IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR KENT COUNTY

CLARENCE D. TATMAN	)	
	)	
Appellant,	)	
	)	
v.	)	C.A. No. 03A-04-002 HDR
	)	
DELAWARE HOME MAINTENANCE C/O JOHN SHOCKLEY, AND UIAB	)	
	)	
Appellees.	)	

Submitted: September 25, 2003
Decided: December 12, 2003

Clarence D. Tatman, Dover, Delaware, *pro se*.

John F. Shockley, Millsboro, Delaware, *pro se*.

Joseph A. Julian, Jr., UIAB, Appeals Referee.

Upon Appeal from a Decision
of the Unemployment Insurance Appeals Board
AFFIRMED

RIDGELY, President Judge

Tatman v. Del. Home Maintenance, et al. and The UIAB
03A-04-002 HDR
December 12, 2003

In this case petitioner Clarence D. Tatman appeals a decision by the Unemployment Insurance Appeals Board ("UIAB" or "Board") that denied him unemployment benefits.[1] Opposing the petition is Tatman's former employer, Delaware Home Maintenance and Property Services ("DHM"), and the company's owner, John F. Shockley. Although Tatman was absent from the appeal hearing, the Board was warranted in proceeding without him because Tatman waived his right to participate. Because the decision is supported by substantial evidence and is free of legal error, it must be affirmed.

I.

From August to November 2002, DHM employed Tatman as a landscaper. Because he had no other means of transportation, Shockley's father picked up Tatman each morning for further assignment. On November 22, however, Tatman did not arrive for work. Although the parties continue to dispute the reasons surrounding his absence, both agree Tatman has not worked for DHM since.[2]

Contending he was fired without just cause, Tatman filed a claim with the UIAB, and a hearing was held before the Appeals Referee ("Referee") on February 10, 2003. After considering the parties' testimony, the Referee found that Shockley had not approached Tatman to offer additional employment. Therefore, the Referee

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[1] *Tatman v. Delaware Home Maintenance Services, et al.*, Appeal Docket No. 426720 (Mar. 31, 2003), *rev'g* Decision of Appeals Referee Joseph A. Julian, Jr. (Feb. 12, 2003).

[2] Tatman claims that Shockley's father told him that work was no longer available. Shockley, in response, contends he contacted Tatman several days later, and has continued to offer Tatman employment.

concluded that Tatman was terminated without just cause, and was thus eligible for unemployment benefits.[3] Shockley then appealed to the full Board.

On March 19, 2003, the Board held a hearing on the appeal. Tatman, had been properly notified, but failed to appear. The Board waited over ten minutes, conducted a search of the premises for him, and then proceeded in his absence.[4] During the hearing, Shockley testified that he had called Tatman several times to discuss continuing his employment, all to no avail. The Board credited Shockley's statements, and found that Tatman had voluntarily abandoned his employment.[5] Accordingly, the Board reversed the decision of the Referee and denied benefits. This appeal followed.

II.

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[3] Under 19 *Del. C.* § 3315(2), an employee is disqualified from benefits "for the week in which the individual was discharged from the individual's work for just cause." A term of art, "just cause" refers to a wilful or reckless act in violation of either the employer's interest or of the employee's duties. *Boughton v. Division of Unemployment Ins.*, 300 A.2d 25, 26 (Del. Super. Ct. 1972). Poor attendance may support a finding of just cause for dismissal. *Ortiz v. Unemployment Ins. Appeal Bd.*, 317 A.2d 100, 101 (Del. 1974).

[4] *Tatman*, Appeal Docket No. 426720 (Mar. 31, 2002), at 1. Scheduled for 11:40 a.m., the Board waited until 11:52 a.m. to begin the hearing.

[5] Under 19 *Del. C.* § 3315(1), disqualification for benefits results where an employee "[leaves] work voluntarily without good cause attributable to such work . . . ." The burden of proof to show cause for voluntarily terminating employment is upon the claimant. *Longobardi v. Unemployment Ins. Appeal Bd.*, 287 A.2d 690, 692 (Del. Super. Ct. 1971). In this context, good cause entails 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 Sec. Com.*, 269 A.2d 247, 247 (Del. Super. Ct. 1970).

This Court's role in reviewing a decision of the UIAB is to determine whether the Board's findings are supported by substantial evidence and are free from legal error.[6] Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a particular conclusion.[7] When supported by this requisite evidentiary standard, the UIAB's findings are conclusive, with judicial review limited only to questions of law.[8] It is within the discretion of the Board, not the Court, to weigh the credibility of witnesses and resolve conflicting testimony.[9]

After considering the conflicting testimony, the UIAB credited Shockley's statements. Specifically, the Board found that Shockley "continued to offer claimant work, but claimant failed to return calls or try to contact his employer . . . ."[10] Tatman therefore "voluntarily terminated his own employment by abandoning his job."[11] In addition to Shockley's live testimony, the Board examined the record adopted by the Referee, which included Tatman's own statements. Tatman admits he was contacted

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[6] *Ridings v. Unemployment Ins. Appeal Bd. and Dept. Natural Resources and Envtl. Control*, 407 A.2d 238, 239 (Del. Super. Ct. 1979).

[7] *Oceanport Industries, Inc. v. Wilmington Stevedores, Inc.*, 636 A.2d 892, 899 (Del. 1994); *Olney v. Cooch*, 425 A.2d 610, 614 (Del. 1981).

[8] 19 *Del. C.* § 3323(a).

[9] *Starkey v. Unemployment Ins. Appeal Board*, 340 A.2d 165, 166 (Del. Super. Ct. 1975), *aff'd*, 364 A.2d 651 (Del. 1976).

[10] *Tatman*, No. 426720, at 2.

[11] *Id.*

by Shockley, but disputes the Board's finding that Shockley continued to offer him work.

Here, the Board considered the record developed by the Referee, and heard testimony from Shockley, Tatman's direct supervisor. The Board also received undisputed evidence that Tatman and Shockley spoke several days after Tatman's initial absence. Shockley testified that he has continued to offer job opportunities to Tatman; the Board deemed this statement adequate in light of the facts developed by the Referee.[12] The UIAB's finding that Tatman voluntarily abandoned his job is supported by substantial evidence and is therefore conclusive[13].

III.

Even if the Board's decision is supported by substantial evidence, the Court must ensure it is free from legal error. Tatman contends that his absence from the UIAB hearing was justified and warrants additional review by this Court. Specifically, Tatman claims he was absent because he was attending a job interview mandated by the state Department of Employment and Training. Moreover, Tatman contends that he attempted to reach the hearing on time, but was delayed due to his reliance on public transportation. In response, Shockley questions why Tatman, aware of the hearing date and his inevitable conflict, did not seek to reschedule it.

Under UIAB rules, all parties to an appeal must be present within ten minutes

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[12] *Tatman*, No. 426720, at 2. The Board accepted the evidence presented to the Referee, but reversed on the basis of Shockley's testimony at the hearing on appeal.

[13] 19 *Del. C.* § 3323(a).

of the scheduled time.[14] Otherwise, the delinquent party runs the risk of having the appeal heard in that party's absence.[15] Those who fail to make any appearance waive their right to participate in the hearing process.[16] In addition, a party absent from the hearing may not renew factual claims on appeal to this Court.[17]

Regardless of his intent, Tatman chose not to be present at the hearing, and made no attempt to contact the Board. Furthermore, before opening the hearing, the Board waited ten minutes for him to arrive. Because Tatman knowingly failed to appear, the Board was justified in proceeding without him. I find that, the UIAB's decision is free from legal error.

IV.

Because the decision is supported by substantial evidence and is free from legal error, the decision of the Unemployment Insurance Appeals Board denying unemployment benefits to Clarence D. Tatman is affirmed.

IT IS SO ORDERED.

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[14] 2 *UIAB Rules and Regulations* 4.2 (2003).

[15] *Id*.

[16] *Mullins v. Dover Downs, Inc.*, 1998 Del. Super. LEXIS 178, at *8 (noting that "since the possibility existed that new evidence could be introduced, a reasonably prudent person would have attended the [UIAB appeal] meeting to cross-examine new witnesses, and to offer rebuttal testimony.").

[17] *See Griffin v. Chrysler*, 2001 Del. Super. LEXIS 156, at **5-6 (finding failure to exhaust administrative remedies precludes claimant from resurrecting factual disputes for judicial review).

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/s/ Henry duPont Ridgely
President Judge

oc: Prothonotary
xc: Order distribution