

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE  
IN AND FOR NEW CASTLE COUNTY

BERNADETTE R. JOHNS,	)	
	)	
Claimant-Below/	)	
Appellant,	)	
	)	
v.	)	C.A. No. 06A-03-007 MJB
	)	
PHILLIPS & COHEN and	)	
UNEMPLOYMENT INSURANCE	)	
APPEAL BOARD	)	
	)	
Appellees.	)	

Submitted: September 20, 2006  
Decided: October 19, 2006

On Appeal from the Unemployment Insurance Appeal Board.  
**DISMISSED.**

**OPINION AND ORDER**

Bernadette R. Johns, Wilmington, Delaware, Appellant, pro se.

Mary Page Bailey, Deputy Attorney General, Department of Justice,  
Wilmington, Delaware, Attorney for Appellee, Unemployment Insurance  
Appeal Board.

BRADY, J.

This 19<sup>th</sup> day of October, 2006, upon consideration of the record in the case and the papers filed by Appellant, Bernadette Johns (“Johns”), and no Answer having been filed by the Appellee, Unemployment Insurance Appeal Board (“UIAB”), the Court hereby finds as follows:

(1) Claimant worked for Phillips & Cohen as a Collections Representative from December 27, 2004 until August 30, 2005, when she was terminated because she was 33 weeks pregnant and ineligible for maternity leave. She filed an application for unemployment benefits with the Department of Labor, Division of Unemployment Insurance.

(2) The Board held a hearing on February 1, 2006. At the hearing Claimant presented the doctor’s certificate and testified that she continued to look for work and report to the Department of Labor from September 3, 2005 until she started a new job on September 26, 2005. The issue before the Board, therefore, was “whether the claimant was ‘able and available’ for work and actively seeking work between September 3, 2005 and September 26, 2005.”<sup>1</sup> The Board, in its written decision, determined that the Claimant was “able and available for work” during the relevant period, found Claimant eligible for benefits during that time, and awarded same.

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<sup>1</sup> *Johns v. Phillips & Cohen Assoc.*, IAB Hearing No. 159835 (Feb. 1, 2006), at 2.

(3) Claimant received a favorable decision by the Board and does not challenge the decision of the Board directly. Rather, she files this appeal claiming that she is entitled to benefits through March 2006. Claimant disputes the number of weeks for which she was awarded benefits, and contends she is eligible to receive benefits through March 2006 because her employment as of September 26, 2005 was on a part-time, commission-only basis. She maintains that she earned no income during her employment in that position and continued to seek a full-time job until March 2006. Therefore, Claimant is asking the Court to extend her eligibility period to include the period between September 26, 2005 and March 2006.

(4) This Court may review a Board decision only after an aggrieved party has exhausted all administrative remedies.<sup>2</sup> Jurisdiction does not vest in this Court until an appellant has taken all administrative avenues available.<sup>3</sup> On appeal, claimant is bound by the record of the administrative hearing and cannot seek to enlarge the record by offering additional evidence.<sup>4</sup>

(5) The question, whether Claimant is entitled to compensation beyond the time period considered by the Board, is not properly before this Court. It

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<sup>2</sup> *Gullion v. Advance Xing Pain*, 2006 WL 1067280 (Del. Super.) (citing 19 *Del. C.* §3322(a)).

<sup>3</sup> *Id.*

<sup>4</sup> *Petty v. University of Delaware*, 450 A.2d 392, 396 (Del. 1982).

was not previously raised before the Board and nothing in the record indicates that the Board considered eligibility of benefits beyond September 26, 2005. Indeed, the evidence before the board was that the Claimant was employed as of September 26, 2005:

THE CHAIRMAN: Okay that is fine but you did have a job as of the 26<sup>th</sup>?  
CLAIMANT: As of the 26<sup>th</sup> yes.  
BOARD MEMBER: All right, so this [is] from September 3<sup>rd</sup> until the 26<sup>th</sup>...  
CLAIMANT: Yes.<sup>5</sup>

(7) A determination of Appellant's eligibility for benefits from September 26, 2005 through March 2006 would require the Court to consider additional facts and evidence not in the record. As this Court's appellate review is limited to the issues previously before the Administrative Board,<sup>6</sup> the Court does not have jurisdiction to decide this matter in the first instance. For the reasons set forth herein the appeal is **DISMISSED** for lack of jurisdiction.

**IT IS SO ORDERED.**

\_\_\_\_\_/s/\_\_\_\_\_  
M. Jane Brady  
Superior Court Judge

<sup>5</sup> IAB Hearing No. 159835, at 8.

<sup>6</sup> Indeed, the Board's hearing was in February, and the claim asserted is for benefits which would not even have accrued by the date of the hearing.