**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE**

**IN AND FOR NEW CASTLE COUNTY**

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| KENNETH M. FLOWERS,<br>Appellant/Claimant,<br><br>5.<br><br>LAIDLAW CORPORATION<br>Appellee/Employer,<br>and<br>UNEMPLOYMENT INSURANCE<br>APPEAL BOARD,<br>Appellee/Board. | ) | C.A. No. 00A-11-002 (CHT) |

**OPINION AND ORDER**

**On the Employee's Appeal from the Decision of the Unemployment Insurance Appeal Board**

Date Assigned: July 24, 2001
Date Decided: November 2, 2001

Kenneth M. Flowers, pro se, P.O. Box 481, Wilmington, DE 19899.

Robert C. McDonald, Esquire, SILVERMAN & MCDONALD, 1010 North Bancroft Parkway, Wilmington, Delaware 19805.

**TOLIVER, Judge**

## STATEMENT OF FACTS AND NATURE OF THE PROCEEDINGS

Kenneth Flowers was employed as both a "racker"[1] and a "packer"[2] of metal clothes hangers for Laidlaw Corporation (Laidlaw) from May of 1998 until August 2, 2000. The events that ultimately culminated in the termination of the employment relationship between Mr. Flowers and Laidlaw began on the Friday, July 28, 2000, 3 p.m.-11 p.m. shift at Laidlaw. On that date, Mr. Flowers reported for his shift and began performing his duties as a "packer". Shortly thereafter, another Laidlaw employee, who normally worked in a different department, began to work in Mr. Flowers' area as a "racker". This upset Mr. Flowers because, according to him, "packing" is a much more strenuous and tedious job than is "racking".

[1] From what the Court can gather from the record, the duties of a "racker" are to put metal clothes hangers in an unfinished state onto or into a machine that ultimately produces the finished clothes hangers.

[2] The duties of a "packer" are apparently to retrieve the finished clothes hangers from the machine mentioned in footnote 1, measure them and then pack them in the appropriate box based upon the size of the clothes hanger.

Moreover, the normal progression in terms of job assignments, is for employees new to the department to begin with the harder jobs, namely “packing”, and then proceed to the easier “racking” jobs. Mr. Flowers was further distressed when he overheard the new employee bragging of immediately being given a “racking” position thereby foregoing the aforementioned progression.

Mr. Flowers next reported to work on the following Monday, July 31, 2000. When he reported to work, he found that the new employee had arrived twenty minutes late for work and was once again assigned to “racking” duties. Mr. Flowers approached a supervisor to inquire as to why the new employee was not assigned the more taxing “packing” duties as was the custom at Laidlaw. The Supervisor took Mr. Flowers to the office, where a more senior manager told Mr. Flowers that the new employee was assigned to “racking” because he did not know who to “pack”.

Mr. Flowers, refused to accept the manager’s explanation,

and told him that he was not going back to work until he received a satisfactory response. The manager then told Mr. Flowers to either go back to work or to go home. Mr. Flowers went home, never to return except to pick up his paycheck.

Mr. Flowers filed for unemployment compensation on August 6, 2000. The Claims Deputy found that Mr. Flowers voluntarily quit his position and denied his petition. In that regard, the Claims Deputy's report indicates that Mr. Flowers admitted to voluntarily terminating his employment because he was passed over for a job by another employee, despite the fact that Mr. Flowers was more qualified, and also because he was threatened by Laidlaw management with termination. Mr. Flowers appealed that decision to the Unemployment Insurance Appeal Board. The Board affirmed the Deputy's decision and agreed that Mr. Flowers voluntarily quit without good cause.

Mr. Flowers now appeals the decision of the Board. His sole contention is that the Board committed legal error because it did not demand the presence of a representative of

Laidlaw at the hearing. Laidlaw has filed no response to Mr. Flowers' appeal.

## DISCUSSION

In reviewing a decision of the Unemployment Insurance Appeal Board, this Court is bound by its findings if supported by substantial evidence and absent abuse of discretion or error of law. Ohrt v. Kentmore Home, Del. Super., C.A. No. 96A-01-005, Cooch, J. (Aug. 9, 1996)(Mem. Op. at 8). "Substantial evidence is defined as such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." Anchor Motor Freight v. Ciabattoni, Del. Super., 716 A.2d 154, 156 (1998); and Streett v. State, Del. Supr., 669 A.2d 9, 11 (1995). It "is more than a scintilla and less than a preponderance" of the evidence. City of Wilmington v. Clark, Del. Super., C.A. No. 90A-FE-2, Barron, J. (March 20, 1991) (Mem.Op. at 6).

Mr. Flowers contends that the Board erred by conducting the hearing without the presence of a Laidlaw representative. This contention is supported by no legal citation. However, 19 Del. C. §3321(a) provides:

> [t]he manner in which disputed claims shall be presented and the conduct of hearings and appeals shall be in accordance with regulations prescribed by the Unemployment Insurance Appeal Board for determining the rights of the parties. . . .

In this regard, Unemployment Insurance Appeal Board Rule B states in relevant part:

> [a]ll parties are required to be present for a hearing at the scheduled time. Any party who is not present within 10 minutes after the scheduled time for hearing shall be deemed to waive his right to participate in said hearing and *the hearing shall commence without the presence of the party.*

Del. Dept. of Labor, U.I.A.B. Rules and Regulations, Rule B (1979)(emphasis added). It is abundantly clear from a reading of this rule that there is no such requirement that all parties be present for the hearing to commence. To the contrary, the Board is required to start the hearing despite

the absence of one of the parties. Therefore, Mr. Flowers assertion that the Board erred as a matter of law is without merit.

## CONCLUSION

Based upon the above, the Court finds that the decision of Unemployment Insurance Appeal Board is free from legal error as asserted. Accordingly, it must be, and hereby is **affirmed**.

**IT IS SO ORDERED.**

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**Toliver, Judge**