

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR KENT COUNTY

TAVIA MULLEN,	:	
	:	C.A. No: 06A-10-001 (RBY)
Claimant-Below,	:	
Appellant,	:	
	:	
v.	:	
	:	
UNEMPLOYMENT INSURANCE	:	
APPEAL BOARD,	:	
	:	
Appellee	:	

Submitted: February 22, 2007
Decided: March 27, 2007

*Upon Consideration of Appellant's Appeal
of the Decision of the Unemployment Insurance Appeal Board*
REVERSED AND REMANDED

OPINION AND ORDER

Tavia Mullen, *pro se* for Appellant.

Thomas H. Ellis, Esq., Deputy Attorney General, for Appellee.

Young, J.

Claimant-Below/Appellant (“Appellant”), Tavia Mullen, appeals the decision of the Unemployment Insurance Appeal Board (“Board”) finding she had not produced evidence that she was able to work and, if she could work, whether she could work without restrictions. The Appellant, appearing *pro se*, argues that the Board’s decision is in error as she had submitted evidence that she could work without restriction. For the following reasons the Board’s decision is **REVERSED**.

FACTUAL AND PROCEDURAL HISTORY

Prior to March 3, 2006, the Appellant worked as a Customer Service Representative. During the end of February 2006, the Appellant began to experience severe headaches. She saw her family physician, and was under his care from February 21 to March 2. Eventually, the Appellant’s physician referred her to a specialist. While under the care of her family physician, the Appellant did not appear for work. The Appellant was terminated on March 3, 2006, because she had missed two weeks of work.

On March 16, 2006, the Appellant filed a claim for unemployment benefits. Following review of the matter, the Claims Deputy stated that to be eligible to collect benefits, the Appellant must be able and available to work.¹ Based on the evidence presented, which consisted of the fact-finding statements by the Appellant and the Employer, the Claims Deputy determined that the Appellant was unable to work. The Claims Deputy stated the Appellant had not presented medical documentation that she was released to work. Until such time as that documentation was provided, the Appellant was not eligible for benefits.

¹ See 19 Del. C. § 3315(3).

The Appellee then timely filed a request for reconsideration and a notice of appeal of the Claims Deputy's decision. The Appellant, in her request for an appeal, stated that she had misunderstood the order of her specialist. Hence, she relayed that information incorrectly in her fact-finding statement to the Claims Deputy. The Appellant stated, that when she drafted her fact-finding statement, she mistakenly believed that she had been ordered not to work until her next appointment, in May 2006. She stated that she later learned that the specialist had ordered that the Appellant not work on the date of her next appointment, in May 2006, and that she was currently able to work.

On May 15, 2006, an Appeals Referee ("Referee") heard the appeal. The Referee stated that the only issue in the case was whether the Appellant was able to work. The Referee stated that the Appellant had the burden to demonstrate that she was able to work without restrictions. Because the Appellant had not provided clear evidence that she was able to work without restrictions, the Referee affirmed the decision of the Claims Deputy, thereby finding the Appellant ineligible for benefits. The Appellant then timely filed a notice of appeal of the Referee's decision. In her request for an appeal, the Appellant provided notes from her family physician and her specialist that stated she was able to return to work on March 3, 2006 with no limitations. On August 2, 2006, the Board heard the appeal. After it received testimony and documentary evidence from the Appellant, the Board concluded that the information provided by the Appellant did not clarify whether she was able to work at all, and if she were, whether she could work freely or with limitations. Finding this evidentiary void, the Board affirmed the Referee's decision, and denied benefits to the Appellant.

The Appellant, acting *pro se*, then timely filed an appeal of the Board's

decision to this Court for review.

STANDARD OF REVIEW

On appeal, this Court reviews a decision of the Board to determine whether the Board's decision was supported by substantial evidence and free from legal error.² Substantial evidence has been defined as "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion."³ In addition, substantial evidence is "more than a scintilla but less than a preponderance."⁴ On appeal, this Court is limited to consideration of the record presented to the Board.⁵ When the Board adopts the factual findings of the Referee, this Court also reviews the findings of fact and conclusions of law of the Referee.⁶ However, this Court does not have the "authority to weigh evidence, determine the credibility of witnesses or make independent factual findings."⁷ If the Board's decision is supported by substantial evidence, this Court "must affirm the ruling unless it identifies an abuse of discretion

² *MRPC Financial Management LLC v. Carter*, 2003 WL 21517977, at *4 (Del.Super.)(citing *Ridings v. Unemployment Ins. Appeal Bd.*, 407 A.2d 238, 239 (Del. Super. 1979)).

³ *Olney v. Cooch*, 425 A.2d 610, 614 (Del.1981)(quoting *Consolo v. Federal Maritime Commission*, 383 U.S. 607, 620 (1966)).

⁴ *Id.* (quoting *Cross v. Califano*, 475 F.Supp. 896, 898 (D. Fla. 1979)).

⁵ *Hubbard v. Unemployment Ins. Appeals Bd.*, 352 A.2d 761, 763 (Del.1976).

⁶ *Boughton v. Dept. of Labor*, 300 A.2d 25, 26 (Del. Super.1972).

⁷ *State v. Dalton*, 878 A.2d 451, 454 (Del. 2005)(citing *Johnson v. Chrysler Corp.*, 213 A.2d 64, 66 (Del. 1965)).

or a clear error of law.”⁸ Questions of law are reviewed *de novo*.⁹

DISCUSSION

The Appellant argues that, contrary to the Board’s finding, she provided clear documentation that she was able to work without limitations. Additionally, the Delaware Department of Labor, Division of Unemployment Insurance wrote the Court in support of the Appellant’s appeal, stating that the appeal had merit.

According to 19 *Del. C.* § 3315(3), “[a]n unemployed individual shall be eligible to receive benefits with respect to any week only if the Department finds that the individual . . . is able to work and is available to work and is actively seeking work.” The Board, like the Referee and Claims Deputy before it, found that the Appellant had not produced evidence sufficient to demonstrate that she met the language of this provision. That conclusion is not supported by substantial evidence.

At the hearing, the Board had before it a copy of a progress note from the Appellant’s specialist, dated July 24, 2006. This note states that the Appellant “may return to employment without restriction” and that she was “allowed to return to work and school on March 3, 2006.” Additionally, the Appellant, in her request for an appeal, presented notes from both her family physician and her specialist, both dated June 16, 2006, each indicating that she was released to return to work without limitations on March 3, 2006. Moreover, there exists no evidence to the contrary. Therefore, the Board’s finding that the Appellant presented no evidence to indicate

⁸ *Bolden v. Kraft Foods*, 2005 WL 3526324, at *2 (Del.)(citing *DiGiacomo v. Bd. of Public Educ.*, 507 A.2d 542, 546 (Del. 1986)).

⁹ *Anchor Motor Freight v. Ciabattoni*, 716 A.2d 154, 156 (Del. 1998)(citing *State v. Cephas*, 637 A.2d 20, 23 (Del. 1994)).

that she was able to work without restrictions is unsupported by the evidence before the Board. Without substantial evidence, the Board's decision to affirm and deny benefits was in error and is reversed.

Since, as stated by the Referee, the only obstacle to the Appellant's eligibility for benefits was evidence of her ability to work unrestricted, an Order finding the Appellant eligible for unemployment benefits is required.

Accordingly, the decision of the Board is **REVERSED**.

SO ORDERED.

/s/ Robert B. Young

J.

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