# IN THE SUPERIOR COURT OF THE STATE OF DELAWARE IN AND FOR NEW CASTLE COUNTY

LISA CLARK,	)
Appellant,	)
V.	) C.A. No. N12A-08-002-MMJ
UNEMPLOYMENT INSURANCE APPEAL BOARD,	) ) )
Appellee.	)
	<i>)</i> )

Date Submitted: March 11, 2013 Date Decided: April 22, 2013

On Appeal from the Decision of the Unemployment Insurance Appeal Board.

#### AFFIRMED.

# **ORDER**

Lisa Clark, *Pro Se*, 12 Deville Circle, Apt. 9, Wilmington, DE 19808. Appellant.

Thomas H. Ellis, Esquire, Attorney for Appellee, Division of Unemployment Insurance.

Lisa Clark ("Claimant") has appealed the July 18, 2012 decision of the Unemployment Insurance Appeal Board ("Board"). The Board affirmed the Appeals Referee's determination that Claimant's unemployment insurance benefits had been exhausted. Claimant contends that she requires unemployment insurance benefits in order to pay for medical treatment and other financial obligations. Claimant acknowledges that her benefits have been exhausted.

#### FACTUAL AND PROCEDURAL CONTEXT

## Claims Deputy's Determination

On May 29, 2012, the Claims Deputy found that Claimant had exhausted her Tier 3 Emergency Unemployment Benefits as of May 26, 2012. Therefore, Claimant had exhausted all available benefits. On May 30, 2012, Claimant appealed the Claims Deputy's determination. A hearing was held before an Appeals Referee on July 9, 2012.

## Hearing Before the Appeals Referee

At the hearing, Terry Combs-Attarian, a Senior Deputy with the Department of Labor, testified that Claimant filed a Petition for unemployment benefits on November 28, 2010. The claim was reopened on January 19, 2011 and claimant collected benefits until they expired on July 2, 2011. An extension was opened on July 3, 2011, and claimant collected

the full 20 weeks available until November 19, 2011. A second extension was opened on November 20, 2011, and claimant received benefits for the maximum allowable period of 14 weeks through February 25, 2012. Claimant opened a third and final extension on February 26, 2012, and received benefits, again for the maximum allowable period of 13 weeks, through May 26, 2012. Additional extensions were no longer available under federal regulations because Delaware's statewide unemployment percentage had fallen below the requisite threshold.

Claimant acknowledged in her testimony that her unemployment benefits were exhausted. However, claimant noted that she had doctor's appointments, bills for prescriptions, dentist's appointments, grocery bills, electric bills, and phone bills. Claimant explained that without her unemployment benefits, she would have to borrow money to pay for some of these expenses.

## Appeals Referee's Determination

By decision dated July 9, 2012, the Appeals Referee affirmed the decision of the Claims Deputy. The Appeals Referee found that the Claimant's unemployment benefits were exhausted and that the claimant was ineligible for further unemployment benefits. On July 13, 2012, Claimant appealed the Appeals Referee's decision.

#### **Board's Decision**

By decision dated July 18, 2012, the Board affirmed the Appeals Referee's determination. The Board found that the Department is legally required to comply with federal unemployment insurance law, and that claimant had collected unemployment insurance benefits for the maximum compensable weeks allowable under federal regulations. Ultimately, the Board found that there were no factual or legal issues to consider. This appeal followed.

# **STANDARD OF REVIEW**

On appeal from the Unemployment Insurance Appeal Board, the Superior Court must determine if the Board's factual findings are supported by substantial evidence in the record and free from legal error. Substantial evidence is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." The Court must review the record to determine if the evidence is legally adequate to support the Board's factual findings. The Court does not "weigh evidence, determine questions of

<sup>&</sup>lt;sup>1</sup> *Unemployment Ins. Appeal Bd. v. Duncan*, 621 A.2d 340, 342 (Del. 1993).

<sup>&</sup>lt;sup>2</sup> Histed v. E.I. duPont de Nemours & Co., 621 A.2d 340, 342 (citing Olney v. Cooch, 425 A.2d 610, 614 (1981)).

<sup>&</sup>lt;sup>3</sup> Johnson v. Chrysler Corp., 213 A.2d 64, 66 (Del. 1965).

credibility or make its own factual findings."<sup>4</sup> If the record lacks satisfactory proof in support of the Board's finding or decision, the Court may overturn the Board's decision.<sup>5</sup> On appeal, the Superior Court reviews legal issues *de novo*.<sup>6</sup>

#### **DISCUSSION**

Pursuant to 19 *Del. C.* Section 3313(o), "Delaware law provides for 26 weeks of unemployment benefits absent a federal or state extension." In order for Delaware to provide unemployment benefits beyond the third-tier emergency extension provided by federal law, Delaware's statewide unemployment rate must be at or above 8.5%. The unemployment rate was below 8.5% at the time Claimant's benefits were exhausted. Therefore, Claimant could not obtain a fourth extension of benefits.

It is undisputed that Claimant had received the full unemployment benefits allowable as of May 26, 2012, and that Claimant's benefits were exhausted.<sup>9</sup> The Court is satisfied that Claimant has received all

<sup>&</sup>lt;sup>4</sup> *Id*. at 67.

<sup>&</sup>lt;sup>5</sup> *Id.* at 66-67.

<sup>&</sup>lt;sup>6</sup> Person-Gaines v. Pepco Holdings, Inc., 981 A.2d 1159, 1161 (Del 2009).

<sup>&</sup>lt;sup>7</sup> Welk v. Unemployment Ins. Appeal Bd., 2013 WL 1090765, \*1 (Del.Super.).

<sup>&</sup>lt;sup>8</sup> 26 U. S. C. §3304 Note Sec. 4002(e)(3)(A).

<sup>&</sup>lt;sup>9</sup> Administrative Hr'g Tr. 10, 11, July 9, 2012.

unemployment benefits for which she was eligible. The Board's decision is

supported by substantial evidence within the record and is free from legal

error.

**CONCLUSION** 

The Court finds that the decision of the Unemployment Appeals

Board is supported by substantial evidence, and that the Board's decision is

free from legal error. Claimant's unemployment benefits have been

exhausted, and no further unemployment benefits are available.

THEREFORE, the Unemployment Insurance Appeal Board's July

18, 2012 decision is hereby **AFFIRMED**.

IT IS SO ORDERED.

1sl Mary M. Johnston

The Honorable Mary M. Johnston

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