

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

BRAD C. RIPPEY)	
Appellant,)	
)	
v.)	C.A. No. S16A-11-002 MJB
)	
)	
EASTERN SHORE METALS,)	
&)	
UNEMPLOYMENT INSURANCE)	
APPEALS BOARD,)	
Appellees.)	

Submitted: May 25, 2017
Decided: August 31, 2017

Upon Petitioner’s Appeal from the Unemployment Insurance Appeal Board’s Decision
AFFIRMED.

OPINION AND ORDER

Brad C. Rippey, 14740 County Seat Hwy, Seaford, Delaware, *pro se*, Appellant.
Eastern Shore Metals LLC, 102 Park Ave, Seaford, Delaware, Appellee.

BRADY, J.

STATE OF FACTS

Before the Court is an appeal from a decision made by the Unemployment Insurance Appeals Board (“Board”) denying a claim by Brad C. Rippey (“Appellant”) for unemployment benefits against his former employer, Eastern Shore Metals, LLC (“ESM”). Appellant is claiming eligibility during the time he was absent from work between July 20, 2016 through September 13, 2016.¹

Appellant was employed full-time by ESM, starting on the date of April 20, 2014 as a rebar fabricator, earning an hourly rate of \$12.² On July 8, 2016, Appellant suffered a heart attack outside of work, resulting in a loss of eyesight and health concerns.³ Appellant notified John Collins (“Collins”), who was his direct report and currently the representative for ESM in this case, that his physician advised him not to perform any type of work on a full-time basis.⁴ Additionally, Appellant informed Collins that because of the heavy lifting and excessive heat conditions that were required of his job, he was not permitted to return to work until re-evaluation on September 13, 2016.⁵ Collins never terminated Appellant’s employment and continues to welcome him back to work for the company in the position as a rebar fabricator when he is able and available to work.⁶

Appellant filed for unemployment benefits, which were denied by the Delaware Division of Unemployment Insurance.⁷ The Appeals Referee affirmed, finding that Appellant voluntarily

¹ Decision of the Unemployment Insurance Appeal Board, October 25, 2016 (“Board Decision”).

² Transcript of Unemployment Insurance Appeals Hearing, September 13, 2016 (“Appeals Hearing Transcript”), at 3.

³ Referee’s Decision from Unemployment Insurance Appeals, September 23, 2016 (“Referee Decision”) at 2.

⁴ Appeals Hearing Transcript, at 10.

⁵ *Id.* (Appellant presented a Claimant’s Authorization for Release of Information/Doctor’s Certificate to the Referee as evidence to prove that he was advised not to work his doctor. No evidence was introduced by Appellant to show Appellant was otherwise permitted to work.

⁶ *Id.* at 12.

⁷ Claims Deputy/Agency Representative Decision, August 15, 2016.

quit his job without showing good cause for doing so.⁸ The Appellant then appealed to the Unemployment Insurance Appeals Board (“UIAB”, “Board”), which modified and reversed the decision of the Appeals Referee.⁹ The Board found that Appellant voluntarily left his job for a good cause, and involuntarily left work due to illness.¹⁰ Because Appellant’s good cause for separating from his work was due to illness, the Board found that Appellant is denied from receiving unemployment benefits.¹¹ Appellant appeals the Board’s decision in order to receive unemployment benefits for the time he was absent from work on medical leave.

PARTIES’ CONTENTIONS

In appealing the Referee’s decision denying Appellant’s unemployment benefits claim, Appellant asserted that he “did not quit” but was absent from work on medical leave, from July 20, 2016 until September 13, 2016 and should not be disqualified from receipt of benefits during that period of time.¹² In the current appeal from the Board’s decision, Appellant acknowledges that the note from his physician prohibits him from returning to his duties as a rebar fabricator and any other type of work that involves the same duties, but contends that his doctor expressed he could pursue other jobs such as customer service, housekeeping or janitorial positions.¹³ Appellant impliedly argues that because his physician allowed him to pursue other jobs that did not have heat and physical requirements of his current job, he was able and available to work in another occupation during the relevant time period.¹⁴

⁸ Referee Decision, at 2.

⁹ Board Decision, at 2.

¹⁰ Board Decision, at 2.

¹¹ Id.

¹² Transcript of Revised Decision Hearing before the Unemployment Insurance Appeal Board, October 25, 2016, at 3.

¹³ Opening Brief, at 1. (Appellant did not assert this claim in front of the Referee or during the Board hearings.)

¹⁴ Opening Brief, at 1. (Appellant asserts for the first time that his doctor only advised that he not return to his previous position, but he was permitted to start other employment before his medical re-evaluation on September 13, 2016. No such evidence was presented to the Board. Because this Court’s review is on the record below, the new contentions are not considered or addressed in this decision.)

The Board found that Appellant involuntarily left his employment for medical reasons, and cites 19 *Del. C.* §3314(1), which states in part, “if an individual has left work involuntarily because of illness, no disqualification shall prevail after the individual becomes able and available to work and meets all other requirements under this title, but the Department shall require a doctor’s certificate to establish such availability...”¹⁵ The note from Appellant’s physician reflects Appellant suffered a heart attack on July 8, 2016 and advised he should refrain from returning to work until his re-evaluation on September 13, 2016.¹⁶ The note also advised Appellant not to perform any other type of work on a full time basis until his re-evaluation.¹⁷ The Board considered witness testimony and exhibits in making its finding that Appellant separated from his employment voluntarily for good cause but separated involuntarily due to illness.¹⁸ On the basis of the findings, the Board modified and reversed the decision of the Appeals Referee.¹⁹ The Board found that Appellant was disqualified from the receipt of unemployment benefits pursuant to 19 *Del. C.* § 3314(1) until September 13, 2016 when he would be entitled to benefits provided that he became able and available to work and meets all other Departmental requirements.²⁰

STANDARD OF REVIEW

This Court’s appellate review of a decision by the UIAB is limited to determining whether the Board’s decision is supported by substantial evidence²¹ and free from legal error.²²

¹⁵ Board Decision, at 2.

¹⁶ Claimant’s Authorization for Release of Information/Doctor’s Certificate, (“Doctor’s Certificate”).

¹⁷ Doctor’s Certificate.

¹⁸ Answering Brief, at 3.

¹⁹ Board Decision, at 2.

²⁰ Board Decision, at 2.

²¹ *General Motors Corp. v. Freeman*, 164 A.2d 686, 689 (Del.1960).

²² *Boone v. Syab Serv./Capitol Nursing*, 2012 WL 3861059, *1 (Del. Super. Ct. Aug. 23, 2012).

The Board's decision must stand even if the Court would have decided otherwise.²³ Substantial evidence is "relevant evidence such as a reasonable mind might accept as adequate to support a conclusion."²⁴ Freedom from legal error exists when "the Board properly applied the relevant legal principles."²⁵ In reviewing the record for substantial evidence, this Court will consider the record in the light most favorable to the prevailing party.²⁶ Unless no substantial evidence supports a decision by the Board, this Court must uphold its decision.²⁷ This Court does not weigh evidence, determine questions of credibility, or make its own factual findings.²⁸

DISCUSSION

In Appellant's initial claim for unemployment benefits, Appellant asserted that he was unable to work due to his heart condition.²⁹ Appellant consistently maintained the position, first with the Claims Deputy in his initial application for unemployment benefits and later with the Appeals Referee of the UIAB, that he was not available to work until his medical re-evaluation on September 13, 2016.³⁰ In appealing the Referee's decision, Appellant made no assertion to the Board that he was available to work or was permitted by his doctor to work in any capacity.³¹ The Board found Appellant became able and available for work as of September 13, 2016.³² The

²³ *Straley v. Advanced Staffing*, 2009 WL 1228572, *2 (Del. Super. Ct. Apr. 30, 2009) (citing *PAL of Wilmington v. Graham*, 2008 WL 258986, at *3 (Del. Super. Ct. June 18, 2008)).

²⁴ *Id.* (quoting *Anchor Motor Freight v. Ciabottoni*, 716 A.2d 154, 156 (Del.1998)).

²⁵ *State v. Kasi*, 1994 WL 637028, at *4 (Del. Super. Ct. Mar. 11, 1994).

²⁶ *Boone*, 2012 WL 3861059, at *1.

²⁷ *Person-Gaines v. Pepco Holdings, Inc.*, 981 A.2d 1159, 1161 (Del. 2009).

²⁸ *City of Newark v. Unemployment Ins. Appeal Bd.*, 802 A.2d 318, 323 at *2 (Del. Super. Ct. 2002) (citing *Johnson v. Chrysler Corp.*, 213 A.2d 64, 66 (Del. Super. Ct. 1986)).

²⁹ Claimant Fact-Finding, item 2.

³⁰ Appeals Hearing, at 10.

³¹ Transcript of Revised Decision Hearing before the Unemployment Insurance Appeal Board, October 25, 2016, at 3.

³² Board Decision, at 2.

Board noted that Appellant would have been eligible for unemployment benefits after September 13, 2016 so long as he met all other Department Requirements.³³

In making its decision, the Board determined the earliest date Appellant was able and available to work was September 13, 2016. That determination is clearly supported by the evidence, in particular the Appellant's own doctor's report.³⁴

Under 19 *Del. C.* §3314 (8), citizens who are unable to work due to illness are not eligible to receive unemployment benefits until a physician clears them from their work restrictions. To be eligible for unemployment benefits, a claimant has the burden to establish his or her right to unemployment compensation.³⁵ Appellant submitted a Doctor's Certificate attesting that Appellant was "advised to be absent from last job due to health"³⁶ and is "totally disabled from performing the duties required in his/her current occupation"³⁷ from July 8, 2016 until re-evaluated on September 13, 2016.³⁸ Appellant submitted no other evidence in support of his claim for benefits.

Appellant now argues the Doctor's Certificate only prohibited him from working on a full-time basis because the question on the form only asked specifically whether Appellant was permitted to perform "any other work on a full-time basis". Appellant claims he was permitted to work part-time. However, this assertion cannot be considered by this Court as it is improperly asserted. Our standard of review is limited to deciding whether the Board's decision was

³³ Board Decision, at 2.

³⁴ Doctor's Certificate. Doctor checked "no" next to question "have/will you permit performance of any other work on a full-time basis?" Doctor checked "yes" next to the question asking "was patient advised to be absent from last job due to health?" Doctor wrote "until re-evaluated on 9-13-16 next to "suggested dates of absence".

³⁵ *Petty v. University of Delaware*, 450 A.2d 392, 395 (1982).

³⁶ Doctor's Certificate. Doctor checked "yes" next to the question asking "was patient advised to be absent from last job due to health?"

³⁷ Doctor's Certificate. Doctor checked "yes" next to the question asking "is the patient totally disabled from performing the duties required in his/her current occupation?"

³⁸ Doctor's Certificate.

supported by substantial evidence and free from legal error. Appellant provided no evidence to the Board or the Appeals Referee indicating that a physician cleared him to work in any capacity before his re-evaluation.

The Board's finding that Appellant was not able and available to work until September 13, 2016 because of medical issues and was, thereby, disqualified from the receipt of unemployment benefits is supported by the record.

CONCLUSION

The Board made findings of fact that are supported by substantial evidence. The Court finds no legal error. The decision of the Board is **AFFIRMED**.

IT IS SO ORDERED.

M. Jane Brady
Superior Court Judge