

SUPERIOR COURT  
OF THE  
STATE OF DELAWARE

E. SCOTT BRADLEY  
JUDGE

1 The Circle, Suite 2  
GEORGETOWN, DE 19947

December 9, 2013

Dennis G. Clayton, Jr.  
38582 Hemlock Drive  
Frankford, DE 19945

***RE: Dennis G. Clayton, Jr., v. Save-A-Lot Food Stores  
C.A. No. S13A-03-007 - ESB***

Date Submitted: September 5, 2013

Dear Mr. Clayton:

This is my decision on your appeal of the Unemployment Insurance Appeal Board's denial of your claim for unemployment benefits. The Board denied your claim because it found that you had voluntarily left your work without good cause. You began working as the meat department manager for the Save-A-Lot grocery store in Millsboro, Delaware in July 2012. Shortly after beginning your job, you were injured at work and placed on a medical leave of absence. In October 2012, you returned to work with some restrictions on your activities, such as not lifting more than 15-20 pounds. On October 11, you left your work around noon for, according to your testimony, a doctor's appointment at 1:00 p.m. At that appointment, your doctor took you out of work until you could be seen by a pain management specialist.

Your store manager testified that you got upset about not having someone to help you and walked out of work that day without telling him about your doctor's appointment and without cleaning your work station. Furthermore, the district manager, who was in the store the day you left, testified that you phoned him later that evening and told him that you didn't think meat cutting was the profession you wanted to continue in and that he was better off looking for someone else. The district manager hired another person to replace you. You filed a claim for unemployment benefits because Save-A-Lot allegedly did not have worker's compensation insurance. The Board found that you had voluntarily left your work without good cause. You then filed an appeal of the Board's decision with this Court.

### **STANDARD OF REVIEW**

The Supreme Court and this Court repeatedly have emphasized the limited appellate review of the factual findings of an administrative agency. On appeal from a decision of the Board, this Court is limited to a determination of whether there is substantial evidence in the record sufficient to support the Board's findings, and that such findings are free from legal error.<sup>1</sup> Substantial evidence means such relevant

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<sup>1</sup> *Unemployment Ins. Appeals Board of the Dept. of Labor v. Duncan*, 337 A.2d 308, 309 (Del. 1975).

evidence as a reasonable mind might accept as adequate to support a conclusion.<sup>2</sup> The Board’s findings are conclusive and will be affirmed if supported by “competent evidence having probative value.”<sup>3</sup> The appellate court does not weigh the evidence, determine questions of credibility, or make its own factual findings.<sup>4</sup> It merely determines if the evidence is legally adequate to support the agency's factual findings.<sup>5</sup> Absent an error of law, the Board's decision will not be disturbed where there is substantial evidence to support its conclusions.<sup>6</sup>

## **DISCUSSION**

Delaware law provides that an individual is disqualified from receiving unemployment benefits if he “left work voluntarily without good cause attributable to such work.”<sup>7</sup> “Good cause” may include such circumstances as a substantial reduction in wages or hours or a substantial deviation in working conditions from the

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<sup>2</sup> *Oceanport Ind. v. Wilmington Stevedores*, 636 A.2d 892, 899 (Del. 1994); *Battista v. Chrysler Corp.*, 517 A.2d 295, 297 (Del. Super. 1986), *app. dismiss.*, 515 A.2d 397 (Del. 1986).

<sup>3</sup> *Geegan v. Unemployment Compensation Commission*, 76 A.2d 116, 117 (Del. Super. 1950).

<sup>4</sup> *Johnson v. Chrysler Corp.*, 213 A.2d 64, 66 (Del. 1965).

<sup>5</sup> 29 *Del.C.* § 10142(d).

<sup>6</sup> *Dallachiesa v. General Motors Corp.*, 140 A.2d 137 (Del. Super. 1958).

<sup>7</sup> 19 *Del.C.* § 3314(1).

original agreement of hire to the employee's detriment.<sup>8</sup> The claimant bears the burden of showing "good cause" for voluntarily terminating employment and the claimant must demonstrate that she exhausted all administrative remedies prior to voluntarily leaving her work.<sup>9</sup>

The Board ruled that you were not entitled to unemployment benefits because you voluntarily left your work without good cause. It is undisputed that you left work on October 11, 2012. What is contested is the reason why you left work. You argue that you 1) left work to go to a doctor's appointment, and 2) essentially set your own schedule when it came to leaving work at the end of a shift because you were not allowed to work more than 40 hours a week. Save-A-Lot's version of why you left is different. Save-A-Lot argues that you got into a dispute with your store manager over not having enough help and quit your job. Its version is supported by the fact that you left your shift two hours early, did not clean up your work area, did not tell your store manager about your doctor's appointment, and phoned the district manager on the evening of October 11 and told him that meat cutting was no longer a profession you wanted to continue in and that he would be better off looking for

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<sup>8</sup> See *Hopkins Construction v. UIAB*, 1998 WL 960713, at \*3 (Del. Super. Dec. 17, 1998).

<sup>9</sup> *Longobardi v. Unemployment Insurance Appeals Board*, 287 A.2d 690, 692 (Del. Super. 1971).

someone else.

You argue that the Board erred because you were not present for the hearing before the Board and because all of the necessary medical documentation was not provided to the Board.<sup>10</sup> You argue that if you were present at the Board hearing, the Board would not have ruled against you. You state that you missed the hearing due to a misunderstanding. The evidence does not support your argument. You were provided with proper notice of the hearing location and an opportunity to be heard by the Board. The notice you received described the location of the hearing as “Dover, DE.” You instead went to the Georgetown, Delaware office and missed the hearing. Just because you were not present at the hearing does not mean that the Board did not consider your previous testimony and evidence. Indeed, in reaching its decision, the Board stated that it considered the whole record, which included your testimony and the evidence you presented to the Appeals Referee. The only thing that you were unable to do was to question Kevin Reichart’s testimony, which was due to your mistake about the location of the hearing.

At the Appeals Hearing, you testified that you did not walk off of the job on

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<sup>10</sup> The disability slips that you provided to your employer have no bearing on whether or not you are entitled to unemployment benefits in this case. At issue is whether or not you quit your job on October 11, 2012. The disability slips you turned in took you out of work after your shift on October 11 and not before.

October 11, but rather left to go to a doctor's appointment. You testified that prior to leaving for your doctor's appointment, you had a brief discussion with Kevin Reichart, the district manager, and told him you were leaving for a doctor's appointment. You testified that at your appointment on October 11, the doctor increased your restrictions to no lifting, no bending and no squatting and told you not to return to work until you were seen by a pain management specialist. You also testified that you went in to the store on Monday, October 15, to collect your paycheck and turn in your disability slip.

Vernon Ko, the store manager, testified on behalf of Save-A-Lot at the Appeals Hearing. Ko testified that you requested to switch shifts so you could work on October 11, instead of October 12, due to a family obligation. Ko testified that he had scheduled a helper to work with you on October 12 due to your work restrictions, and that by switching shifts you would no longer have a helper. Ko testified that he told you he would do his best to help you throughout the day and that you were fine with this arrangement. Ko testified that he was unable to help you very much because he was busy showing several district officials around the store. Ko testified that you became upset because he was unable to help you and left the store around noon on October 11 without cleaning up your work area. Ko testified that he was unsure of your work status because decisions regarding your employment were the

responsibility of his supervisor.

Kevin Reichart, the district manager, testified on behalf of Save-A-Lot at the Board hearing. Reichart testified that you left your work area on October 11 unclean and not sanitized, which is against the health code regulations. Reichert testified that you phoned him later that evening and told him that you didn't think meat cutting was the profession you wanted to continue in and that he was better off looking for someone else. Since you were not present at the Board hearing, you could not dispute Reichart's testimony.

After reviewing all of the evidence, the Board found the testimony of both Ko and Reichart more credible than your testimony. This is certainly within the Board's discretion and decision making powers.<sup>11</sup> Their testimony indicates that you 1) left work before your shift ended, 2) did not tell your supervisor that you had a doctor's appointment, 3) left your work station unclean and not sanitized, 4) and phoned Reichart on the evening of October 11 to inform him that meat cutting was not for you and that he would be better off looking for a replacement. The evidence indicates that you voluntarily walked out of work on October 11 without good cause attributable to your work. It defies reason to think that you, as a meat department manager, would have left your work station unsanitized and dirty knowing the health

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<sup>11</sup> *Johnson v. Chrysler Corp.*, 213 A.2d 64, 66 (Del. 1965).

risks associated with doing so if you had not quit your job. The Board's decision that you quit your job without good cause is based upon substantial evidence in the record and free from legal error.

### **CONCLUSION**

The Unemployment Insurance Appeal Board's decision is **AFFIRMED**.

**IT IS SO ORDERED.**

Very truly yours,

*/s/ E. Scott Bradley*

E. Scott Bradley

ESB/sal

cc: Save-A-Lot Food Stores, Attention: Vernon Ko  
UIAB