

SUPERIOR COURT
OF THE
STATE OF DELAWARE

T. Henley Graves
Resident Judge

SUSSEX COUNTY COURTHOUSE
THE CIRCLE
P.O. BOX 746
GEORGETOWN, DE 19947
(302) 856-5257

May 14, 2004

Dante G. Molinaro
28909 Poplar Grove Drive
Milton, DE 19968

Mary Page Bailey, Esq.
State Office Building
820 N. French Street, 6th Floor
Wilmington, DE 19801

RE: Molinaro vs. Unemployment Insurance Appeal Board and R&R Sports Complex
C.A. No. 03A-10-002 THG

DATE SUBMITTED: April 22, 2004

Dear Mr. Molinaro and Ms. Bailey:

This is the Court's decision on Dante G. Molinaro's ("Appellant") appeal of the Unemployment Insurance Appeal Board's ("the Board") decision that Appellant was ineligible for unemployment insurance benefits. The Board's decision is affirmed for the reasons stated herein.

FACTUAL BACKGROUND

Appellant was employed by R&R Sports Complex ("Employer") from April 2002 through January 2003 as a part-time sales clerk in the tackle shop. Employer operates a seasonal business and reduces employment during the winter months. Appellant was not guaranteed any set number of hours per week. On December 30, 2003, Employer suspended Appellant from work. Employer expected Appellant to return to work on January 20, 2003. Appellant did not return to employment after the suspension because he was unhappy that his hours had been cut back. Appellant testified

that it didn't make any sense for him to go to work for 7 hours a week. Appellant viewed the cut back in his working hours as a ploy to get him to quit. However, Employer maintained that Appellant would have continued to be employed had he returned after his suspension.

After a hearing by the Board, Appellant was declared ineligible for unemployment benefits as he had voluntarily quit without good cause.

STANDARD OF REVIEW

The Supreme Court and this Court repeatedly have emphasized the limited appellate review of the factual findings of an administrative agency. The function of the reviewing Court is to determine whether the agency's decision is supported by substantial evidence, *Johnson v. Chrysler Corp.*, 312 A.2d 64, 66-67 (Del. 1965); *General Motors v. Freeman*, 164 A.2d 686, 688 (Del. 1960), and to review questions of law de novo. *In re Beattie*, 180 A.2d 741, 744 (Del. Super. Ct. 1962). Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Oceanport Indus. v. Wilmington Stevedores*, 636 A.2d 892, 899 (Del. 1994); *Battista v. Chrysler Corp.*, 517 A.2d 295, 297 (Del.), *app. disp.*, 515 A.2d 397 (Del. 1986). The appellate court does not weigh the evidence, determine questions of credibility, or make its own factual findings. *Johnson*, 213 A.2d at 66. It merely determines if the evidence is legally adequate to support the agency's factual findings and whether errors of law exist. 19 *Del. C.* § 3323.

DISCUSSION

The findings of the Board are supported by substantial evidence in the record. Delaware law states that an individual will be disqualified from receiving unemployment benefits:

(1) [f]or the week in which the individual left work voluntarily without good cause

attributable to such work...
19 *Del. C. § 3315(a)*.

The burden is on the claimant to show good cause existed for voluntarily terminating employment. *Longobardi v. Unemployment Insurance Appeal Board*, 287 A.2d 690 (Del. Super. 1971). “Good cause can include a substantial reduction in wages, work hours or a substantial deviation in the working conditions from the original agreement of hire to the detriment of the employee.” *Weathersby v. Unemployment Ins. Appeal Bd.*, 1995 WL 465326 (Del. Super. 1995), citing *Moore v. Fulton Paper Co.*, Del. Super. Ct., C.A. No. 94A-06-004, Gebelein, J. (Dec. 2, 1994).

The Board was well within its discretion to determine that Appellant did not meet his burden of showing good cause for leaving his employment. The Board found that Appellant worked part-time, knowing and understanding the seasonal nature of Employer’s business, and was not guaranteed any set number of hours per week. The Board concluded that Appellant agreed, as a condition of hire, that he would be given hours as they were available and that there would be less hours available in the off-season. The Board found that these conditions had not changed.

Appellant does not argue that the Board committed any errors of law in reaching its decision. Appellant’s argument on appeal is that the Board was confused. Appellant’s focus is on the merits of his claim, in that he deserved to receive benefits because Employer was unfair and unjust and that he was ‘forced’ to quit. Appellant’s arguments are not supported by evidence on the record. In fact, Appellant’s own statements show that he did not return to work after his suspension because he was unhappy with the reduction in his hours. That, by itself, does not

amount to good cause. *See White v. Security Link*, 658 A.2d 619 (Del. Super. 1994)

As the Court is bound by the Board's findings of fact in the absence of fraud and if supported by the evidence, this Court must affirm the Board's decision. Since there is substantial evidence, the Court must uphold its determination. Thus, in light of the foregoing, the decision of the Unemployment Insurance Appeal Board is affirmed.

Very truly yours,

T. Henley Graves

jfg

oc: Prothonotary
cc: Unemployment Insurance Appeal Board
R&R Sports Center