

IN THE SUPREME COURT OF THE STATE OF DELAWARE

TONY A. WILSON,	§
	§ No. 684, 2010
Employee/Appellant Below-	§
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware
	§ in and for Sussex County
THE BREAKERS HOTEL &	§ C.A. No. S09A-08-004
SUITES,	§
	§
Employer/Appellee Below-	§
Appellee.	§

Submitted: March 25, 2011

Decided: April 25, 2011

Before **STEELE**, Chief Justice, **HOLLAND** and **RIDGELY**, Justices

ORDER

This 25th day of April 2011, upon consideration of the opening brief and the record below,¹ it appears to the Court that:

(1) The appellant, Tony A. Wilson, filed an appeal from the Superior Court’s June 24, 2010 order affirming the decision of the Unemployment Insurance Appeals Board (“UIAB”), which denied him unemployment insurance benefits, and from the Superior Court’s August 23,

¹ By letter dated January 27, 2011, the Clerk informed the parties that, in the absence of an answering brief, the appeal would be decided on the basis of the opening brief and the Superior Court record.

2010 and October 13, 2010 orders denying his first and second motions for reargument. We find no merit to the appeal. Accordingly, we affirm.

(2) The record reflects that, in July 2008, Wilson filed a claim for unemployment insurance benefits with the Delaware Department of Labor. Wilson claimed that his hours of employment as a maintenance worker with the Breakers Hotel & Suites had been reduced for a period of time in the summer of 2008, rendering him partially unemployed and, therefore, entitled to unemployment benefits. In August 2008, the Claims Deputy denied Wilson's claim for benefits. Wilson appealed to the Appeals Referee, but later withdrew his appeal. In March 2009, Wilson moved to reopen his case. The UIAB granted his request and remanded the case to the Appeals Referee.

(3) Following a hearing on April 27, 2009, the Appeals Referee determined that Wilson was ineligible for benefits. Wilson appealed to the UIAB. The hearing before the UIAB took place on June 30, 2009. Following the hearing, the UIAB issued its decision denying him benefits on the ground that he had failed to demonstrate that he worked less than his customary number of hours during the period for which he claimed benefits² and, therefore, was not entitled to unemployment benefits.

² Del. Code Ann. tit. 29, §8503(7); Dept. of Labor Reg. 15.

(4) In this appeal, Wilson asserts several claims that may fairly be summarized as follows: a) the UIAB failed to follow proper procedures in denying his claim for benefits; b) the Superior Court failed to follow proper procedures in affirming the decision of the UIAB; c) the Superior Court applied an incorrect legal standard in its decision; and d) the Superior Court abused its discretion in its decision.

(5) An employee may receive unemployment benefits if the employee is totally or partially unemployed.³ An individual is “unemployed” 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.”⁴ Under Department of Labor Regulation 15, a “partially unemployed individual” is one who a) earned less than his weekly benefit amount plus two dollars; b) was employed by a regular employer; and c) worked less than his normal customary full-time hours because of lack of full-time work.⁵

(6) The standard of review of the Superior Court on appeal from a decision of the UIAB is whether there is substantial evidence in the record

³ Del. Code Ann. tit. 19, §3302(17).

⁴ Id.

⁵ Del. Code Ann. tit. 29, §8503(7).

sufficient to support the Board's findings and whether such findings are free from legal error.⁶ Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.⁷ The Superior Court does not independently weigh the evidence, determine questions of credibility or make its own factual findings.⁸ The standard of review applicable to this Court is that same as the standard of review applicable to the Superior Court.⁹

(7) We have carefully reviewed the record in this case, including the transcripts of the hearings before the Appeals Referee and the UIAB and the written decisions of the Claims Deputy, the Appeals Referee, the UIAB and the Superior Court. We find no error or abuse of discretion on the part of the UIAB in denying Wilson's claim for benefits or on the part of the Superior Court in determining that Wilson's claims of error were without merit and in affirming the decision of the UIAB. We also find no error or abuse of discretion on the part of the Superior Court in denying Wilson's two motions for reargument.¹⁰ We conclude that the Superior Court's judgment should be affirmed on the basis of the Superior Court's well-reasoned decisions dated June 24, August 23, and October 13, 2010.

⁶ *UIAB v. Duncan*, 337 A.2d 308, 309 (Del. 1975).

⁷ *Oceanport Ind., Inc. v. Wilmington Stevedores, Inc.*, 636 A.2d 892, 899 (Del. 1994).

⁸ *Johnson v. Chrysler Corp.*, 213 A.2d 64, 66 (Del. 1965).

⁹ *Id.*

¹⁰ Super. Ct. Civ. R. 59(e).

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Myron T. Steele
Chief Justice