January 23, 2001

Beulah L. Pinkett
N111 Tull Drive
Seaford, DE 19973

Susan Pittard Weidman, Esquire
Mary Robin Schrider, Esquire
Tunnell & Raysor, P.A.
P.O. Box 151
Georgetown, DE 19947

Re: Beulah L. Pinkett v. Barrett Business Services, Inc. and Unemployment Insurance Appeal Board
Civil Action No. 00A-07-001

Dear Ms. Pinkett and Counsel:

***Pro se* claimant Beulah L. Pinkett ("Claimant") appeals a decision of the Unemployment Insurance Appeal Board ("Board") dated June 14, 2000. The Board denied Ms. Pinkett's request for unemployment benefits on the grounds that she refused an offer of work for which she was reasonably fitted.[1] This letter constitutes my decision in the matter.**

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[1] **In 19 Del. C. it is provided in pertinent part:**

> **An individual shall be disqualified for benefits if the individual has refused to accept an offer of work for which the individual is reasonably fitted or has refused to accept a referral to a job opportunity when directed to do so by a local employment office of this State or another state, …. No individual otherwise qualified to receive benefits shall lose the right to benefits by reason of a refusal to accept a referral or new work if:**
> **(d) The remuneration, hours, or other conditions of the work offered are substantially less favorable than those prevailing for similar work in the locality.**

FACTS

Claimant was a Barrett Business Services, Inc. (hereinafter Barrett) employee working at B&G as a pickle packer. This was a full time position where the Claimant earned $6.31 per hour. On November 24, 1999, she was laid off. Barrett issued a letter in all employee paychecks dated November 24, 1999 informing employees of available work. Employees were urged to contact the local Barrett office closest to the employee's home to discuss work opportunities. The letter stated that failure to report may affect eligibility for unemployment benefits.

The Claimant testified that she was only offered a position at Allen Foods and she advised Stacy Brittingham, the on-site manager for Barrett, that Allen Foods would not hire her due to surgery on her hand to treat carpal tunnel syndrome. The Claimant asserts that she previously worked for Allen Foods for eleven years where she developed carpal tunnel syndrome and was asked to leave. The Claimant admits that she was given no information about the position at Allen Foods when she told Ms. Brittingham that she could not work at Allen Foods. The Claimant also claims that her record at B&G contains information on her carpal tunnel syndrome. Furthermore, the Claimant states that at this time there was no job offer or conveyance of job information regarding Black and Decker.

Barrett claims that Beulah Pinkett was contacted by a customer services representative on November 24, 1999 and advised of two production job openings for which she qualified. The first offer was a long-term position at Allen Foods for $6.50 per hour. The second offer was a long-term position with Black and Decker paying $7.00 for the first shift and $7.35 for the second shift. Although the Claimant argues she was not offered suitable work, the employer argues that the work offered is basic general

production/light industrial work. The job at Allen Foods was admitted by Barrett to be in the areas of evisceration and deboning, which require repetitive scissors use. Barrett records indicate that Ms. Pinkett declined both job offers on November 24, 1999. The employer's records indicate Ms. Pinkett's reasoning for refusal was that she was not interested in any job at Barrett at that time and she would prefer to just receive unemployment compensation. Nothing in the Claimant's file possessed by Barrett indicates that the Claimant suffers from carpal tunnel syndrome. In addition, Barrett argues that at that time it was standard routine procedure for the customer service representative to refer everyone to the two positions at Allen Foods and Black and Decker. The Claimant called and spoke to an individual no longer with the company and the call cannot be confirmed. However, the record does contain information that the Claimant never went to the Barrett office but instead went to B&G to talk about job opportunities and called the Barrett office every week. The Barrett employee at B&G, Stacy Brittingham, was not a customer service representative.

The UIAB record includes a letter from Connie Sites, the nurse at Allen Foods and the company's representative at the hearing. This letter states that the Allen Foods files contain no information that would prevent Ms. Pinkett from being hired. Ms. Sites also conveyed that the Claimant worked for eleven years at ConAgra, which merged with Allen Foods, and she was employed by Allen Foods for approximately seven months. Despite the merger, Allen Foods does not possess ConAgra records.

The UIAB record also contains evidence that Ms. Pinkett performed repetitive work at B&G in the packing department, wore a wrist brace, and consistently earned the hand pack bonus. In addition, the record contains a doctor note submitted by the Claimant.

This note addresses the doctor's treatment of the Claimant for carpal tunnel syndrome over six years ago. This note states:

> **This is to verify that Ms. Pinkett was a patient of mine from December of 1991 through 8/30/93 for several diagnoses, including carpal tunnel syndrome on the right, for which she underwent decompression of the median nerve at the right wrist in March of 1992 and seemed to have a reasonably good result. However, she developed tendonitis of the right wrist flexor carpi ulnaris shortly thereafter, which her work at ConAgra aggravated. She also had a history of right thoracic outlet syndrome.**
>
> **In July of 1994 I saw her for clear-cut symptoms of carpal tunnel syndrome on the left and felt she would need decompression of the median nerve on that side. I offered surgery but she wished to continue conservative treatment with bracing and nonsteroidals. I told her that, if she was unable to work with the hand in a non-repetitive type job, then surgical treatment was available. I have not seen the patient since that time.**

The appeals referee found that the employer's testimony about the Black and Decker job offer was hearsay. The referee stated that the Delaware Courts have held that hearsay evidence cannot be given any weight unless supported by first hand information. The appeals referee found that the Claimant's testimony concerning Allen Foods corroborates the employer's statement that the position was offered to Ms. Pinkett. However, no such corroboration was found for the Black and Decker offer and, therefore, there is no evidence this job was offered in the first instance. She concluded the Allen Foods position was the only one offered. The referee found the Claimant had been doing hand packing or grading work at her previous assignment and the new assignment would have been in general production. She found that the positions were similar and the Claimant therefore was reasonably fitted for the job. In addition, the referee found she did not submit any substantiating medical evidence to show that she suffers from carpal tunnel syndrome. … [T] here has been no medical documentation presented to show that if she

does suffer from carpal tunnel syndrome, that she would be unable to perform the work offered to her at Allen Foods. Without such medical documentation, this tribunal can not find that the claimant had good cause to refuse the offer of work.

The referee concluded that the Claimant refused an offer of work for which she was reasonably fitted and is, therefore, disqualified from the receipt of unemployment benefits.

In its decision on appeal, the Board stated:

> **The appeals referee found that the Claimant refused an offer of work for which she was reasonably fitted. The Board agrees and affirms the referee for the following reason. The Claimant presented a note from a physician that last saw her in 1994. This note confirmed that the Claimant had bilateral carpal tunnel syndrome. The Board acknowledges this note but finds that it does not support a finding that the condition is a problem now; that the condition would prevent her from working at Allen Foods or Black and Decker and thus is not sufficient to support a finding of good cause to refuse an offer of work.**

The Board affirmed the appeals referee's decision to deny benefits. Claimant then brought this timely appeal. Employer argues this appeal should be denied on procedural grounds, or in the alternative, on the merits. The procedural flaws are not jurisdictional. Consequently, I disregard them and address the appeal on its merits.

STANDARD OF REVIEW

The Supreme Court and this Court repeatedly have emphasized the limited appellate review of the factual findings of an administrative agency. The function of the reviewing court is to determine whether substantial evidence supports the agency's decisions. *Johnson v. Chrysler Corp.,* Del. Supr., 213 A.2d 64, 66-7 (1965); *General Motors Corp. v. Freeman,* Del. Supr., 164 A.2d 686, 688 (1960). Substantial evidence means such relevant evidence as a reasonable mind might accept as

adequate to support a conclusion. *Oceanport Ind. v. Wilmington Stevedores,* Del. Supr., 636 A.2d 892, 899 (1994); *Battista v. Chrysler Corp.,* Del. Super., 517 A.2d 295, 297 (1986), *app. dism.,* Del. Supr., 515 A.2d 397 (1986). The appellate court does not weigh the evidence, determine questions of credibility, or make its own factual findings. *Johnson,* 213 A.2d at 66. It merely determines if the evidence is legally adequate to support the agency's factual findings. 19 *Del. C.* § 3323 (a).

DISCUSSION

Title 19, section 3315(3) of the Delaware Code provides that "an individual may not refuse an offer of work for which he is reasonably fitted." "No individual otherwise qualified to receive benefits shall lose the right to benefits by reason of a refusal to accept a referral or new work if ... [t]he remuneration, hours or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality." 19 Del. C. § 3315(3)(d). In *Power v. Myriad Services Inc.*, the Court found that an individual is reasonably fitted for work when the offer of employment is similar to the individual's previous training and experience, and as a result can be performed with minimal additional training. *Power v. Myriad Services, Inc.,* Del. Super, C.A. No. 95A-07-001, Gebelein, J. (Mar. 8, 1996), Order at 5, *aff'd,* Del. Supr., 718 A.2d 528 (1998). In addition, the Court in *Power* articulated other factors to be considered in determining when an individual is reasonably fitted for employment including "the individual's prior earnings, physical fitness, length of unemployment, and prospects for securing work in his/her customary occupation." *Power supra* at 5. The individual is justified in refusing offered employment if the "remuneration, hours or other conditions of the work offered

are substantially less favorable to the individual than those prevailing for similar work in the locality." ***Hopkins Constr., Inc. v. Delaware Unemployment Ins. Appeal Bd.,*** **Del. Super., No. 98A-05-002, Graves, J. (Dec. 17, 1998), Mem. Op. at 8.**

There is no ambiguity on the record pertaining to Barrett's employment offer at Allen Foods. Both the Claimant and the employer offered testimony supporting the finding of a job offer at Allen Foods and a refusal by the Claimant of that offer. The UIAB based its decision that the Claimant was offered employment on the Claimant's corroboration of a conversation with a Barrett employee about the Allen Foods position. Therefore, the UIAB factual finding of a job offer should be left intact.

The next question is whether this job offer was one for which the Claimant was reasonably fitted. The only reason the Claimant claimed for why she was not reasonably fitted for the position at Allen Foods was an infliction with carpal tunnel. The Claimant argues that she suffered from this condition while she worked at Allen Foods in the past. The record contains two letters. The first letter is from the Allen Food representative stating that the company records do not contain information on the Claimant's carpal tunnel syndrome. The second letter is from the Claimant's former doctor. The doctor addresses the Claimant's history with carpal tunnel. However, he has not seen or treated Ms. Pinkett in six years. The UIAB found this letter unpersuasive. The Board's findings and conclusions are valid because the letter did not address the impact of the condition on her present health or whether she was able to work in light of that condition. Without substantiation that the Claimant could not work due to carpal tunnel problems, the Claimant failed to establish she was not reasonably fitted for the offered job. <u>See</u> ***Biss v. Zeneca, Inc.,*** **Del. Super., C. A. No. 98A-02-021, Alford, J. (Oct. 28, 1998), Order at 5**

(holding that where an injury is internal or not open to view medical testimony is necessary to establish the existence and extent of such injury); *Rea v. Midway Realty Corp.,* Del. Super., C.A. No. 88C-JL6, Graves, J. (Mar. 14, 1990), Letter op. at 3 (stating where a medical injury is internal the existence and extent of the injury must be established by expert medical testimony); *McCormick Transportation Co., v. Barone,* Del. Super., 89 A.2d 160, 162 -63 (1952) (finding the claimant's testimony in absence of any medical testimony inadequate to establish the existence or extent of the injury). Thus, the Board correctly decided claimant had not shown good cause to refuse the job offer at Allen Foods.

CONCLUSION

For the reasons set forth above, the decision of the Board is affirmed.

IT IS SO ORDERED.

Very truly yours,

E. Scott Bradley

oc: Prothonotary's Office
xc: Unemployment Insurance Appeal Board