IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

MICHAEL A. SINCLAIR, INC.,	)	
	)	
Appellant,	)	
	)	
v.	)	C.A. No.: 03A-09-007 JRJ
	)	
DAVID E. RILEY,	)	
	)	
Appellee,	)	

Date Submitted: April 1, 2004
Date Decided: July 30, 2004

O R D E R

On Appeal from the Decision of the Unemployment Insurance Appeal Board.
Decision **REVERSED.**

Michael R. Ippoliti, Esquire, 824 Market Street, Suite 412, P.O. Box 2284, Wilmington, DE 19899. Attorney for Appellant Michael A. Sinclair, Inc.

David E. Riley, 216 Ohio Avenue, Wilmington, DE 19805. *Pro Se* Appellee.

JURDEN, J.

Upon consideration of the briefs submitted and the record in this case, it appears to the Court that:

Factual and Procedural Background

1. Appellant Michael A. Sinclair, Inc. ("Sinclair" or "Employer") appeals from a decision of the Unemployment Insurance Appeal Board ("UIAB" or "Board") which granted unemployment benefits to David E. Riley ("Riley" or "Claimant").

2. Sinclair initially employed Riley as a commercial truck driver in November of 2001.[1] Individuals who drive vehicles with a gross weight over 10,000 pounds are required to have a Medical Examiner's Certificate ("MEC" or "Certificate").[2] On April 9, 2002, Riley underwent a medical examination for his MEC.[3] As a result of this examination, Riley was given a three-month temporary certification, rather than the standard two-year certification, and was advised to see a physician to determine whether he suffered from diabetes.[4] Riley was subsequently diagnosed with diabetes in May of 2002,[5] and his certification expired on July 9, 2002. Riley applied for a new Certificate, but was denied. On or about July 30, 2002, Riley "parked the truck" and his

[1] *See* UIAB Record (Docket No 5) at 21.
[2] *Id.* at 12.
[3] *Id.*
[4] *Id.*
[5] *Id.* at 30.

employment with Sinclair ended.[6] After briefly working elsewhere, Riley filed a claim for unemployment benefits with the Department of Labor on August 18, 2002.[7] On August 30, 2002, Sinclair tried to rehire Riley for the same truck driver position, but Riley refused, allegedly because he could not obtain his MEC and would be unable to perform the same truck-driving duties.[8]

3. In a February 4, 2003 decision, the Claims Deputy determined that the Claimant was disqualified from receiving benefits under 19 *Del. C.* § 3315(3)[9] because the medical documentation provided by the Claimant "showed no medical restriction that would affect the Claimant's job."[10]

4. Riley appealed and an Appeals Referee affirmed. The Referee's decision states, in pertinent part:

> The issue in this case is whether the claimant refused a suitable offer of work. Clearly, there was an offer of work. This work was identical to what the claimant had previously done for Sinclair. It is also clear that the claimant refused this job. The question then is whether the work was suitable for the claimant. Although the claimant testified that he is

[6] *Id.* at 22-23.
[7] *Id.* at 4.
[8] *Id.* at 23.
[9] 19 *Del. C.* § 3315(3) provides in pertinent part:
> An individual shall be disqualified for benefits:
> (3) If the individual has refused to accept an offer of work for which the individual is reasonably fitted . . . and the disqualification shall begin with the week in which the refusal occurred and shall continue for each week thereafter until the individual has been employed in each of 4 subsequent weeks (whether or not consecutive) and has earned wages in covered employment equal to not less than 4 times the weekly benefit amount . . . .

[10] *See* Notice of Determination, UIAB Record at 7-8.

> unable to obtain new certification due to his diabetes, he provided no medical documentation of this allegation. In the absence of such evidence, this tribunal cannot find that the offer of work was one for which the claimant was not reasonably fitted. Having refused the position, it must be concluded that he is disqualified from benefits by operation of the above-cited statute [19 *Del. C.* 3315(3)].[11]

5. On June 25, 2003, the UIAB held a hearing after the Claimant appealed. Sinclair did not attend this hearing.[12] The Board reversed the Referee's decision because the Claimant provided documentation that he was diagnosed with diabetes. The Board found that the offer of another driving position was not a suitable offer of work because Riley's diabetes restricted his ability to obtain the necessary certification that would permit him to drive.[13] The Board decision became final on September 7, 2003.[14]

6. On September 17, 2003 the Employer timely filed an initial appeal of the Board decision to this Court.[15] On January 27, 2004 the Employer filed the Appellant's Opening Brief.[16] On February 27, 2004 a Delinquent Brief Notice was sent to the Claimant, warning that an answering brief needed to be

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[11] *See* Referee's Decision, UIAB Record at 13.
[12] Sinclair filed a motion for a rehearing, claiming that it never received notice of the first hearing. In an August 13, 2003 decision, the Board denied the Employer's motion for a new hearing because it determined that notice of the first hearing was properly mailed to the Employer's address of record and was not returned. *See* Board's August 13, 2003 Decision, UIAB Record at 67-68.
[13] *See* Board's Decision, UIAB Record at 41-42.
[14] *See* Board's Refusal of Rehearing (Docket No 1) at Exhibit A.
[15] *See* Notice of Appeal (Docket No 1) at 3.
[16] *See* Appellant's Opening Brief ("Employer's Op. Brief") (Docket No 8) at 1.

filed or "the Court will decide the issue on the papers which have been filed if no further action of record is taken within ten (10) days from the receipt of this notice."[17] Having received no response from the Claimant, on March 25, 2004, the Court ordered a determination of the issue on the papers that were filed to that date.[18]

Standard of Review

7. In reviewing a decision on appeal from the Unemployment Insurance Appeal Board, this Court must determine if the decision is supported by substantial evidence and is free from legal error.[19] "'Substantial evidence' means such relevant evidence as a reasonable mind might accept to support a conclusion."[20] Absent an abuse of discretion, this Court must uphold the Board's decision.[21] "Questions of credibility are exclusively within the province of the Board which heard the evidence. As an appellate court, it [is] not within the province of the Superior Court to weigh the evidence, determine

[17] *See* Final Delinquent Brief Notice (Docket No10) at 1.
[18] *Id.*
[19] *K-Mart v. Bowles*, C.A. No. 94A-10-007, 1995 Del. Super. LEXIS 175 (Mar. 23, 1995) (citing 29 *Del. C* § 10142(d); *Johnson v. Chrysler Corp.*, 213 A..2d 64 (Del. 1965)).
[20] *Oceanport Ind. v. Wilmington Services*, 636 A.2d 892, 899 (Del. Super. Ct. 1972).
[21] *Id.*

questions of credibility or make its own factual findings."[22] The Court will only reverse a decision of the Board if its findings are not supported by substantial evidence, or where the Board has made a legal mistake.[23]

Discussion

8. Under 19 *Del. C.* § 3315(8), claimants are disqualified from unemployment benefits "[i]f it shall be determined by the Department that total or partial unemployment is due to the individual's inability to work. Such disqualification [is] to terminate when the individual becomes able to work and available for work as determined by a doctor's Certificate and meets all other requirements under this title."[24] "[W]hile the unemployment insurance fund is an emergency fund provided for those individuals who have become unemployed through no fault of their own, the fund was designed to assist individuals who are unemployed primarily due to economic conditions. The fund and the unemployment insurance system were not intended to be a disability or illness insurers."[25]

[22] *Unemployment Ins. Appeal Bd. v. Div. Of Unemployment Ins.*, 803 A.2d 931, 937 (Del. 2002).
[23] *Delgado v. Unemployment Ins. Appeal. Bd.*, 295 A.2d 585 (Del. Super. 1972).
[24] 19 *Del. C.* § 3315(8).
[25] *O'Neill v. Airborne Express*, UIAB Hearing No. 135523 at 3 (August, 21 2000). *See* Employer's Op. Brief at Tab 29.

9. Here, the Board found that because the Claimant was medically unable to obtain a MEC, the Claimant was no longer able to work as a licensed truck driver.[26] However, the Board erred in concluding that the only effect of this was to prevent the subsequent job offer from being a suitable offer for work. The Board should have also concluded that this disability left the Claimant unable and unavailable to work pursuant to 19 *Del. C.* § 3315(8). Consequently, it was an error of law for the Board to hold that the Claimant was qualified to receive unemployment benefits under the facts in the record.

10. As an alternative grounds for reversal, Delaware Superior Court Rule 107(e) states:

> If any brief, memorandum, deposition, affidavit, or any other paper which is or should be part of a case pending in this Court, is not served and filed within the time and in the manner required by these Rules or in accordance with any order of the Court or stipulation of counsel, the Court may in its discretion, dismiss the proceeding if the plaintiff is in default, consider the motion as abandoned, or summarily deny or grant the motion, such as the situation may present itself, or take such other action as it deems necessary to expedite the disposition of the case.[27]

In *Hunter v. First USA/Bank ONE*, this Court found that "Rule 107(e) inextricably vests in the Court the power to reverse the Board's decision for failure of the Appellee to file its answering brief."[28] Here, the Court is confronted with a factually similar case. As in *Hunter*, the Appellee was duly

[26] *See* UIAB Record at 42 ("The Claimant has demonstrated that he has Type II Diabetes which restricted his ability to obtain proper certification to permit him to drive.").
[27] Del. Super. Ct. Civ. R. 107(e).
[28] *Hunter v. First USA/BANK ONE*, C.A. No. 03A-05-005 PLA, 2004 Del. Super. LEXIS 123 at *13 (April 15, 2004).

notified[29] and failed to explain his inaction. Accordingly, "the Court has no other alternative but to reverse the Board's decision due to the Appellee's failure to diligently prosecute and file its brief pursuant to Rule 107(e)."[30]

11. For the reasons stated above, the decision of the Board that the Claimant is entitled to benefits is not free from legal error and is therefore **REVERSED**.

IT IS SO ORDERED.

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Jan R. Jurden, Judge

[29] Although, in the *Hunter* case, there was a subsequent notification by certified mail, this fails to distinguish these cases because that additional notification was prompted by a concern of a "significant clerical error [that] may have been made in the mailing process, potentially resulting in Appellee never receiving any type of notification of appeal." *Id* at *5.

[30] *Id* at *18.