IN THE SUPERIOR COURT OF THE STATE OF DELAWRE

IN AND FOR NEW CASTLE COUNTY

JOHN DAVID CONNOR,	)	
	)	
Employee-Appellant,	)	
	)	
v.	)	C.A. No. 03A-04-005 JRJ
	)	
TECHCLEAN INDUSTRIES, LTD	)	
	)	
Employer-Appellee	)	
	)	
and	)	
	)	
UNEMPLOYMENT INSURANCE APPEAL BOARD,	)	
	)	
Appellee.	)	

Date Submitted: November 3, 2003
Date Decided: January 27, 2004

O R D E R

On Appeal of the Decision of the Unemployment Insurance Appeal Board.
Decision **AFFIRMED**.

JURDEN, J.

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

Procedural History

1. Appellant John David Connor ("Connor" or "claimant") appeals from a decision of the Unemployment Insurance Appeal Board ("UIAB" or "Board") which denied him benefits.

2. Connor was employed as an air duct cleaning foreman by TechClean Industries, Ltd. ("TechClean" or "employer") from approximately 1995 until November 8, 2002, when he was placed on thirty (30) days of suspension for allegedly failing to show up for work on November 4 and November 8, 2002.[1] After the employer called the claimant on November 8th and issued a letter of suspension dated November 11, 2002, Connor filed a claim for unemployment benefits on November 17, 2002.

3. On January 3, 2003, a Claims Deputy determined that Connor was not entitled to unemployment benefits because he was on disciplinary suspension at the time he filed his claim.[2]

4. Connor appealed this decision and an Appeals Referee held a hearing on February 10, 2003. The employer did not attend this hearing,[3] and the Referee determined that the claimant was constructively discharged and therefore qualified for benefits.[4]

5. The employer appealed the Referee's decision to the Unemployment Insurance Appeal Board and the Board held a hearing on March 26, 2003. The Board reversed and held that Connor abandoned his job without good cause and was therefore

[1] *See* Letter dated November 11, 2002 from Joseph Laterza to Dave Connor ("Suspension Letter"), UIAB Record ("Record") (Docket No. 4) at 32 and 68.
[2] *See* Notice of Determination, Record at 5.
[3] The employer states that it was unaware of the Referee's hearing because the "paperwork pertaining to the matter was misplaced." Answering Brief of Appellee TechClean Industries, Ltd. ("Employer's Brief") at 1; *see also* Letter to the Appeals Referee from Joseph Laterza on behalf of TechClean dated Feb. 18, 2003, Record at 25.
[4] *See* Referee's Decision, Record at 10.

disqualified from the receipt of unemployment benefits.[5] This appeal followed.

Standard of Review

6. 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.[6] Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.[7] Absent an abuse of discretion, this Court must uphold the Board's decision.[8]

7. "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 questions of credibility or make its own factual findings."[9] 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.[10]

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[5] *See* Decision of the Appeal Board, Record at 40-41; *see also* 19 Del. C. § 3315 (2).
[6] *K-Mart v. Bowles*, 1995 WL 269872 (Del. Super. Mar. 23, 1995), citing 29 Del. C § 10142(d); *Johnson v. Chrysler Corp.,* 213 A.2d 64 (Del. 1965).
[7] *Oceanport Ind. v. Wilmington Stevedores*, 636 A.2d 892, 899 (Del. Super. 1994).
[8] *Id*.
[9] *Unemployment Ins. Appeal Bd. v. Div. of Unemployment Ins.,* 803 A.2d 931, 937 (Del. 2002).
[10] *Delgado v. Unemployment Insurance Appeal Board*, 295 A.2d 585 (Del. Super. 1972).

Analysis

8. Connor asserts that he was effectively discharged from employment because TechClean demanded that he work in New York on Friday November 8, 2002 when the employer knew that Connor had to take care of his son that weekend and would not be able to travel to New York.[11] In support of this assertion, Connor also suggests that the employer canceled his health insurance and placed him on suspension just before he was about to have surgery on his shoulder.[12]

9. Joseph Laterza, testifying for the employer, stated that Connor was not fired but was placed on temporary suspension effective November 8, 2002.[13] TechClean issued the suspension because Connor had a period of no shows during two weeks and the employer was unable to reach Connor on the phone, even though the employer paid for Connor's cell phone so he would be on call.[14] In addition, Laterza testified that he did not ask Connor to work the whole weekend of November 8, 2002. Instead, the employer wanted Connor to drive up to New York that Friday morning, but told Connor he could return to Delaware by that afternoon.[15]

10. Laterza also testified that he went to Connor's home during the suspension in order to collect certain items that were owned by the employer. At this time Laterza claims that he told the claimant "the door is open finish your suspension let me know

[11] Claimant's Opening Brief (Docket No. 8) at 1.
[12] *See* Claimant's Reply Brief (Docket No. 11) at 1; *see also* Transcript of Hearing before the Appeals Referee at 12 (Record at 23).
[13] *See* Transcript of the UIAB Hearing at 4-5 (Record at 47-48).
[14] *Id.*
[15] *See* Tr. of the UIAB Hrg. at 5-7 (Record at 48-50).

what you want to do and you can come back to work."[16] But after the suspension TechClean never heard from Connor again.[17]

11. Connor denied that he was told to contact the employer after the suspension.[18] The claimant was under the impression that the employer would contact him after the suspension period terminated and after he was cleared to work by his doctor.[19] This misunderstanding is clear from Connor's Notice of Appeal to the Referee in which he states, "I was able to return to work but was not called back. So I took it as they fired me."[20]

12. The Board found that the employer had just cause for the suspension.[21] The Court finds that there is substantial evidence in the record to support this conclusion. In this case, the Board's determination hinged on the credibility of the witnesses, and "questions of credibility are exclusively within the province of the Board."[22] The Board found Laterza'a testimony to be credible, and Connor admitted that he was told to give Laterza a call if he wanted to talk.[23] The Board's decision, in pertinent part, states the following:

> The Board also accepts as credible employer's testimony that he told claimant to call in and that he could report back to work after the suspension. Even claimant admitted that Laterza told him to give him a call during the suspension period.

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[16] Tr. of the UIAB Hrg. at 9 (Record at 52).
[17] *See* Tr. of the UIAB Hrg. at 9, 11 (Record at 52, 54).
[18] *See* Tr. of the UIAB Hrg. at 14 (Record at 57).
[19] *See* Tr. of the UIAB Hrg. at 16 (Record at 59).
[20] Notice of Appeal to Referee, Record at 6.
[21] Decision of the Appeal Board, Record at 41.
[22] *Unemployment Ins. Appeal Bd. v. Div. of Unemployment Ins.,* 803 A.2d 931, 937 (Del. 2002).
[23] Connor's testimony before the Board reveals the following exchange:

> Board Member: [When Mr. Laterza came to your home while you were recouperating from the surgery, d]id you at that point have any discussions about returning to work when your recouperation period was up?
>
> John Connor: He just told me you know if you want to talk about everything give me a call and that was the end.

Tr. of the UIAB Hrg. at 21 (Record at 64).

> While there may have been some miscommunication, the Board finds that it was incumbent upon claimant to call his employer to attempt to return to work or at least find out the status of his job. Having failed to do so, claimant effectively abandoned his job without good cause. Accordingly, the Board finds that claimant is disqualified from the receipt of benefits.[24]

13. On appeal, Connor argues "[I] did not abandon my job, I waited for Tech

[24] Decision of the Appeal Board, Record at 41.

Clean to call me in regards to coming back to work."[25] But the Board's decision that "it was incumbent upon claimant to call his employer to attempt to return to work or at least find out the status of his job" is supported by substantial evidence and is free from legal error. Unemployment is for the benefit of persons who are unemployed through no fault of their own and are sincerely cooperating to end their unemployment.[26] By failing to contact his employer when his thirty (30) day suspension ended, Connor was not sincerely cooperating to end his unemployment.

14. A decision by an administrative agency is not an abuse of discretion "unless it is based on clearly unreasonable or capricious grounds," or the agency "exceeds the bounds of reason in view of the circumstances and has ignored recognized rules of law or practice so as to produce injustice."[27] The Board's determination, after considering Connor's proffered reasons for his belief that he was fired, that it was the claimant's responsibility to contact his employer once his suspension ended, is not an abuse of discretion.

15. For the reasons stated above, the decision of the Board is supported by substantial evidence, is free from legal error, and is not an abuse of discretion.

The decision of the Board is hereby **AFFIRMED**.

IT IS SO ORDERED.

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Jan R. Jurden, Judge

[25] Claimant's Reply Brief at 1.
[26] *Johnston v. Chrysler Corp.*, 178 A.2d 459 (Del. 1962).
[27] *K-Mart v. Bowles, supra*.