

**SUPERIOR COURT
OF THE
STATE OF DELAWARE**

RICHARD F. STOKES
JUDGE

SUSSEX COUNTY COURTHOUSE
1 THE CIRCLE, SUITE 2
GEORGETOWN, DE 19947
TELEPHONE (302) 856-5264

March 25, 2014

Orlando Dean
9479 Meyer Ln.
Seaford, Delaware 19973

James T. Wakley, Esquire
Thomas H. Ellis, Esquire
Department of Justice
820 N. French St.
Wilmington, Delaware 19801

**Re: Orlando Dean v. Perdue Farms, Inc. and the Unemployment Insurance
Appeal Board
C.A. No. S13A-09-002 RFS**

On Appeal from the Unemployment Insurance Appeal Board: **AFFIRMED**

Date Submitted: January 7, 2014

Date Decided: March 25, 2014

Dear Parties:

This is an appeal from the August 27, 2013 decision of the Unemployment Insurance Appeal Board (“Board”) denying benefits to Orlando Dean (“Dean”). Dean now appeals the decision of the Board. For the reasons set forth, the Board’s decision is upheld.

NATURE AND STAGE OF THE PROCEEDINGS

On February 7, 2013, a Claims Deputy found Dean had become involuntarily separated from his employment because of a physical injury. Therefore, the Claims Deputy disqualified Dean from the receipt of unemployment benefits until such time as he evinced an ability to work. After a hearing, and by way of written decision mailed March 15, 2013, the Appeals Referee agreed with the Claims Deputy’s determination. Dean appealed to the Board and the Board remanded the case for the Appeals Referee to conduct a second hearing to determine whether Dean was unemployed

due to an inability to work. After a second hearing, and by way of a written decision mailed June 19, 2013, the Appeals Referee, once again, affirmed the decision of the Claims Deputy. Subsequently, Dean appealed that decision to the Board, and a hearing was held on August 27, 2013. The Board affirmed the decision of the Appeals Referee. It held that pursuant to 19 *Del. C.* § 3314(8) Dean was disqualified from the receipt of unemployment benefits because his unemployment was caused by his inability to work due to medical reasons. Dean has timely filed an appeal in this Court. The other parties have not participated in briefing and the Court is deciding the case on the filings pursuant to Superior Court Civil Rule 107(f).

The relevant facts are as follows. Dean has been employed by Perdue Farms, Inc. (“Employer”) since September 2008. On or about September 8, 2012, Dean became involuntarily separated from his employment due to an ankle injury. Employer received a doctor’s certificate from Dean’s treating physician which rendered Dean totally disabled from performing his job duties from January 21, 2013 until March 21, 2013. After exhausting his thirteen weeks of short-term disability benefits, Dean returned to work on or about March 7, 2013. Dean’s return was brief, one-day, as he complained of back pain and Employer’s medical staff sent him home with an instruction to obtain a medical release before returning. Dean received a medical release for light duty work only. However, at this time, Employer did not have any light duty work available. Dean returned to full-time work, without restriction, in June 2013.

STANDARD OF REVIEW

When reviewing the decision of the Board, this Court must determine whether the Board’s findings and conclusions of law are free from legal error and are supported by substantial evidence

in the record.¹ “Substantial evidence” is “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.”² This Court’s review is narrow: “It is not the appellate court’s role to weigh the evidence, determine credibility questions or make its own factual findings, but merely to decide if the evidence is legally adequate to support the agency’s factual findings.”³

DISCUSSION

Pursuant to 19 *Del. C.* 3314(8) an individual is disqualified from receiving unemployment benefits when the unemployment is due to an inability to work. “An employee is considered unable to work within the meaning of the statute when [he] is restricted from performing [his] normal job duties by [his] doctor due to a physical condition.”⁴ Furthermore, an individual’s disqualification will end when the individual is able and available to work as determined by a doctor’s certificate or testimony indicating that the individual may go back to work without restriction.⁵

In the matter before the Court, Dean was unable to work for many months due to an ankle injury that resulted in a diagnosis of a disrupted ligament. On January 23, 2013, by way of a doctor’s

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Unemployment Ins. Appeal Bd. v. Martin, 431 A.2d 1265 (Del. 1981); *Pochvatilla v. United States Postal Serv.*, 1997 WL 524062 (Del. Super. Jun. 9, 1997); 19 *Del. C.* § 3223(a) (“In any judicial proceeding under this section, the findings of the [Board] as to the facts, if supported by evidence and in the absence of fraud, shall be conclusive, and the jurisdiction of the Court shall be confined to questions of law.”).

² *Gorrel v. Division of Vacations Rehab.*, 1996 WL 453356, at *2 (Del. Super. July 31, 1996).

³ *McManus v. Christina Serv. Co.*, 1997 WL 127953, at *1 (Del. Super. Jan. 31, 1997).

⁴ *Brown v. Unemployment Ins. Appeal Bd.*, 2011 WL 863310, at *2 (Del. Super. Feb. 3, 2011).

⁵ *Jackson-Mills v. Carter Racing Stables*, 2012 WL 3025860, at *2 (Del. Super. July, 25, 2012).

certificate, Dean's treating physician determined that he was completely disabled from performing the duties of his current job or any other work on a full-time basis. However, in March 2013, Dean's physician determined Dean could return to work *with restrictions*- light duty work only. For example, Dean was restricted from bending, squatting, kneeling, climbing, or reaching. He was restricted from standing or walking for more than two hours at a time. He was also restricted from lifting or carrying anything in excess of ten pounds. Finally, the physician noted that cold temperatures could exacerbate pain to Dean's ankle and foot. Simply put, Dean was limited as to the work he could perform. Therefore, Dean's inability to return to work *without restrictions* did not render him eligible for unemployment benefits.

CONCLUSION

In this case, the findings of the Board are supported by substantial evidence in the record.

IT IS SO ORDERED.

Very truly yours,

/s/ Richard F. Stokes

Richard F. Stokes

cc: Prothonotary
cc: Unemployment Insurance Appeal Board
Perdue Farms, Inc.

