IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

CATHERINE LANDIS,	)	
	)	
Employee-Appellant,	)	
	)	
v.	)	C.A. No. 03A-11-011 WCC
	)	
BRANDYWINE MEDICAL MANAGEMENT, and UNEMPLOYMENT INSURANCE APPEAL BOARD,	)	
	)	
Appellees.	)	

Submitted: September 16, 2004
Decided: December 22, 2004

Appeal from Unemployment Insurance Appeal Board. DENIED.

ORDER

Douglas A. Shachtman, Douglas A. Shachtman & Associates, 1200 Pennsylvania Ave., Suite 302, Wilmington, Delaware. Attorney for Appellant.

Jeffrey K. Martin, Margolis Edelstein, 1509 Gilpin Ave., Wilmington, Delaware. Attorney for Appellee.

Mary Page Bailey, Deputy Attorney General. Department of Justice, Carvel State Office Building, 820 North French Street, 6th Floor, Wilmington, Delaware. Attorney for Unemployment Insurance Appeal Board.

CARPENTER, J.

This 22nd day of December, 2004, upon consideration of briefs filed by the parties and the record below, it appears that:

1. Catherine Landis ("Appellant"), filed this appeal from the October 15, 2003 decision of the Unemployment Insurance Appeal Board (the "Board") which ruled that she is ineligible for unemployment insurance. This Court finds that the decision of the Board is supported by substantial evidence and is free from legal error, and therefore the decision must be affirmed.

2. In March 2002, Appellant was hired to work full-time in accounts receivable for Brandywine Medical Management ("Brandywine") at a salary of $12.35 an hour. Approximately a year later, Appellant's responsibilities were reduced to act as the general receptionist but during the year additional tasks regarding a new client were assigned to her to perform.

On July 29, 2003, at approximately 3:45pm, the Appellant was called into a meeting with her manager, Kamal Erkan, as well as the office manager, Dolly Fader and Rita Munson, the compliance officer, in order to confront the Appellant about why the project involving the new client had fallen behind schedule. Disappointed in Appellant's work, Erkan told Appellant that she was relegated to only answering phones. In response, the Appellant stated that she would be unhappy with only answering phones and allegedly indicated that she was quitting. Approximately

forty-five minutes after the meeting concluded Fader approached the Appellant and told her to pack up her things and leave. Appellant followed Fader's instructions and never returned to work. Thereafter, Appellant filed for unemployment benefits. The Claims Deputy determined that the Appellant voluntarily quit without good cause and was therefore disqualified from receiving benefits.

3. Appellant appealed the Claims Deputy's decision to an Appeals Referee (the "Referee"). The Referee presided over a hearing on September 16, 2003 and found that the Appellant was discharged from her work without just cause and did not voluntarily quit. He reversed and modified the Claims Deputy's decision, and found that the Appellant was qualified, eligible and entitled to the receipt of benefits.

4. Subsequently, Brandywine appealed the Referee's decision to the Unemployment Insurance Appeal Board, and a hearing was held on October 15, 2003. Fader testified that she heard the Appellant say "I quit" before Appellant left the meeting on July 29, 2003, and Appellant denied ever having resigned. The majority of the Board found Fader's testimony to be more credible than that of Appellant and reversed the Referee's decision and denied benefits. On November 20, 2003, the Appellant appealed the Board's decision *pro se* to the Court. However, on March 24, 2004, the Court dismissed Appellant's appeal because she had failed to file

her brief in a timely fashion.[1] However, on May 12, 2004, the Court granted Appellant's Motion to Vacate the Dismissal of Appeal, as she was now represented by counsel and the case could appropriately proceed to be decided on its merits without prejudice to the Appellee.

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[2] and is free from legal error.[3] Substantial evidence is such relevant evidence that a reasonable person might accept as adequate to support a conclusion.[4] This Court does not weigh evidence, determine questions of credibility, or make factual findings in the first instance.[5] Rather, this Court's role is to determine whether the evidence is legally adequate to support the Board's findings.

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[1]Super. Ct. Civ. R. 107(e).

[2]*General Motors Corp. v. Freeman*, 164 A.2d 686, 688 (Del. 1960); *Attix v. Voshell*, 579 A.2d 1125, 1127 (Del. Super. Ct. 1989).

[3]*Boughton v. Div. of Unemployment Ins. of the Dep't of Labor*, 300 A.2d 25, 26-27 (Del. Super. Ct. 1972); *Ridings v. Unemployment Ins. Appeal Bd.*, 407 A.2d 238, 239 (Del. Super. Ct. 1979).

[4]*Oceanport Ind., Inc. v. Wilmington Stevedores, Inc.*, 636 A.2d 892, 899 (Del. 1994); *Breeding v. Contractors-One-Inc.*, 549 A.2d 1102, 1104 (Del. 1988); *Battista v. Chrysler Corp.*, 517 A.2d 295, 297 (Del. Super. Ct. 1986).

[5]*Trotman v. Bayhealth Med. Ctr., Inc.*, 2000 WL 33109616, at *1 (Del. Super.).

6. Appellant contends there is no substantial evidence supporting the Board's findings and raises four grounds for her appeal which the Court will address *seriatim*. First, Appellant argues that the standard of review is modified where the Board did not consider part of the evidence of the record. More specifically, she alleges that the Board's decision is entitled to less deference because it was based partially on testimony which was presented only to the Referee and since it would not have been transcribed at the time the Board hearing occurred would not be available to the Board. Appellant relies on *Pierson v. Parkview Nursing Home*, where the Board did not have the advantage of seeing or hearing the employee-appellant testify.[6] There, the Court stated that less deference "is required when the Board considers testimony which is not presented orally because the rule is at least partially founded on the assumption that the Board sees and hears witnesses, and is better able to determine the credit and weight to be given their testimony."[7] Here, Appellant had the opportunity to testify before both the Referee and the Board and presented her position in both hearings, so Appellant's reliance on *Pierson* is misguided.

Appellant also argues that the credibility of witnesses, and the weight given to their testimony are issues for the Referee. However, Appellant misconstrues

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[6]1995 WL 108730, at *2 (Del. Super.).

[7]*Pierson v. Parkview Nursing Home*, 1995 WL 108730, at *2 (Del. Super.).

precedent which explicitly states that credibility findings and "the reasonable inferences to be drawn therefrom are for the Board to determine."[8] Furthermore, the Board's factual findings, if supported by the evidence and in the absence of fraud, will be conclusive.[9] A fairer reading of the Board's comment that they were "familiar with the case" was a reference to the fact that they had the benefit of the findings of the Referee and had reviewed them prior to the hearing. The Appellant had a full opportunity to present her position to the Board and the Board's decision was based upon that testimony. As a result, Appellant's first ground for reversal lacks merit.

7. Next, Appellant alleges that she did not voluntarily resign.[10] While the testimony of Appellant that she never said "I quit" conflicts with the testimony of Fader, the Board found the latter's testimony more credible. Moreover, the Board found the fact that Appellant did not question Fader's directions to pack up her possessions and leave supported Fader's testimony that Appellant had already resigned. This issue centers on the resolution of a factual dispute, based upon an assessment of the witnesses' credibility, which is solely within the realm of the Board's discretion. The Court cannot question the Board's findings on issues of

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[8] *Coleman v. Dep't of Labor et al.*, 288 A.2d 285, 287 (Del. Super. Ct. 1972).

[9] 19 *Del. C.* § 3323(a).

[10] Appellant's Opening Br. at 4 (Misidentifying her own gender, Appellant argues "he did not voluntarily quit his job.").

credibility and whether the Court would perhaps have found a different result is not relevant. As a result, the Court finds there is substantial evidence to support the Board's factual finding that Appellant voluntarily quit and her second ground for reversal collapses.

8. Appellant next asserts that the Board's limited findings do not support a determination that she voluntarily quit. Appellant contends that the Board "did not hear" and was not privy to the testimony of Appellant and Rita Munson before the Referee.[11] The Board's decision, however, explicitly states that it considered "the evidence presented to the appeals referee" and they had the benefit of hearing from two witnesses that were directly involved in the conversation where the "I quit" comments allegedly occurred.[12] Therefore, Appellant's third ground for reversal is without merit.

9. Finally, Appellant argues that the Board failed to reconcile or address conflicting testimony of the witnesses. The Board, however, did address the conflicting testimony when it stated that it found Fader's testimony more credible than that of Appellant. Furthermore, Appellant's reliance on *Andress v. Schumacher*

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[11] *Id.* at 6.

[12] Decision of the Appeal Board (Oct. 15 2003).

& Co. is erroneous.[13] There, this Court reversed the Board's decision, but only after it concluded that the employee never resigned and moreover, the employer admitted to the Board that it had terminated the employee for being disruptive.[14] The holding of *Andress* is inapplicable and Appellant's final argument must succumb because credibility determinations are beyond the scope of review.[15]

10. Based upon the above, the Court finds Appellant has not provided any information to support the contention that the Board's decision is based on insufficient evidence, nor that it is tainted by legal error. There is substantial evidence in the record that supports the determination of the Board and that, as a matter of law, Appellant is ineligible for unemployment insurance.

11. The Board's decision is therefore AFFIRMED.

IT IS SO ORDERED.

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Judge William C. Carpenter, Jr.

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[13] 1993 WL 542062 (Del. Super.).

[14] *Id.* at *1.

[15] *Trotman v. Bayhealth Med. Ctr., Inc.*, 2000 WL 33109616, at *1 (Del. Super.).