IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR KENT COUNTY

PATRICIA WINGO, :

C.A. No. K12A-05-002 WLW

Appellant, :

:

V.

UNEMPLOYMENT INSURANCE APPEALS BOARD and CECIL

COUNTY PUBLIC SCHOOLS,

.

Appellees.

Submitted: December 21, 2012 Decided: February 22, 2013

ORDER

Upon the Appeal of the Decision of the Unemployment Insurance Appeals Board. *Affirmed*.

Patricia Wingo, pro se

William A. Crawford, Esquire of Franklin & Prokopik, Wilmington, Delaware; attorney for Cecil County Public Schools.

WITHAM, R.J.

This is a *pro se* appeal by Claimant Patricia Wingo ("Appellant") from a May 10, 2012 decision of the Unemployment Insurance Appeal Board ("the Board" or "UIAB"). The Board affirmed a determination by an Appeals Referee that Appellant was disqualified to receive unemployment benefits because she is unable and unavailable to work as required by 19 *Del. C.* § 3315(3). For the reasons stated herein, the UIAB's decision is AFFIRMED.

Relevant Factual and Procedural Background

Appellant has been employed by Cecil County Public Schools ("the School District") as a substitute teacher since September 2009. The School District employs an automated telephone system to notify substitute teachers that they are needed to teach on a given day at any one of the School District's 30 schools. The School District presented evidence that Appellant was offered work on a total of 18 days during the periods of October 29, 2011, to December 24, 2011, and January 7, 2012, to January 14, 2012. At a hearing before the UIAB on April 25, 2012, the School District presented testimony that Appellant either refused work, did not respond to the automated call, or could not be reached on each of the 18 days. Appellant attributes her unavailability to a number of personal limitations. She testified at the same hearing that she can only accept teaching assignments if they are at the school her daughter attends on account that she does not have a reliable child care provider. She also offered medical records that show that she suffers from chronic pain syndrome that inflicts Appellant with migraine headaches, and lower back and neck pain.

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Appellant filed a claim for unemployment benefits on January 8, 2012. On February 3, 2012, a Claims Deputy denied Appellant's claim on the grounds that, by restricting her schedule and availability so severely, Appellant was not able and available for work as required by 19 *Del. C.* § 3315(3). Appellant appealed the Claims Deputy's decision on February 6, 2012. The Appeals Referee affirmed the Claims Deputy's decision on March 5, 2012, concluding that Appellant's unavailability rendered her ineligible for the receipt of benefits.

Appellant then timely a notice of appeal of the Referee's decision. In her request for an appeal, the Appellant provided records from her treating physician documenting her chronic medical condition. On April 25, 2012, the Board heard the appeal. Appellant testified that her availability is constrained by her medical condition and the lack of reliable child care for her daughter. Appellant's mother, Sandra Wingo, testified that although she tries to help out when she can, she is only available sporadically to watch her granddaughter while her daughter is at work. After it received testimony and documentary evidence from the Appellant, the Board concluded that the information provided by the Appellant established that she is unable to accept substitute teaching positions at district schools other than the one her daughter attends unless she has sufficient advance notice to procure a babysitter, such as her mother. Finding her availability limited, 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

This Court's review of a decision of the Unemployment Insurance Appeals Board is limited to a determination of whether there is sufficient substantial evidence in the record to support the Board's findings, and that such findings are free from legal error.¹ Substantial evidence is relevant evidence that 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." An appellate court does not weigh the evidence, determine questions of credibility, or make its own factual findings.⁴

Discussion

The central issue on appeal is whether there is substantial evidence in the record to support the Board's findings that Appellant is unable and unavailable to work as required by 19 *Del. C.* 3315(3) ("Section 3315(3)"). Section 3315 of Title 19 of the Delaware Code provides, in pertinent part, that "[a]n unemployed individual shall be eligible to receive benefits with respect to any week only if the Department [of Labor] finds that the individual ... is able to work and is available to work and is

¹ Employment Ins. Appeals Bd. of the Dep't of Labor v. Duncan, 337 A.2d 308, 309 (Del. 1975); Longobardi v. Unemployment Ins. Appeals Bd., 287 A.2d 690, 692 (Del. Super. Ct. 1971).

² Oceanport Indus. v. Wilmington Stevedores, 636 A.2d 892, 899 (Del. 1994); Battista v. Chrysler Corp., 517 A.2d 295, 297 (Del. Super. Ct. 1986).

³ Geegan v. Unemployment Comp. Comm'n, 76 A.2d 116, 117 (Del. Super. Ct. 1950).

⁴ Johnson v. Chrysler Corp., 213 A.2d 64, 66 (Del. 1965).

actively seeking work."⁵ A claimant is deemed "available for work" within the meaning of this statute "only to the extent that she is willing, able and ready to accept employment which she has no good cause to refuse."⁶ A claimant may not seek unemployment benefits while making his or her availability improperly conditional.⁷ The Board, like the Referee and the Claims Deputy before it, found that, by unduly restricting her availability, the Appellant did not meet the criteria set forth in Section 3315(3). Although the Court is sympathetic to Appellant's plight, that conclusion is supported by substantial evidence and is free from legal error.

The record supports the Board's decision that Appellant is unable to, and unavailable for, work for the relevant weeks and is thus ineligible for benefits per Section 3315(3). In her opening brief, Appellant merely rehashes the very arguments that were rejected by the Board. The evidence before the Board as that Claimant declined jobs when she was contacted by the School District's automatic dialer to fill available jobs in the weeks relevant to her claim. Appellant testified that, because of child care constraints, she is unable to accept teaching positions at a school other than the one where her daughter attends. She also testified that she is sometimes too sick to work due to the sudden onset of migraine headaches and other manifestations of her chronic medical condition. In light of the wealth of evidence that Appellant's

⁵ 19 Del. C. § 3315(3).

⁶ Petty v. Univ. of Del., 450 A.2d 392, 395 (Del. 1982) (internal citations omitted).

⁷ *Barbour v. UIAB*, 1990 WL 199514, at *8 (Del. Super. Ct. 1990) (citing *In re Platt*, 292 A.2d 822, 825 (1972)).

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availability was severely limited, the Court is satisfied that the record contains

sufficient evidence to support the Board's decision that Appellant is unable and

unavailable for work within the meaning of 19 Del. C. § 3315(3), and that the

decision is free from legal error.

Conclusion

In light of the substantial evidence in support of the UIAB's decision, as well

as the absences of any error of law or abuse of discretion, the decision of the UIAB

must be, and is, hereby **AFFIRMED**.

IT IS SO ORDERED.

/s/ William L. Witham, Jr.

Resident Judge

WLW/dmh

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