

IN THE SUPREME COURT OF THE STATE OF DELAWARE

MURPHY MARINE SERVICES, INC.,	§ § No. 677, 2010 §
Employer/Appellant Below- Appellant,	§ § Court Below—Superior Court § of the State of Delaware
v.	§ in and for New Castle County § C.A. No. 10A-01-001
CLIFTON BRITTINGHAM,	§ §
Employee/Appellee Below- Appellee.	§ §

Submitted: March 25, 2011

Decided: May 5, 2011

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

**ORDER**

This 5<sup>th</sup> day of May 2011, upon consideration of the opening brief and the record below,<sup>1</sup> it appears to the Court that:

(1) The appellant, Murphy Marine Services, Inc. (“Murphy Marine”), filed an appeal from the Superior Court’s September 22, 2010 order affirming the decision of the Unemployment Insurance Appeals Board (the “UIAB” or the “Board”), which granted unemployment insurance benefits to the appellee, Clifton Brittingham. Because the Board’s decision

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<sup>1</sup> By letter dated January 21, 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.

was not supported by substantial record evidence, we reverse the Superior Court’s judgment and remand this matter to the Superior Court for entry of judgment in favor of Murphy Marine.

(2) The record reflects that Brittingham is a longshoreman and a member of the International Longshoreman’s Association Local 1694. Brittingham began his employment with Murphy Marine on March 19, 1998. His job involved loading and unloading containers from vessels at the Port of Wilmington. Following the events of September 11, 2001, Congress enacted the Maritime Transportation Security Act of 2002 (“MTSA”) as a means of securing the nation’s ports.<sup>2</sup> Under that statute, individuals are prevented from entering certain secure areas of MTSA-regulated port facilities unless they hold a Transportation Worker Identification Credential (“TWIC”) card. In July 2008, employees of Murphy Marine were notified that they needed to obtain TWIC cards.

(3) Under Department of Homeland Security (“DHS”) regulations, the deadline for obtaining a TWIC card was December 30, 2008. Nevertheless, between that date and June 2, 2009, DHS regulations permitted employees without TWIC cards to enter some secure, but “unrestricted,” areas of the Port by being “escorted” by individuals with

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<sup>2</sup> 46 U.S.C.A. §70105.

TWIC cards. When the entire Port of Wilmington became a secure and “restricted” area effective June 2, 2009, however, escorts were provided only for visitors to the Port and were no longer provided for employees without TWIC cards.

(4) Brittingham did not meet the deadline for obtaining a TWIC card. He failed to apply for his TWIC card until December 12, 2008, approximately two weeks prior to the deadline for obtaining a card. His application also was delayed due to his criminal history. Brittingham last showed up for work with Murphy Marine on May 29, 2009. On May 31, 2009, Brittingham made a claim for unemployment benefits with the Department of Labor. His claim stated, “I can’t work down to the port because I’m waiting for my twic.” Brittingham did not claim that Murphy Marine had terminated him.

(5) Due to its perceived complexity, the Claims Deputy referred the claim directly to an Appeals Referee in June 2009. A hearing before the Appeals Referee took place on July 9, 2009, the same day Brittingham received his TWIC card.<sup>3</sup> Following the hearing, the Appeals Referee denied Brittingham’s claim on the ground that he voluntarily left his

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<sup>3</sup> It appears that Brittingham has been back to work as a longshoreman with Murphy Marine since that time.

employment without good cause, thereby disqualifying him for benefits.<sup>4</sup>

Brittingham appealed the decision of the Appeals Referee to the UIAB.

(6) On September 16, 2009, a hearing was held before the UIAB. On December 15, 2009, the UIAB issued its decision reversing the Appeals Referee's decision. According to the UIAB, the issue before it was whether Murphy Marine had demonstrated that Brittingham was terminated for just cause. The UIAB found that Brittingham was not terminated for just cause and awarded him benefits. In rendering its decision, the Board relied on the testimony of Ronald Harris, a union representative, who testified, incorrectly, that the deadline for submitting an application for (rather than obtaining) a TWIC card was December 30, 2008. The Board also relied on the testimony of State Representative James Johnson, who stated that someone from Murphy Marine had told him that employees who had unsuccessfully attempted to get TWIC cards would get unemployment benefits.

(7) Murphy Marine filed an appeal of the UIAB's decision to the Superior Court. On September 22, 2010, the Superior Court concluded that the Board had improperly relied on Harris's testimony regarding the December 30, 2008 deadline, but, nevertheless, affirmed the UIAB's

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<sup>4</sup> Del. Code Ann. tit. 19, §3314(1).

decision to grant Brittingham unemployment benefits on the ground that he had not been terminated for just cause.

(8) In its appeal, Murphy Marine claims that the Superior Court erred in affirming the Board's decision because there was no substantial evidence in the record supporting its finding that Brittingham was terminated from his employment with Murphy Marine. According to Murphy Marine, both the Board and the Superior Court erroneously attributed Brittingham's perceived inability to continue working at Murphy Marine to a discretionary decision on the part of Murphy Marine to discontinue providing escorts to employees without TWIC cards after June 2, 2009. In fact, Murphy Marine argues, there were significant differences in the legal requirements for escorting employees before and after June 2, 2009, when the Port became a "restricted" area. At that point, only visitors who needed access to the Port from time to time were to be "escorted" by TWIC card holders. Employees, such as Brittingham, were required to have their own TWIC cards.

(9) 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 to support the Board's findings and whether such findings are free from legal

error.<sup>5</sup> Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.<sup>6</sup> The Superior Court does not independently weigh the evidence, determine questions of credibility or make its own factual findings.<sup>7</sup> The standard of review applicable to this Court is the same as the standard of review applicable to the Superior Court.<sup>8</sup>

(10) We have carefully reviewed the record in this case, including the transcripts of the hearings before the Appeals Referee and the UIAB as well as the written decisions of the Appeals Referee, the UIAB and the Superior Court. We conclude that the Board failed to properly consider the legal requirements for escorting its employees at the Port before and after June 2, 2009 and failed to assess the actions of Murphy Marine during that period within the context of those legal requirements.<sup>9</sup> We further conclude that there is no substantial evidence in the record to support the Board's conclusion that Murphy Marine made a discretionary decision to stop

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<sup>5</sup> *UIAB v. Duncan*, 337 A.2d 308, 309 (Del. 1975).

<sup>6</sup> *Oceanport Ind., Inc. v. Wilmington Stevedores, Inc.*, 636 A.2d 892, 899 (Del. 1994).

<sup>7</sup> *Johnson v. Chrysler Corp.*, 213 A.2d 64, 66 (Del. 1965).

<sup>8</sup> *Id.*

<sup>9</sup> The transcript of the hearing before the Board reflects that the testimony of the employer's representative, Ms. Ferguson, was cut short by the Board's chairman, who assured her that all the information concerning the escorting procedures was "in the record." The transcript of the hearing before the Appeals Referee reflects that Ferguson presented testimony in that proceeding concerning the escorting procedures before and after June 2, 2009 and the reasons behind such procedures. As such, that information was "in the record" and before the Board at its September 16, 2009 hearing.

providing “escorts” to its employees after June 2, 2009 and that Brittingham was constructively “terminated” as a result of that discretionary decision. The judgment of the Superior Court must, therefore, be reversed on that ground.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is REVERSED and the matter is hereby remanded to the Superior Court for entry of judgment in favor of Murphy Marine.

BY THE COURT:

/s/ Myron T. Steele  
Chief Justice