

SUPERIOR COURT
OF THE
STATE OF DELAWARE

E. SCOTT BRADLEY
JUDGE

SUSSEX COUNTY COURTHOUSE
1 The Circle, Suite 2
GEORGETOWN, DE 19947

January 4, 2008

Felipe Valentin
P.O. Box 1046
Rehoboth Beach, DE 19971

Robert Thomas Salon
Attn: Thomas Baykowski
36 Baltimore Avenue
Rehoboth Beach, DE 19971

RE: Felipe Valentin v. Robert Thomas Salon
C.A. No. 07A-05-005 ESB
Memorandum Opinion

Date Submitted: October 16, 2007

Dear Messrs. Valentin and Baykowski:

This is my decision on Felipe Valentin's appeal of the Unemployment Insurance Appeal Board's denial of his claim for unemployment benefits. Valentin is a hair stylist at the Robert Thomas Salon in Rehoboth Beach, Delaware. He filed a claim for unemployment benefits with the Department of Labor because he was not busy at work in the winter. The Claims Deputy, Appeals Referee and Board all denied Valentin's claim, concluding that he is a part-time employee who sets his own schedule and works only as much as he wants to work. Valentin then filed an appeal with this Court.

STATEMENT OF THE CASE

There were hearings before the Appeals Referee and Board. Valentin and Thomas Baykowski, a co-owner of the Salon, testified at both hearings. The Salon is open five days a week from 9:00 a.m. to 7:00 p.m. The Salon's customers fall into two categories - those that make an appointment with a particular hair stylist and those that simply walk into the Salon without an

appointment and see the next available hair stylist. The Salon offers a variety of services, including haircuts, “colorings,” “perms” and “updos.” Valentin started working for the Salon in October 2004 and still works there. He sets his own work schedule and only cuts hair. From January to March, he works Wednesdays through Fridays and on Saturdays if a customer makes an appointment with him. From April to December, Valentin works Wednesdays through Saturdays. Valentin is paid on a commission basis equal to one-half of his customers’ bills. He generally works from 10:00 a.m. to 4:00 p.m. However, Valentin goes home early if he does not have any customers. If a walk-in customer comes in after Valentin has left, then he loses the customer. Valentin testified that the Salon could call him and he could be there in approximately 20 minutes. Baykowski testified that this is impractical because customers will not wait that long. He also testified that Valentin could work up to eight hours a day, but has never worked more than five. Valentin’s refusal to do anything other than cut hair and wait at the Salon for walk-in customers reduces his opportunities to work more and make more money according to Baykowski.

The Board found that Valentin was not “partially unemployed,” reasoning that he does not have “normal customary full-time hours” against which partial unemployment could be measured because he sets his own hours. The Board also found that Valentin’s hours were not reduced by the Salon because of a lack of business, but because he has simply decided not to work more.

STANDARD OF REVIEW

The Supreme Court and this Court repeatedly have emphasized the limited appellate review of the factual findings of an administrative agency. On appeal from a decision of the Board, this Court is limited to a determination of whether there is substantial evidence in the record to support

the Board’s findings, and that such findings are free from legal error.¹ Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.² The Board’s findings are conclusive and will be affirmed if supported by “competent evidence having probative value.”³ The appellate court does not weigh the evidence, determine questions of credibility, or make its own factual findings.⁴ It merely determines if the evidence is legally adequate to support the agency's factual findings.⁵ Absent an error of law, the Board's decision will not be disturbed where there is substantial evidence to support its conclusions.⁶ In reviewing an appeal from the Board, the Court is limited to determining whether or not there is substantial evidence in the record to support the Board’s finding, and that such findings are free from legal error.

DISCUSSION

19 Del.C. § 3315 states that “[a]n unemployed individual shall be eligible to receive benefits with respect to any week only if the Department finds that the individual: ... (3) is able to work and is available for work and is actively seeking work....” 19 Del.C. § 3302(17) states that:

“Unemployment” exists and an individual is “unemployed” in any week during which the individual performs no services and with respect to which no wages are

¹ *Employment Ins. Appeals Board of the Dept. of Labor v. Duncan*, 337 A.2d 308, 309 (Del. 1975); *Longobardi v. Unemployment Ins. Appeal Board*, 287 A.2d 690, 692 (Del. Super. 1971), *aff'd* 293 A.2d 295 (Del. 1972).

² *Oceanport Ind. v. Wilmington Stevedores*, 636 A.2d 892, 899 (Del. 1994); *Battisa v. Chrysler Corp.*, 517 A.2d 295, 297 (Del.), *app. disp.*, 515 A.2d 397 (Del. 1986).

³ *Geegan v. Unemployment Compensation Commission*, 76 A.2d 116, 117 (Del. 1950).

⁴ *Johnson v. Chrysler Corp.*, 312 A.2d 64, 66 (Del. 1965).

⁵ 29 *Del.C.* § 10142(d).

⁶ *Dellachiesa v. General Motors Corp.*, 140 A.2d 137 (Del. Super. 1958).

payable to the individual, or in any week of less than full-time work if the wages payable to the individual with respect to such week are less than the individual's weekly benefit amount plus whichever is the greater of \$10 or 50% of the individual's weekly benefit amount. The Department shall prescribe regulations applicable to unemployed individuals making such distinctions in the procedures as to total unemployment, part-total unemployment, partial unemployment of individuals attached to their regular jobs and other forms of short-time work as the Department deems necessary.

Department of Labor Regulation 15(1)(a) states that "a partially unemployed individual is one who, during a particular week (i) earned less than his weekly benefit amount plus two dollars, (ii) was employed by a regular employer, (iii) worked less than his normal customary full-time hours for such regular employer because of lack of full-time work."⁷

The Board's decision that Valentin is not "partially unemployed" is both in accordance with the applicable law and supported by substantial evidence in the record. Valentin is a part-time employee who does not have normal customary full-time hours.⁸ Baykowski testified that Valentin was hired as a part-time worker and that he has never worked more than five hours in a day. Valentin himself testified that he sets his own schedule and goes home early if he wants to do so. Moreover, Valentin's hours were not reduced by the Salon due to a lack of work, but by his own work practices. The Salon is open more days and hours than Valentin has ever worked. Baykowski testified that, at the very least, Valentin could pick up more hours and walk-in customers if he were simply willing to stay at work longer. Valentin refused to do that. Thus, his "reduced hours" merely reflect his desire not to work more and are in no way related to the Salon's actions.

⁷ Reg. 15(1)(a).

⁸ *Schneider v. Unemployment Insurance Appeal Board*, 2004 WL 2827915 (Del. Super. April 30, 2004).

CONCLUSION

The Unemployment Insurance Appeal Board's decision is affirmed.

IT IS SO ORDERED.

Very truly yours,

E. Scott Bradley

cc: Unemployment Insurance Appeal Board