

Ms. Kathy King
RD 2, Box 331A
Millsboro, DE 19966

First State Community Action
P.O. Box 877
Georgetown, DE 19947
Attn: Timothy McGhee

RE: *Kathy King v. First State Community
Action and Unemployment Insurance Appeal Board,*
CONSOLIDATED
C.A. No. 00A-12-003
C.A. No. 99A-09-002

Date Submitted: July 26, 2001
Date Decided: October 29, 2001

Dear Ms. King and Mr. McGhee:

This is the Court's decision on the appeal by Kathy King ("Claimant") of the decision by the Unemployment Insurance Appeal Board ("Board") to deny Claimant unemployment benefits.¹ The Board affirmed a Referee's denial of employee benefits under 19 *Del. C.* 33. The Referee found that the Claimant refused an offer of work for which she was reasonably fitted. The Referee concluded, and the Board agreed, that the Claimant's refusal disqualified her from unemployment compensation under the statute.² Pursuant to 19 *Del. C.* § 3323, the Claimant has appealed the

¹This appeal is a consolidation of two actions brought by the Claimant. The first, C.A. 99A-09-002, was an appeal to this Court from the Board's decision to dismiss the Claimant's appeal. This Court, J. Stokes presiding, remanded that decision for additional Board consideration. The Board reinstated the Claimant's appeal and affirmed the Referee's decision. The Claimant's appeal to this Court from that decision is the second action, C.A. 00A-12-003, and the focus of this opinion.

²19 *Del. C.* § 3315 reads in part: "An individual shall be disqualified for benefits: (3) If

Board's decision to this Court.³

FACTS

Claimant was employed for approximately two years with First State Community Action ("First State") as a bus driver. The job paid \$8.17 an hour and the Claimant worked approximately five hours a day. Because First State owned the buses, the Claimant had been allowed to take a bus home with her at night.

On or about May 27, 1999, Claimant was informed that her job would end on June 9, 1999. She was subsequently offered a position with First State in the Summer Feeding Program that was to begin on June 14, 1999. That position involved driving a van from Laurel to various points in Sussex County. The job paid \$8.00 an hour and she would have worked approximately six hours a day. However, she was required to provide her own transportation to and from work, as she was not allowed to take a van home at night.⁴

The Claimant testified that she received a call from First State offering her a position. She claims she refused this offer because she was required to provide her own transportation to and from

the individual has refused to accept an offer of work for which the individual is reasonably fitted..."

³First State Community Action has not participated in this appeal. The matter is now ripe for decision.

⁴First State did not own the vans and did not allow their summer drivers to take the vans home with them due to insurance issues.

work without reimbursement. First State contended that the Claimant accepted the job on June 11 and that she was to start work on June 14. However, she failed to show up for work on that date. Claimant later applied for unemployment benefits, which precipitated this litigation.

DISCUSSION

This Court's standard of review for appeals from the Unemployment Insurance Appeal Board is not unfettered. "The scope of review of findings of the Unemployment Insurance Appeal Board, like the scope of review in appeals from the Industrial Accident Board, is limited to a determination of whether there was substantial evidence sufficient to support the findings."

Unemployment Ins. Appeal Bd. Of Dep't of Labor v. Duncan, Del. Supr., 337 A.2d 308, 309 (1975).

While this Court closely examines the facts underlying the claim, it does not have the power to make factual determinations.⁵ Rather, "the findings of the Unemployment Insurance Appeal Board as to the facts, if supported by evidence and in the absence of fraud, shall be conclusive, and the jurisdiction of the Court shall be confined to questions of law." 19 *Del. C.* § 3323(a).

It is this Court's opinion that the record shows substantial evidence sufficient to support the Board's conclusion that the Claimant is disqualified from receiving unemployment compensation benefits. The new position offered to the Claimant was substantially the same as the prior position she held. Both positions involved driving a commercial vehicle to various points in Sussex County. The rates of pay and hours worked were also substantially the same. Therefore, the evidence supports the Referee's finding, as adopted by the Board, that the Claimant was reasonably fitted for

⁵Furthermore, this Court may only consider facts contained in the record. Arguments made by either party that are not supported by the record are ignored.

the new position.

The evidence also supports the Referee's finding, as adopted by the Board, that the Claimant could not show good cause for refusing the position. The Claimant refused the offer because she would be required to provide her own transportation to and from work. However, it is not unreasonable for an employer to request an employee to provide her own transportation to and from work. The fact that she was able to take a bus home after work in her previous position is not a factor in this determination. Accordingly, Claimant's reason for refusing the new position does not constitute "good cause."

Substantial evidence exists to support the Board's conclusion that the Claimant refused an offer of work for which she was reasonably fitted. Accordingly, the Board's decision is affirmed and the Claimant is disqualified from receiving unemployment benefits.

IT IS SO ORDERED.

Very truly yours,

E. Scott Bradley

cc: Prothonotary
James Hanley, Esquire