clemmons' ("Claimant") appeal of the Unemployment Insurance Appeal Board ("Board") decision denying unemployment benefits to Claimant. The Board's decision is affirmed for the reasons set forth herein.

**STATEMENT OF FACTS**

On October 4, 2001, Claimant resigned from her position with Lifecare at Lofland Park

(“Employer”). Claimant resigned due to health problems.<sup>1</sup> Thereafter, Claimant filed a claim with the Department of Labor, Division of Unemployment Insurance seeking unemployment benefits. On March 15, 2002, the Claims Deputy (“Deputy”) issued a written decision denying benefits on the grounds that Claimant voluntarily left her employment without good cause. Claimant appealed this decision to the Referee. Following a hearing conducted on April 17, 2002, the Referee affirmed the decision of the Deputy finding that the Claimant voluntarily left her employment without good cause. The Referee specifically found that Claimant opted to resign, although she was offered a leave of absence. The Referee also found that nothing “directly related to the work or the employer” caused Claimant to leave her employment.

Thereafter, Claimant appealed this decision to the Board. Following a hearing on May 22, 2002, the Board held that Claimant was not eligible for benefits because she was medically unable to work. The Board reversed and modified the Referee’s Decision finding that the undisputed medical evidence showed that Claimant was totally disabled during the entire time period for which she seeks benefits. Thus, the Board held that Claimant was not able to and available for work. This made her ineligible to receive benefits under 19 *Del.C.* § 3314(3). However, the Board reserved the right to reconsider its decision should the Claimant produce medical certification showing her present ability to perform light duty work.

Thereafter, Claimant submitted a note dated June 6, 2002, stating that Claimant would be able to work as of February, 2002. The Board treated the submission as a motion for rehearing,

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<sup>1</sup>At a hearing before the Appeals Referee (“Referee”), Claimant testified that she was encouraged to resign due to her repeated absences and inability to resume full duty work. Employer testified that Claimant was given the option of resigning or continuing her employment and chose to resign. The Appeals Referee found that Claimant voluntarily chose to leave her position.

which was denied on July 3, 2002. The Board emphasized that the note did not address the nature of the treatments provided by the doctor which designated light duty. The Board also noted that Claimant's treating specialist found Claimant to be totally disabled from June 30, 2001 through April 25, 2002. Accordingly, the Board concluded that Claimant was still medically unable to work. Claimant appeals that decision.

### **ISSUES PRESENTED**

Did the Board err in declining to reopen the claim for further hearing upon receipt of the June 6, 2002 Doctor's note?

Is the Board's decision to deny benefits on the grounds that Claimant was unavailable for work supported by substantial evidence?

### **DISCUSSION**

#### **A. Standard of Review**

The Supreme Court and this Court repeatedly have emphasized the limited appellate review of the factual findings of an administrative agency. The function of the reviewing Court is to determine whether the agency's decision is supported by substantial evidence, *Johnson v. Chrysler Corp.*, 312 A.2d 64, 66-67 (Del. 1965); *General Motors v. Freeman*, 164 A.2d 686, 688 (Del. 1960), and to review questions of law *de novo*, *In re Beattie*, 180 A.2d 741, 744 (Del. Super. 1962). Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Oceanport Ind. v. Wilmington Stevedores*, 636 A.2d 892, 899 (Del. 1994); *Battisa v. Chrysler Corp.*, 517 A.2d 295, 297 (Del. Super.), *app. disp.*, 515 A.2d 397 (Del. 1986). The appellate court does not weigh the evidence, determine questions of credibility, or make its own factual findings. *Johnson v. Chrysler Corp.*, 312 A.2d at 66. It

merely determines if the evidence is legally adequate to support the agency's factual findings. 19 *Del. C.* § 3323(a).

B. Claimant's motion for a rehearing

The Board did not err in denying Claimant's request for a rehearing since the doctor's note submitted by Claimant failed to establish Claimant's availability for work. Moreover, the Board's decision to deny benefits is supported by substantial evidence. In order to receive unemployment benefits, a claimant must be unemployed and meet the statutory eligibility requirements. *Turkey's Inc. v. Peterson*, Del. Super., C.A. No. 01A-11-007, Jurden J. (May 13, 2002) (Mem. Op.). An unemployed individual is only eligible for benefits if they are able and available for work. See 19 *Del. C.* § 3314 (3); 19 *Del. C.* § 3315 (8). The limitation ends once "the individual becomes able to work and available for work as determined by a doctor's certificate." 19 *Del. C.* § 3315 (8). Thus, an employee who involuntarily leaves work due to illness may become eligible for benefits upon a showing that they are able and available to work. 19 *Del. C.* § 3315 (1). However, the claimant must produce a doctor's certificate to establish availability. *Id.*

The terms available to work and able to work, "though complementary, are not synonymous;" both conditions must be met for the receipt of benefits. *Petty v. Univ. of Delaware*, 450 A.2d 392, 395 (Del. 1982). Claimant bears the burden of establishing her entitlement to receive unemployment compensation. *Id.* A claimant is "available to work" when "she is willing, able and ready to accept employment which she has no good cause to refuse, that is, she is genuinely attached to the labor market." *Id.* Thus, availability to work includes both an "ability to work and qualification through skill, training or experience for a particular occupation,

commonly expressed in terms of an identifiable labor market.” *Id. citing Harper v. Unemployment Ins. Appeal Bd.*, 293 A.2d 813 (1972). A labor market exists “when the kind of work which a claimant is able to perform is generally performed in the area where he or she is seeking employment.” *Briddell v. Unemployment Ins. Appeal Bd.*, Del. Super., C.A. No. 01A-06-008, Vaughn, J (March 28, 2002) (ORDER). The claimant is not required to be available for her usual type of work, availability for another type of work is sufficient. *Id.*

Section 3320 of Title 19 gives the Board broad review power. 19 *Del. C.* § 3320. The regulations enacted by the Board govern its hearing procedures. 19 *Del. C.* § 3321 (a). Board Rule 7.0 permits any party to file a motion for a rehearing, after a Board decision, until the date of final decision. Unemployment Ins. Appeal Bd. Rule 7.0. The Rules further provide that the decision to grant or deny such a motion is solely within the Board’s discretion. Unemployment Ins. Appeal Bd. Rule 7.1. *See also Turkey’s Inc. v. Peterson*, Del. Super., C.A. No. 01A-11-007, Jurden J. (May 13, 2002) (Mem. Op.) (holding the Board has discretion to grant or deny a motion for a rehearing).

Furthermore, there is no express statutory authority for the Board to grant a rehearing. *Henry v. Dep’t of Labor*, 293 A.2d 578, 581 (Del. Super.1972). However, the Board, as “a public body exercising judicial functions, inherently has the power, even without statutory authority, to reopen and reconsider a decision until it loses jurisdiction.” *Id.* This Court will not disturb such a discretionary ruling absent an abuse of discretion. *Funk v. Unemployment Ins. Appeal Bd.*, 591 A.2d 222, 225 (Del. 1991).

Here, the Board confirmed its earlier decision denying benefits on July 3, 2002. The Board previously found Claimant ineligible for benefits since she was not “available” for work

during the period of unemployment. The evidence presented to the Board from Claimant's treating physician indicated that Claimant was totally disabled and unable to work during the entire period of unemployment. Before the Board's decision became final, Claimant submitted a doctor's note in order to show that, contrary to the Board's holding, she had recently become available for work. The Board treated this submission as a motion for a rehearing.

Thereafter, the Board concluded that Claimant failed to meet her burden of establishing her work availability under 19 *Del. C.* § 3314(3). The note dated June 4, 2002 from Georgetown Family Medicine indicated that Claimant could return to work from February of 2002 with light duty restrictions. However, the note failed to address the nature of the illness, the manner of the treatment or the amount of time that Claimant was under their care. Moreover, the detailed medical certificate submitted by Claimant's treating physician stated that Claimant had been totally disabled from June 30, 2001 through April 25, 2002. The Board accepted the certification of Claimant's treating physician over the note from Georgetown Family Medicine. Under these facts, the Board did not abuse its discretion in declining to reopen the matter.

Moreover, the Board's decision denying benefits on the grounds that Claimant is unavailable for work is supported by substantial evidence. The Board was entitled to find the treating physician's opinion more credible than the opinion of another doctor whom was less familiar with Claimant's medical condition. Claimant's treating physician found that Claimant remained totally disabled during the entire period of her unemployment. Based on the facts presented, the Board's determination that Claimant is unavailable to work is supported by substantial evidence and free from legal error.

Although the Board's decision is affirmed, the Court would like to clarify the unusual

procedural background of the case. The Referee suggested that Claimant required medical proof to establish her inability to work from disability before resigning under 19 *Del. C.* § 3315 (1). Under this section, an individual may be eligible if employment ended involuntarily for illness, and the person has since become able to and available for work. Claimant believed that she would be eligible for benefits if a doctor's certification of disability was produced prior to her resignation.

At the Board hearing, Claimant produced medical certification from her treating physician stating that Claimant has been continuously totally disabled from June of 2001. The Board then ruled that Claimant was ineligible for benefits pursuant to 19 *Del. C.* § 3314(3) because she was unavailable for work during the entire period of unemployment. This ruling is legally correct and supported by substantial evidence. Thus, although the medical certification might establish that Claimant left work involuntarily due to illness, the certification fails to establish that Claimant has become able to and available for work since that time. The posture of the case was understandably confusing to Claimant, a pro se litigant.

### **CONCLUSION**

Considering the foregoing, the decision of the Board is affirmed.

**IT IS SO ORDERED.**

Very truly yours,

Richard F. Stokes

oc: Prothonotary's Office  
cc: Vincent G. Robertson, Esquire  
Mattie Clemmons  
Unemployment Insurance Appeal Board