

SUPERIOR COURT
OF THE
STATE OF DELAWARE

RICHARD F. STOKES
JUDGE

1 THE CIRCLE, SUITE 2
SUSSEX COUNTY COURTHOUSE
GEORGETOWN, DE 19947

Emily J. Spicer
115 Marvil Dr.
Laurel, DE 19956

Spicer Unlimited
418-D DuPont Hwy.
Georgetown, DE 19947

RE: *Emily Spicer v. Spicer Unlimited*
C.A. No. 04A-11-004-RFS

Date Submitted: January 19, 2005
Date Decided: April 21, 2005

Dear Ms. Spicer and Counsel:

This is my decision regarding Emily Spicer's appeal of the Unemployment Insurance Appeals Board's decision that she was not eligible to receive unemployment benefits. For the reasons set forth herein, the decision of the Board is affirmed.

STATEMENT OF THE CASE

Emily Spicer ("Ms. Spicer") is the president of Spicer Unlimited ("Spicer"). Spicer bought an H & R Block franchise on January 5, 2004. In addition to being president of Spicer, Ms. Spicer works as an employee at H & R Block and is paid as such. Ms. Spicer has worked for H & R Block in some capacity for ten years. From January until April fifteenth, during the busy tax season, the H & R Block office is open six days a week and Ms. Spicer works a full work week. After April fifteenth, however, H & R Block is required to be open only six hours per week. These requirements are set out in the H & R Block franchise agreement with Spicer. Ms. Spicer does not have any other employment, does not receive other compensation from

Spicer or H & R Block, and from April fifteenth until January is only paid for the one day she works per week.

Ms. Spicer applied to the Division of Unemployment Insurance to receive unemployment benefits.¹ After a hearing on August 2, 2004, and in a decision, dated August 6, 2004, the Referee found that Ms. Spicer was ineligible to receive benefits because she was neither unemployed nor partially unemployed under Delaware law. The Referee found that Ms. Spicer was obviously not unemployed because she worked one day a week. She was also not partially unemployed² because she was working her customary hours for that time of the year. The Referee also found Ms. Spicer was ineligible for unemployment benefits because she had made herself unavailable for other full-time work.

Ms. Spicer then appealed the Referee's decision to the Unemployment Insurance Appeals Board ("the Board"). A hearing was held on September 22, 2004. The Board affirmed the decision of the Referee, agreeing that Ms. Spicer had made herself unavailable for work. The Board also found her to be ineligible for benefits because she was not actively seeking employment.

Ms. Spicer has appealed the Board's decision to this Court, claiming she was misinformed by a state agent or representative of the agency because no one informed her that she must be actively seeking work in order to receive unemployment benefits.

DISCUSSION

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 Board's conclusions are supported by substantial evidence and are

free from legal error. *General Motors Corp. v. Fritz*, 2004 WL 2829053, at *2 (Del. Super. Ct.). “‘Substantial evidence’ means ‘such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.’” *Id.*, quoting, *DABCC v. Newsome*, 690 A.2d 906, 910 (Del. 1996). The Court does not weigh the evidence, determine questions of credibility, or make its own factual findings. *General Motors Corp.*, at *2, citing, *Boulevard Elec. Sales v. Webb*, 428 A.2d 11, 13 (Del. 1981).

19 *Del. C.* § 3315 provides “[a]n unemployed individual shall be eligible to receive benefits with respect to any week only if the Department finds that the individual: . . . (3) Is able to work and is available for work and is actively seeking work” Pursuant to 19 *Del. C.* § 3302(17):

"Unemployment" exists and an individual is "unemployed" in any week during which the individual performs no services and with respect to which no wages are payable to the individual, or in any week of less than full-time work if the wages payable to the individual with respect to such week are less than the individual's weekly benefit amount plus whichever is the greater of \$10 or 50% of the individual's weekly benefit amount. The Department shall prescribe regulations applicable to unemployed individuals making such distinctions in the procedures as to total unemployment, part-total unemployment, partial unemployment of individuals attached to their regular jobs and other forms of short-time work as the Department deems necessary.

In order to receive unemployment benefits, an individual must be unemployed. The Referee found that Ms. Spicer was neither unemployed, nor partially unemployed, and she does not dispute those conclusions. The Board did not reach the issue of whether Ms. Spicer was unemployed pursuant to the definition in § 3302(17). It instead decided she was ineligible because she was not available for work and she was not actively seeking work.³

The requirements that an individual seeking benefits be able to work, available for work and actively seeking work are condition precedents to the receipt of any benefits. *Johnston v. Chrysler Corp.*, 178 A.2d 459 (1962) (addressing 19 *Del. C.* § 3314).⁴ “Each of the statutory requirements has a separate meaning and purpose.” *Ashmore v. Unemployment Compensation Comm’n*, 86 A.2d 751, 753 (Del. Super. Ct. 1952). The finding that any one of the three are not met makes a claimant ineligible to receive benefits. *See, e.g., Petty v. University of Delaware*, 450 A.2d 392, 395 (Del. 1982) (noting that the “able to work” and “available to work” terms have a separate meaning and each must be satisfied for benefits to be awarded); *Morgan v. Unemployment Ins. Appeal Bd.*, 416 A.2d 1227, 1230 n. 4 (Del. Super. Ct. 1980) (“It should be noted that Delaware law mandates as a separate requirement that a Claimant actively seek work.”).

Ms. Spicer argues that the Board’s decision should be reversed because she was misled by a state employee when she was not informed that she needed to be actively seeking work in order to be eligible to receive unemployment benefits. Ignorance of the law is no excuse, however. *See, e.g., Vosters v. Delaware Racing Comm’n*, 1987 WL 8896, at *2 (Del. Super. Ct.). The purpose of Delaware’s Unemployment Compensation law is to lighten the burden which often falls with “crushing force upon the unemployed worker” when through no fault of her own, she finds she is unemployed. 19 *Del. C.* § 3301. The law was not created to supplement a worker’s income when she has made or is making no effort to improve her condition. *Cf. Johnston*, 178 A.2d at 464 (“The Law was enacted for the benefit of persons unemployed through no fault of their own, who also are sincerely co-operating to end their

unemployment.”). Unemployment benefits are a temporary solution, meant to keep a person on her feet until that time when she has secured other employment.

While Ms. Spicer might now be of the position that she would have tried to find work if she had known it was necessary to receive unemployment benefits, the fact of the matter is that, at the time of her hearings, she was not actively seeking employment. Ms. Spicer is bound by the record of the administrative hearing. *Petty*, 450 A.2d at 396. From the record and its hearing, it appeared to the Board that she requested unemployment benefits in order to augment her income from her business during the off seasons. *Spicer v. Spicer Unlimited*, Appeal Docket No. 729875, at 2 (November 1, 2004).

The Board found that Ms. Spicer had made no efforts to find other work. She admitted as much during the hearing:

MARY PAGE BAILEY: During the off season what else do you do besides the one day a week?
EMILY SPICER: That is it. I work four [sic] H&R Block or the corporation. That is it.
MARY PAGE BAILEY: Do you, do you have no other form of income? You have no other form of businesses?
EMILY SPICER: No ma'am.
MARY PAGE BAILEY: Do you make any, do you seek any other form of employment during that time period?
EMILY SPICER: No ma'am. I stay home. I have done this for ten years except this, in January is when I, I formed the corporation just to do the, just for H&R Block.

Bd. Hr'g, IAB Appeal Docket No. 729875, at 5.

The Board's decision that Ms. Spicer was not actively seeking work was supported by substantial evidence and was free from legal error. She had made no efforts to find work during the off season for the ten years that she had been involved in this line of work. Nor did she give any indication that she intended to change her pattern. It was clear to the Board, as it is also clear

to this Court, that Ms. Spicer was not actively seeking work. It appeared that she requested unemployment benefits in order to supplement her off season income. Delaware Unemployment benefits are not and never have been intended to be a subsidy for seasonal employment. The fact that Ms. Spicer was not actively seeking work makes her ineligible for benefits.⁵ The burden was on her to show she was actively seeking work and was therefore entitled to unemployment benefits. *Petty*, 450 A.2d at 395. She cannot now alter the fact that she did not meet her burden to prove eligibility for benefits during the hearings.

CONCLUSION

Considering the foregoing, the decision of the Board is affirmed.

IT IS SO ORDERED.

Very truly yours,

Richard F. Stokes

cc: Prothonotary
Industrial Accident Board

ENDNOTES

1. Ms. Spicer was applying to receive benefits from a company, Spicer, of which she is the sole owner. Such an application to the Division of Unemployment Insurance is like a nonadversary proceeding. *See, e.g., Ashwander v. Tennessee Valley Authority*, 297 U.S. 288 (1936).

Notwithstanding the concerns which may arise in this context, the Referee and the Board were justified in refusing Ms. Spicer's application based on the law regarding an applicant's eligibility for benefits.

2. The definition for partial unemployment can be found in Regulation 15, which was promulgated pursuant to the power granted to the Department of Labor under 19 *Del. C.* § 3121.

It states:

(1)(a) A partially unemployed individual is one who, during a particular week (i) earned less than his weekly benefit amount plus two dollars, (ii) was employed by a regular employer, (iii) worked less than his normal customary full-time hours for such regular employer because of lack of full-time work.

3. The Board did not address Ms. Spicer's unemployment status. While the Board may consider the Referee's findings and the record before her, its review is *de novo* and it may come to its own conclusions. *Robbins v. Deatons*, 1994 WL 45344, at *3-4 (Del. Super. Ct.). To the extent it adopted or affirmed the findings of the Referee, however, her findings of fact and conclusions of law are pertinent. *See Thomas v. Chrysler Corp.*, 1995 WL 108896, at *2 (Del. Super. Ct.) ("When the Board affirms a referee's decision after taking additional evidence or affirms it without taking such evidence, this Court will rely upon the referee's determination of the findings of fact and conclusions of law."). The Board did not specifically adopt the Referee's

determination that Ms. Spicer was not unemployed. It did, however, affirm her decision.

Although the issue of her unemployment status may be considered in this Court's review of the Board's decision, it is not necessary to address it here since Ms Spicer was ineligible for benefits because she was not actively seeking work.

4. 19 *Del. C.* § 3314 was transferred to § 3315 by amendment, effective June 30, 2004. The wording of the sections relevant to this decision was not changed.

5. The Board also adopted the Referee's finding that Ms. Spicer was unavailable for work. The Referee concluded that Ms. Spicer had made herself unavailable for "any other full-time work." *Spicer v. Spicer Unlimited*, UIAB Appeal Docket No. 729875 (August 6, 2004) (Decision of Appeals Referee).

"[T]he purpose of the 'available for work' provision is to test the defendant's attachment to a labor market." *Ashmore*, 86 A.2d at 753. More specifically:

"The availability requirement is said to be satisfied when an individual is willing, able and ready to accept suitable work which he does not have good cause to refuse, that is, when he is genuinely attached to the labor market. . . . A labor market for an individual exists when there is a market for the type of services which he offers in the geographical area in which he offers them."

Id. (citation omitted).

Thus, the decisive question is whether a market exists for the kind of services the claimant was offering in the geographical area where she would have been seeking employment. *Id.*

The Referee found that Ms. Spicer was "attached" to her business with H & R Block and, therefore, she was unavailable to work for anyone else full-time. While a person may have loyalty to a business she owns, this is not a factor, in and of itself, that would conclusively

prevent her from being available for supplemental employment in the same field. There is no requirement in the statute that a claimant must be available for full-time work, as opposed to part-time or temporary work. *Harper*, 293 A.2d at 816. Here, Ms. Spicer only worked one day per week; however, she submitted no evidence to prove that there might have been a part-time accounting services market in which she could work. “[T]he burden is on the claimant to establish his [or her] right to unemployment compensation.” *Petty*, 450 A.2d at 395. Since Ms. Spicer also did not meet her burden regarding unavailability, the Board committed no legal error when it affirmed the referee’s finding that she was unavailable for work.