IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

BERNICE PETERSON,	)	
	)	
Appellant,	)	
	)	**C.A. No. 00A-12-002 WCC**
	)	
v.	)	
	)	
HERCULES CREDIT USP, and UNEMPLOYMENT INSURANCE APPEAL BOARD,	)	
	)	
Appellees.	)	

Submitted: July 12, 2001
Decided: October 31, 2001

O R D E R

Upon Claimant's Appeal from the Unemployment Insurance Appeal Board. DENIED.

Bernice Peterson, 313 West 39th Street, Wilmington, Delaware 19802. *Pro se* Claimant.

Kathleen F. McDonough; Erica L. Niezgoda, Potter Anderson & Corroon LLP, 1313 N. Market Street, P.O. Box 951 Hercules Plaza, Wilmington, DE 19899. Attorneys for Hercules Incorporated.

Stephani Ballard, Department of Justice, 820 N. French Street, Wilmington, DE 19801. Attorney for Unemployment Insurance Appeal Board.

CARPENTER, J.

On this 31st day of October, 2001, upon consideration of Bernice Peterson's (hereinafter "Claimant") appeal from the November 15, 2000 decision of the Unemployment Insurance Appeal Board (hereinafter "Board"), and Hercules Inc.'s Answering Brief, it appears to this Court that:

1. Claimant was employed by Hercules Inc. (hereinafter "Hercules")[1] in various positions from 1969 until February 28, 1999.[2] Most recently, Claimant served as a technologist at the Hercules Research Center, until the time that she left her employment with Hercules on February 28, 1999. In December of 1998, Hercules announced that it had acquired another company, BetzDearborn, and that approximately 700 jobs would be eliminated as a result of this acquisition. On January 13, 1999, before Hercules began to involuntarily terminate certain employees, Hercules offered its employees a Voluntary Severance Pay Program (hereinafter "the

[1] Defendant noted in its brief that "although the caption to this appeal and to the proceedings below identifies Hercules Credit USP as [Claimant's] employer, the Division of Unemployment Insurance was notified by letter . . . that Hercules Incorporated was the employer of the Claimant. . . Hercules Incorporated is not aware of any involvement in this matter by any entity known as Hercules Credit USP."

[2] Claimant apparently had two brief leaves of absence. One from June of 1970 through October 1970, and another from August 1972 through January 1973. *See* Defendant's Motion at 1.

Program").[3] The Program was made available to Hercules' full-time employees, who were eligible for retirement, and were also full-time Hercules employees prior to October 15, 1998. The eligible employees were able to apply for the Program beginning January 14, 1999, up through the close of business on February 28, 1999.[4] At the time the Program was offered to the employees, there had not been any announcements pertaining to specific positions that would be eliminated if not enough employees voluntarily left their employment with Hercules. Claimant met the eligibility requirements for the Program, and elected to participate in the Program.[5] When Claimant elected to participate, it appears that there was not a shortage of work in her area and there was not a reduction in force pertaining to her position. Contrary to what Claimant asserted upon appeal, it appears that Claimant's position remained available to her, and would have been available to her had she not voluntarily left

[3] A January 13, 1999 Hercules Memo set forth the terms and conditions of this package as follows: "Prior to involuntary job eliminations, the Company will extend a limited opportunity for employees to voluntarily be part of the total job reduction plan. . . [p]articipants must have been actively employed on December 31, 1998, and must be eligible for retirement. The program offers two weeks of severance pay for each year of credited service plus 12 additional weeks of severance pay, Medical, Dental, and Life Insurance continuation for the total severance period, and an opportunity for out placement services." Bulletin #4210 dated January 13, 1999 signed by President and Chief Operating Officer.

[4] *See* Bulletin #4210 entitled *Voluntary Severance Pay Program* dated January 13, 1999.

[5] Indeed, Claimant stated by letter dated September 25, 2000 to the Department of Labor that "Hercules was having a down sizing in their work force, offered an early retirement package, and I was one of the many employees who *voluntarily* took part in their total reduction plan."

Hercules.[6]

[6] The Claims Deputy's findings of fact state that "[t]he employer protested that the claimant's claim stating the claimant voluntarily chose a special severance program, even though there was no lack of work and her position was still available to her. The employer states the position [that] the claimant held was not down sized and she could have remained employed. In the claimant's rebuttal she confirms it was a voluntary severance program. She was under the impression she would still be entitled to UI benefits since other persons who voluntarily accepted the program were currently collecting."

2. A Claims Deputy originally determined that Claimant was not entitled to unemployment benefits because "[C]laimant voluntarily quit her employment and is [therefore] disqualified from the receipt of benefits."[7] The Claims Deputy cited 19 *Del. C.* § 3315(1) as support for her decision. That section provides that "[a]n individual shall be disqualified for benefits: (1) For the week in which the individual left work voluntarily without good cause attributable to such work and for each week thereafter until the individual has been employed in each of 4 subsequent weeks. . . ."[8] Claimant then appealed the Claims Deputy's decision, and on October 18, 2000 a hearing was held by an Appeals Referee. The Referee found that

> [t]he claimant freely acknowledged that she accepted the Voluntary Severance Pay Package in January of 1999 following the receipt of a Voluntary Severance Pay Program memorandum from her employer dated January 13, 1999. Whereas the claimant did accept the Severance Package on February 28, 1999 the employer's representative pointed out that she could have stayed and remained in her same position. The claimant noted that she was involuntarily moved into a new job in February 1998 and worked that job until she voluntarily left her employment on February 28, 1999.[9]

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[7] Claim's Deputy's Findings at 2.

[8] 19 *Del. C.* § 3315(1).

[9] Appeal Docket No. 136000 at 2.

Based upon these findings, the Appeals Referee affirmed the Claims Deputy's decision.[10] Claimant then appealed that decision to the Unemployment Insurance Appeals Board on October 24, 2000. On November 15, 2000 the Board found that Claimant was not entitled to unemployment insurance, and thereafter affirmed the Appeals Referee's decision.[11] Claimant now has filed this appeal pursuant to 19 *Del. C.* § 3323, appealing the Board's November 15, 2000 decision.

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[10] The Referee's Decision states in part that "[t]he claimant acknowledged that she voluntarily accepted the Severance Pay Program pursuant to [a] memo from her employer . . . . The employer emphasize the fact that the claimant voluntarily quit. . . . At the time of acceptance of that package (February 28, 1999) there was continuing work available for the claimant in her same position. . . [t]he claimant . . . was involuntarily moved into a new position . . . as of February 1998 and continued to work in that position for one year. It should be noted that the employer has a prerogative to change an employee's job according to the staffing needs of the employer."Appeals Referee's Decision at 3.

[11] In the Board's "Opinion and Decision" the Board stated that "[t]he appeal is without merit because the issue on appeal from the Appeals Referee is factual, and a review of the record indicates that evidence supports the findings of fact below and the Board adopts these findings. The Appeals Referee made the following findings: The claimant accepted the voluntary severance package in January, 1999, and could have remained in her position." Opinion and

Decision at 1-2.

3. On appeal, Claimant essentially contends that even though she voluntarily accepted the Program offered by Hercules, she did so only because she had recently been moved to a new position which she did not particularly feel competent in and it was her best option to end an undesirable employment situation. Therefore, Claimant asserts, she terminated her employment with Hercules for good cause because she never would have accepted the Program, if she had not been placed into this new position. Claimant then reasons that because her voluntary departure was for good cause, she is entitled to unemployment benefits.[12] Claimant further contends that "if she had not voluntarily accepted the Program, she would not have continued to be employed by Hercules."

4. Hercules contends that Claimant voluntarily agreed to participate in the Program for which she received 70.1 weeks of severance pay and that Claimant "admits that she had not received any reduction-in-force notice related to her position."[13] As such, Hercules' contends that there is no legal authority to support Claimant's argument, as the Delaware Code prohibits an unemployed individual from collecting benefits if the employee voluntarily left work without good cause

[12] Claimant asserts she was "involuntarily bumped into a job position that [she] had absolutely no experience or knowledge in, and with an adverse change in responsibilities beyond a mere personnel change." Claimant's Appeal Brief at ¶1 under "The Facts."

[13] Hercules's Answering Brief at 3.

attributable to that work.[14]

[14] Hercules Answering Brief at 3.

5. The function of this Court on review of an Unemployment Insurance Appeal Board decision is to determine whether the decision is supported by substantial evidence[15] and is free from legal error.[16] Substantial evidence is such relevant evidence that a reasonable person might accept as adequate to support a conclusion.[17] This Court does not weigh the evidence, determine questions of credibility, or make factual findings in the first instance.[18] Rather, this Court's role is to determine whether the evidence is legally adequate to support the Board's findings.

[15] *General Motors Corp. v. Freeman*, Del. Supr., 164 A.2d 686, 688 (1960).

[16] *Boughton v. Div.of Unemployment Ins.,* Del. Super., 300 A.2d 2, 25, 26-27 (1972); *Ridings v. Unemployment Ins. Appeal Bd.*, Del. Super., 407 A.2d 238, 239 (1979).

[17] *Oceanport Ind. v. Wilmington Stevedores*, Del. Supr., 636 A.2d 892, 899 (1994).

[18] *Johnson v. Chrysler Corp.*, Del. Supr., 231 A.2d 64, 66-67 (196).

6. This Court finds that there is substantial evidence to support the conclusion that Claimant is not entitled to unemployment benefits. It is clear that Claimant voluntarily terminated her employment at Hercules after she accepted the severance program. Claimant's dislike for the position, to which she was recently assigned, does not meet the requirement of "good cause," which would potentially allow her to terminate her employment with Hercules, and receive unemployment benefits.[19] This is simply a case where an employee eligible for a severance program, decided to exercise that option because it was the best alternative available to terminate the employment that she did not particularly enjoy or felt competent performing. Claimant was not forced to participate in the severance program nor was her employment terminated. Now, having obtained the benefit of the severance package, Claimant is merely attempting to extend the benefit of the severance package by now seeking unemployment compensation. While such efforts are creative, there is no legal basis to support such a claim. In addition, all of the cases cited by Claimant in support of her position are distinguishable on their facts and her reliance upon those cases is misplaced.[20]

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[19] "Good cause for leaving employment 'must be such cause as would justify one in voluntarily leaving the ranks of the employed and joining the ranks of the unemployed." *O'Neal's Bus Service, Inc.v. Employment Security Commission*, Del. Super., 269 A.2d 247, 249 (1970).

[20] *See White v. Security Link,* Del. Super., 658 A.2d 619, 622 (1994)(holding that a

7. For the reasons stated above, Claimant's appeal from the decision of the Unemployment Insurance Appeals Board is denied. This Court finds that there was

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claimant had good cause to terminate her employment when her employer altered her work schedule with less than 72 hours notice; the claimant was unable to find child care for her daughter due to the schedule change, and therefore she was forced to quit her job, and the Court noted that "[t]he good cause determination should take into account that under Delaware law it is the primary duty of parents to provide for the "care, nurture, welfare and education" of their children under the age of 18." *White* at 624; *Brainard v. Unemployment Compensation Commission*, Del. Supr., 76 A.2d 126, 127 (1950) (holding that an appeals referee did not consider "overwhelming evidence" that the claimant left his employment due to the fact his income from the position had decreased to a point where the claimant could not make a decent, livable wage. There the Court held that a man, who earned a salary of $4,500 annually, for approximately 5 years, which fell within 2 years to $1,000 a year, was justified in terminating his employment, as the record revealed no competent evidence that personal reasons influenced his decision to quit his job); *O'Neal's Bus Service, Inc. v. Employment Security Commission*, Del. Super., 269 A.2d 247 (1970)(holding that "good cause" to voluntarily terminate ones employment was demonstrated when a school bus driver voluntarily quit his job because the bus children constantly harassed and disturbed him while he was driving, they placed him in great fear for the safety of other pupils and other motorists, and because the claimant had complained to his school principal, who did not change the situation.)

substantial evidence supporting the Board's decision and the decision is free from legal error.

IT IS SO ORDERED.

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Judge William C. Carpenter, Jr.