IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

CLAUDETTE BELL,	)	
	)	
Appellant,	)	
	)	
v.	)	C. A. No. 02A-10-002-JEB
	)	
CHRISTIANA CARE,	)	
	)	
Appellee.	)	

Submitted: February 26, 2003
Decided: April 10, 2003

Appeal from a Decision of the Unemployment Insurance Appeal Board.
Decision Affirmed.

OPINION

Appearances:

Claudette Bell, *pro se*, 1338 N. French Street, Wilmington, DE 19801. Appellant.

David H. Williams, Esquire, and Jennifer L. Brierley, Esquire, Wilmington, Delaware. Attorneys for Appellee Christiana Care.

JOHN E. BABIARZ, JR., JUDGE

This is the Court's decision on Claimant Claudette Bell's appeal of a decision of the Unemployment Insurance Appeal Board ("Board") denying her petition for unemployment benefits. For the reasons explained below, Claimant's appeal is denied and the Board's decision is affirmed.

FACTS

Claimant was employed as a cafeteria service assistant for Christiana Care ("Employer") from July 1997 through April 2002. She worked in the Wilmington Hospital, and her duties included working at the food line, preparing and serving food to patients and other customers, cleaning, taking out the trash, filling in as a cashier and lifting steam wells to store food in hot water. She also lifted, carried and pushed large containers of food, and spent much time walking and standing.

In April 2002, Claimant hurt her back at work while lifting a pail of water. She went to her doctor, Barry Bakst, D.O., who issued four notes between April and September 2002 restricting Claimant to light duty, and precluding her from repetitive twisting and lifting anything over 15 pounds. Because Employer had no full-time, light duty positions that met Claimant's restrictions, she was granted unpaid leave under the Family Medical Leave Act until it expired on September 26, 2002.

In June 2002, when Claimant realized that there were no light duty jobs

available for her, she applied to the Department of Labor, Division of Unemployment, for unemployment benefits. The fact finder at each level of the Division's three-tier system found that Claimant was disqualified from receiving benefits because of her inability to work, pursuant to Del. Code Ann. tit. 19, § 3315(8).

DISCUSSION

On appeal, Claimant challenges the denial of her petition because she was released to light duty work as of June 18, 2002, and Employer failed to offer her a light duty position. Employer argues that Claimant was disqualified from receiving benefits because she was unable to do her work and that no full-time positions within Claimant's restrictions were available. If the decision is supported by substantial evidence and is free from legal error, this Court must affirm.[1]

Delaware unemployment law regarding the ability to work is clear. A person is disqualified from receiving benefits if her unemployment is "due to the individual's inability to work."[2] She is eligible only if she is able and available to work and is actively seeking work.[3] If an individual leaves her job because of an inability to

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[1] *Unemployment Ins. Appeal Bd. v. Duncan*, 337 A.2d 308 (Del. 1975).

[2] Del. Code Ann. tit. 19, § 3315(8).

[3] *Briddell v. DART First State*, 2002 WL 499437, at * 2 (Del. Super.).

work, she may become eligible to receive benefits only if she presents a "doctor's certificate" stating that she is released to work.[4]

In this case, Dr. Bakst's final note, dated September 9, 2002, stated that Claimant could return to work as long as she lifted nothing over 15 pounds and avoided repetitive twisting, bending and crawling.[5] This note cannot be construed as releasing Claimant to work at her previous position. The job description for a cafeteria food assistant required the employee to "lift, pull, push, reach, twist, stand, raise, and lower to accommodate food service demands on a continuous basis.[6] The Court finds that the Board was entitled to rely on Dr. Bakst's note in determining that Claimant was not able to work, as of September 11, 2002, the day of the hearing. The record also shows that Employer's witness testified before the Appeals referee that there were no full-time positions available that met Claimant's restrictions. The Court concludes that there is substantial evidence in the record to support the Board's findings and that the decision if free from legal error.[7]

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[4]Del. Code Ann. tit. 19, § 3315(8).

[5]Employer's Appendix at B-43. All four of Dr. Bakst's notes were presented as exhibits before the appeals referee and are therefore properly before the Court on appeal.

[6]Employer's Appendix at B-2.

[7]*Unemployment Ins. Appeal Bd. v. Duncan*, 337 A.2d 308 (Del. 1975).

CONCLUSION

For the reasons explained above, the decision of the Board denying Claudette Bell's petition for unemployment benefits is *affirmed*.

It Is So ORDERED.

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Judge John E. Babiarz, Jr.

JEB,jr/bjw/rmp
Original to Prothonotary