

SUPERIOR COURT
OF THE
STATE OF DELAWARE

RICHARD F. STOKES
JUDGE

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RE: *Gray v. Beebe Medical Center and Unemployment Insurance
Appeal Board, C.A. No. S14A-04-002 RFS*

Date Submitted: August 4, 2014

Date Decided: August 13, 2014

Dear Parties:

Before the Court is the appeal of Daniel Gray (“Gray”) of a decision rendered against him by the Unemployment Insurance Appeal Board (the “Board”) regarding whether Gray’s unemployment was due to an inability to work. Gray was no longer

able to complete his duties in the Environmental Services Department of Beebe Medical Center (“Beebe”), which ultimately led to his unemployment. Since Gray’s unemployment was brought about by an inability to work as a result of a health condition, the Board held he could not recover unemployment benefits. For the reasons explained below, the Board’s decision is **AFFIRMED**.

FACTS AND PROCEDURAL BACKGROUND

Gray was employed by Beebe from June 7, 2004 until June 21, 2013. During this time Gray worked in the Environmental Services Department, both in the laundry and housekeeping divisions. Gray was originally hired in the laundry division. Later all employees were required to begin cross-training in the various Environmental Services divisions. Therefore, Gray began training in the housekeeping division. Soon his job included responsibility in both divisions.

In June 2013, Gray had a pulmonary episode at work that sent him to the emergency room. After treatment and meeting with his physician, Dr. Fabricio Alaracon (“Dr. Alacaron”), Gray was informed that his episode was a bronchospasm brought about by exposure to cleaning chemicals used in the housekeeping division. Gray was told he could return to work as long as he did not work in the housekeeping division, although continued work in the laundry division was permissible. Dr. Alacaron sent a note to Beebe explaining Gray’s limitations, but the hospital alleges

they did not receive the note. On June 21, 2013, Gray attempted to return to work, but was asked to leave until Beebe could properly sort out his medical documentation and limitations. Throughout June and July of 2013, Gray, Dr. Alacaron, and Beebe sought to resolve the situation. Dr. Alacaron sent notes to Beebe on July 1, 2013 and July 16, 2013. Beebe sought further clarification of Gray's condition on July 23, 2013. The main concern was whether Gray's position in the laundry division would expose him to cleaning chemicals because the laundry division is responsible for cleaning the mop heads and rags used by housekeeping. Dr. Alacaron's response only indicated that Gray could work in laundry division, but not in the housekeeping. On August 16, 2013, Gray was informed that he could continue work in the laundry division, and that the hospital could occasionally call on him to work in housekeeping, as long as he was not exposed to cleaning chemicals. Gray was not satisfied with this arrangement, and refused to go back to work.

Subsequent to his unemployment, Gray filed for unemployment insurance benefits with the Delaware Department of Labor's Division of Unemployment Insurance (the "Division"). The Claims Deputy found that Gray's unemployment was due to his inability to work, thus disqualifying him from unemployment benefits. Gray filed a timely appeal to an Appeals Referee. The initial hearing before the Referee was held on September 10, 2013; however, Beebe was unable to attend the

hearing. Therefore, a second hearing was granted, and held on January 2, 2014. A second Appeals Referee found that Gray was unable to work, and that he could not receive benefits pursuant to 19 *Del. C.* § 3314(8). After this determination, Gray appealed to the Board. The Board affirmed the decision of the Appeals Referee. Gray has filed an appeal of the Board’s finding with this Court.

STANDARD OF REVIEW

When reviewing appeals from the Board, this court will only examine the record upon which the Board relied in making its decision.¹ The Court will only consider whether substantial evidence supported the Board’s decision, and whether the Board’s decision was free from legal error.² The necessary degree of evidence is “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.”³ Evaluating the evidence, deciding credibility issues, and determining factual questions are not within the Court’s purview.⁴ Ultimately, the Court only decides whether a sufficient basis supports the Board’s decision.⁵

¹ *Burgos v. Perdue Farms, Inc.*, 2011 WL 1487076 at *2 (Del. Super. Apr. 19, 2011).

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ *Id.*

ANALYSIS

Parties' Contentions

Gray disagrees with the Appeals Referee's statement that Gray's unemployment is a result of his inability to work in the laundry division. Gray asserts that he is able to work in the laundry division, since he does not come into direct contact with the chemicals that are used in the housekeeping division, which had triggered his health problems. Furthermore, Gray states that the location of the laundry and housekeeping divisions are separate, which allows him to work in the laundry division without being exposed to the housekeeping chemicals. Lastly, Gray stresses that he is only approved to work in the laundry division, not in the housekeeping division. Therefore, Beebe's accommodation providing that Gray could work primarily in the laundry division and occasionally help in the housekeeping division is insufficient. Gray believes that such an arrangement would violate doctor's orders. Gray also asserts in his reply brief that he believes Beebe is "covering their tracks" to hide any wrongdoing.⁶

Beebe contends that the facts present in the record establish that Gray's inability to work is due to his medical condition. Therefore, he is disqualified from

⁶ Gray asserts that his original job description was as a Laundry Operator only, and that Beebe is attempting to "cover their tracks" by adding housekeeping duties to his current job description.

the receipt of unemployment benefits. According to the testimony of both Gray and a representative from Beebe, the nature of Gray's job requires him to conduct housekeeping duties as well as his usual laundry duties.⁷ The evidence also supports the assertion that it is a consequence of Gray's medical condition, which renders him unable to complete housekeeping duties. As a result, Gray was unable to perform his usual job duties because of his medical condition. As such, Gray is disqualified from receiving unemployment benefits.

Discussion

Pursuant to 19 *Del. C.* § 3314(8) a claimant is disqualified from receiving unemployment benefits if he is unable to work. The statute states,

“An individual should be disqualified for benefits: if it shall be determined by the Department that total or partial unemployment is due to the individual's inability to work. Such disqualification to terminate when the individual becomes able to work and available for work as determined by a doctor's certificate and meets all other requirements under this title.”⁸

If a claimant manifests an inability to work under this statutory directive, he or she cannot receive unemployment benefits.⁹ The employee must be both available and

⁷ Beebe alleges they were cross-training all employees in the various Environmental Services divisions, and that Gray's job description merely evolved during the nine years that he worked for Beebe.

⁸ 19 *Del. C.* § 3314(8).

⁹ *Id.*

able to work.¹⁰ Availability to work is defined as both the ability to work and having the proper skills necessary to work.¹¹ Ability to work means that the employee is capable of performing his other normal job duties.¹² “ While the Unemployment Compensation Fund is an emergency fund provided for those persons who find themselves unemployed through no fault of their own, the fund was not intended to be a disability or illness insurer.”¹³

The Court concludes that the Board’s decision regarding Gray’s inability to work, and subsequent unemployment, was supported by substantial evidence and was free from legal error. Pursuant to the statute and case law, an employee is considered unable to work when he or she is restricted from performing normal job duties as a result of a physical condition.¹⁴ The disqualification will end when the claimant is once again able to work without restriction.¹⁵

¹⁰ *Id.*

¹¹ *Petty v. Univ. of Delaware*, 450 A.2d 392, 395 (Del. 1982).

¹² *Brown v. Unemployment Ins. Appeal Bd.*, 2011 WL 863310, at *2 (Del. Super. Feb. 3, 2011).

¹³ *See Appeals Referee’s Op.* at R. 37.

¹⁴ *Brown*, 2011 WL 863310, at *2.

¹⁵ *Id.*

In the matter before the Court, Gray was unable to work in the housekeeping division due to his medical condition brought about by the chemicals used in that division. Since Gray has been found unable to work, he is also unavailable to work.

On July 1, 2013, Dr. Alacaron provided documentation stating that Gray could return to work, but he was restricted from working in housekeeping. Since part of Gray's current work duties included housekeeping responsibilities, Beebe made accommodations so that he would not be exposed to the irritating chemicals, while still performing occasional work in the housekeeping division. Yet, Gray was dissatisfied with the arrangement. He firmly believed that any sort of housekeeping work would violate doctor's orders. He admitted, however, that he did not discuss this accommodation with his physician. Consequently, Gray is disqualified from receiving unemployment benefits. Additionally, there is nothing to indicate that the Board's decision is legally correct.

CONCLUSION

Considering the foregoing, the Board's decision is **AFFIRMED**.

IT IS SO ORDERED.

Very truly yours,

/s/ Richard F. Stokes

Richard F. Stokes

Cc: Prothonotary

