

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR SUSSEX COUNTY

JERRY GREEN, :
Appellant, :
 :
v. : C.A. No. S12A-02-003 (THG)
 :
UNEMPLOYMENT INSURANCE :
APPEALS BOARD, :
Appellee. :
 :
 :

ORDER

AND NOW, having considered Jerry Green’s appeal from the Unemployment Insurance Appeals Board (“the Board”);

WHEREAS, the facts establish:

- (1) Mr. Green, as a co-owner of J&J Powerwashing (“J&J”), terminated his own employment with J&J during the off-season months over a period of several years;
- (2) Mr. Green sought and received unemployment benefits during that time.
- (3) Mr. Green did not collect any wages from J&J during the months when he collected unemployment benefits;
- (3) J&J was essentially closed during the off-season months; although it continued to keep other employees on the payroll, they performed minimal, if any, services;
- (4) During the off-season months, Mr. Green would spend between two (2) and twenty-five (25) hours, including travel time, performing basic housekeeping tasks on behalf of J&J; primarily, Mr. Green would check the mail;

- (5) The decision to lay off Mr. Green, J&J's highest paid employee, during the off-season months was designed to keep the business financially afloat during the down time and to prevent the layoff of J&J's other, long-term employees.

WHEREAS, the Court is aware of the Delaware Supreme Court's decision in *Unemployment Insurance Appeal Board v. Division of Unemployment Insurance*, 803 A.2d 931 (Del. 2002). In that case, the Supreme Court held that business owners may collect unemployment benefits when they made "a sound business decision to close their business for the winter due to financial unprofitability and, as such, left work for good cause attributable to the work."

WHEREAS, the Court finds the facts presented in this case are substantially similar to those presented in *Unemployment Insurance Appeal Board v. Division of Unemployment Insurance*.

WHEREAS, counsel for the Board and the Department of Labor informed the Court via a letter E-filed with the Court on September 14, 2012, that neither the Board nor the Department of Labor oppose Mr. Green's request that the Board's decision be reversed.

THEREFORE, in light of the relevant case law as well as the Board and the Department of Labor's failure to oppose Mr. Green's appeal, the Board's decision is REVERSED AND REMANDED for proceedings in accordance with this order.

IT IS SO ORDERED THIS 28TH DAY OF SEPTEMBER, 2012.

T. HENLEY GRAVES

oc: Prothonotary
cc: Michele D. Allen, Esquire, Wier & Allen, P.A.
Thomas H. Ellis, Esquire, Department of Justice
Unemployment Insurance Appeals Board