

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

GEORGE HUBER, JR.,	)	
	)	
Appellant,	)	
	)	
V.	)	C.A. No. N14A-10-002-CEB
	)	
BAYSHORE FORD TRUCK SALES	)	
and UNEMPLOYMENT	)	
INSURANCE APPEAL BOARD,	)	
	)	
Appellees.	)	

Date Submitted: March 26, 2015  
Date Decided: June 5, 2015

*Upon Consideration of*  
*Appeal From the Unemployment Insurance Appeal Board.*  
**AFFIRMED.**

This 5<sup>th</sup> day of June, 2015, upon consideration of the *pro se* appeal of George Huber, Jr. from the decision of the Unemployment Insurance Appeal Board (the “Board”) disqualifying him from the receipt of unemployment benefits, it appears to the Court that:

1. Mr. Huber was employed by Bayshore Ford Truck Sales (“Employer”) as a commercial truck driver for approximately three years until he was unable to

pass the medical examination required to renew his CDL-class license.<sup>1</sup> Employer subsequently offered Mr. Huber employment as a non-CDL driver, but the Record indicates that Mr. Huber rejected that offer for two reasons: (1) because the non-CDL position paid two dollars less per hour than the CDL position and (2) because Mr. Huber's medical condition rendered him unable to work.<sup>2</sup> Although Mr. Huber now contends that he is physically able to work, the Board found that Mr. Huber was not entitled to unemployment compensation because he was medically unable to return to work.<sup>3</sup>

2. Mr. Huber testified that, on or about June 23<sup>rd</sup>, 2014, he was unable to pass the medical examination required to renew his CDL-class license.<sup>4</sup> Mr. Huber further testified that Employer offered him a position as a non-CDL driver following the loss of his CDL-class license.<sup>5</sup> Mr. Huber explained that he rejected the offer because his physician instructed him not to drive.<sup>6</sup>

3. Joe Tracy, on behalf of the Employer, testified that after learning of Mr. Huber's inability to renew his CDL-class license, Mr. Huber was offered a

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<sup>1</sup> Record at 17, 20 (hereinafter "R. at \_").

<sup>2</sup> R. at 19-20, 23.

<sup>3</sup> R. at 40.

<sup>4</sup> R. at 17.

<sup>5</sup> R. at 20.

<sup>6</sup> R. at 23, 36.

position as a non-CDL driver.<sup>7</sup> Mr. Tracy testified that Mr. Huber rejected the offer because he did not want to work for the reduced hourly rate associated with the non-CDL position.<sup>8</sup>

4. An administrative hearing was held before Appeals Referee Jacqueline R. Richmond on July 14, 2014.<sup>9</sup> The Referee found that Mr. Huber was entitled to unemployment compensation because he was an unemployed individual under 19 *Del. C.* §3302(17).<sup>10</sup> The Board reversed the Referee's decision and found that Mr. Huber was ineligible to receive unemployment benefits under 19 *Del. C.* §3315(3) because he was unable to return to work due to his medical condition.<sup>11</sup> Mr. Huber appealed the Board's decision to the Superior Court.

5. This Court's review of Mr. Huber's appeal is limited to a review of legal error and a determination of whether "substantial evidence exists to support the Board's findings of fact and conclusions of law."<sup>12</sup> "Substantial evidence is that relevant evidence that a reasonable mind might accept as adequate to support a

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<sup>7</sup> R. at 20.

<sup>8</sup> R. at 23.

<sup>9</sup> R. at 13.

<sup>10</sup> R. at 27.

<sup>11</sup> R. at 40.

<sup>12</sup> *Arrants v. Home Depot*, 65 A.3d 601, 604 (Del. 2013).

conclusion.”<sup>13</sup> The Board’s decision is reviewed *de novo* for errors of law.<sup>14</sup> In the absence of legal error, the Board’s decision is reviewed for abuse of discretion.<sup>15</sup> The Court will find an abuse of discretion when the Board’s decision “exceeds the bounds of reason in view of the circumstances and has ignored recognized rules of law or practice so as to produce injustice.”<sup>16</sup> On appeal, the Court will not “weigh the evidence, determine questions of credibility, or make its own factual findings.”<sup>17</sup>

6. Mr. Huber does not argue that the Board’s factual findings were not supported by substantial evidence, nor does he argue that the Board committed an error of law. In his Opening Brief to this Court, Mr. Huber states that he turned down the non-CDL job “due to less money and not being able to drive safely over a long distance . . . .” In the next sentence he states “I am able to work.”

7. The Board’s conclusion that Mr. Huber was unable to return to work as a CDL or non-CDL driver is supported by substantial evidence. In his initial communications with the Department of Labor Claims Deputy, Mr. Huber agreed

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<sup>13</sup> *Wyatt v. Rescare Home Care*, 81 A.3d 1253, 1258-59 (Del. 2013) (internal citations omitted).

<sup>14</sup> *Arrants*, 65 A.3d at 604.

<sup>15</sup> *Id.*

<sup>16</sup> *McIntyre v. Unemployment Ins. Appeal Bd.*, 2008 WL 1886342, at \*1 (Del. Super. Apr. 29, 2008) *aff’d*, 962 A.2d 917 (Del. 2008).

<sup>17</sup> *Person-Gaines v. Pepco Holdings, Inc.*, 981 A.2d 1159, 1161 (Del. 2009).

that he is “totally disabled.”<sup>18</sup> Moreover, Mr. Huber’s physician informed the Department of Labor that he advised Mr. Huber to quit his job for health reasons, and he confirmed that Mr. Huber is totally disabled from performing the duties required in his current occupation.<sup>19</sup> Mr. Huber’s physician further indicated that he would not permit Mr. Huber to perform any other work on a full-time basis.<sup>20</sup> Mr. Huber confirmed his physician’s advice several times during his testimony before both the Appeals Referee and the Board.<sup>21</sup> Accordingly, we find that the evidence in the Record is sufficient to support the Board’s conclusion that Mr. Huber was unable to return to work.

8. The Board did not commit any errors of law. In order to receive unemployment compensation, the Department of Labor must find that the unemployed individual is able to work, and that he is available for immediate employment.<sup>22</sup> The Record shows that the Board properly applied this standard

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<sup>18</sup> R. at 1.

<sup>19</sup> R. at 3.

<sup>20</sup> *Id.*

<sup>21</sup> R. at 17-19, 23, 36.

<sup>22</sup> 19 *Del. C.* § 3315(3) (“An unemployed individual shall be eligible to receive benefits with respect to any week only if the Department finds that the individual . . . (3) [i]s able to work and is available for work and is actively seeking work . . .”).

when it found that Mr. Huber was disqualified from the receipt of unemployment benefits.<sup>23</sup>

9. Based on the foregoing, the Court is satisfied that the Board applied the correct legal standards and that its decision is supported by substantial evidence. Accordingly, the decision of the Board determining that Mr. Huber is disqualified from the receipt of unemployment benefits is **AFFIRMED**.

**IT IS SO ORDERED.**

**/s/ Charles E. Butler**  
Charles E. Butler, Judge

Original to Prothonotary

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<sup>23</sup> R. at 40.