IN THE SUPREME COURT OF THE STATE OF DELAWARE

WILLIAM D. GASKILL,	§	
	§	
Claimant Below-Appellant,	§	No. 566, 2013
	§	
	§	
v.	§	Court Below—Superior Court
	§	of the State of Delaware
BESTEMPS and UNEMPLOYMENT INSURANCE APPEALS BOARD,	§	in and for Kent County
	§	C.A. No. K13A-01-004
	§	
Respondents Below-Appellees.	§	
	§	

Submitted: January 17, 2014
Decided: February 28, 2014

Before **HOLLAND**, **JACOBS**, and **RIDGELY**, Justices

O R D E R

This 28th day of February 2014, upon consideration of the opening brief and the record on appeal,[1] it appears to the Court that:

(1) The Unemployment Insurance Appeal Board ("the UIAB"), disqualified William D. Gaskill ("Gaskill") from the receipt of unemployment benefits because he refused an offer to work pursuant to 19 *Del. C.* § 3314(3).[2] On January 28, 2013, the Superior Court affirmed Gaskill's disqualification from the receipt of unemployment benefits

[1] Neither appellee filed an answering brief on appeal.

[2] DEL. CODE ANN. tit. 19, §3314(3) (An individual shall be disqualified for benefits "[i]f the individual has refused to accept an offer of work for which the individual is reasonably fitted.").

because Gaskill "left work voluntarily without good cause attributable to such work" pursuant to 19 *Del. C.* § 3314(1).[3] The Superior Court found that the record supported the application of 19 *Del. C.* § 3314(1) to disqualify Gaskill from benefits, and therefore, the UIAB's misapplication of 19 *Del. C.* § 3314(3) did not amount to legal error requiring reversal of its decision. This is Gaskill's *pro se* appeal of the Superior Court's decision.

(2) In August 2012, after Gaskill was laid off from his job as a material handler at the Dover Air Force Base, he was hired by BesTemps of Dover ("BesTemps"), a temporary staffing service. BesTemps placed Gaskill as a warehouse worker at Color-Box in Harrington, Delaware on August, 27, 2012. On his BesTemps application form, Gaskill indicated he was able to work all available shifts and was available to work weekends. Gaskill was informed by his BesTemps supervisor that he may have to work weekends as part of the Color-Box assignment. At the time of the placement, Gaskill had custody of his young child every other weekend. On the same day as his placement, Gaskill contacted the mother of his child and attempted to modify the custody arrangement so that he could work every weekend. Gaskill was not able to secure such an arrangement.

[3] DEL CODE ANN. tit. 19, § 3314(1).

(3) On August 29, 2012 Gaskill arrived at Color-Box for orientation. Gaskill was informed by Color-Box personnel that it was mandatory for him to work every weekend. Gaskill informed Color-Box that he was unable to secure proper childcare arrangements for his child that would allow him to work every weekend. Gaskill was told that he could only work at Color-Box if he agreed to work every weekend, and when he failed to so agree, he was dismissed. Gaskill was clocked out by Color-Box personnel after he had attended orientation for six hours.

(4) On August 30, 2012 Gaskill's BesTemps supervisor called him and informed him that she would notify him of any further job opportunities. When Gaskill did not immediately hear back from his supervisor, he called her and left a message to call him back. Gaskill's phone message was his last and final attempt to contact BesTemps about employment opportunities. Gaskill subsequently filed a claim for unemployment benefits.

(5) On September 29, 2012, the Claims Deputy disqualified Gaskill from the receipt of unemployment benefits, pursuant to 19 *Del. C.* § 3314(3), because he refused an offer to work.[4] Gaskill appealed, and on October 22, 2012, an Appeals Referee affirmed the determination. Gaskill

[4] DEL. CODE ANN. tit. 19, § 3314(3) (An individual shall be disqualified for benefits "[i]f the individual has refused to accept an offer of work for which the individual is reasonably fitted.").

appealed again, and the UIAB, by decision dated January 28, 2013, adopted the findings and conclusions of the Appeals Referee and reaffirmed Gaskill's disqualification from the receipt of unemployment benefits. The UIAB determined that Gaskill refused an offer to work by "indicat[ing] he was available to work, accept[ing] an assignment, then decid[ing] personal reasons made him unavailable for work . . . ."

(6) On July 1, 2013 Gaskill filed an appeal of the UIAB's decision with the Superior Court. The Superior Court determined that the UIAB improperly disqualified Gaskill from benefits for refusing an offer to work pursuant to 19 *Del C.* § 3314(3).[5] A claimant is disqualified from benefits under § 3314(3) if: (1) the claimant received notice of an offer of employment; (2) the claimant refused the offer of employment; and (3) the claimant was reasonably fit for the work offered.[6] The Superior Court found that the first and third element had been satisfied but that the second element—refusal of the offer of employment—could not be established. The Superior Court found that Gaskill unequivocally accepted Color-Box's offer to work and could not be said to have refused an offer of employment: Gaskill was employed by BesTemps and accepted the Color-Box

[5] DEL. CODE ANN. tit. 19, § 3314(3).

[6] *Wallington v. Performance Staffing*, 2013 WL 1400849, at *2 (Del. Super. Ct. Mar. 28, 2013); *Quinones v. Access Labor*, 2009 WL 5177148, at *3 (Del. Super. Ct. Nov. 2, 2009).

assignment; he was clocked in for six hours at orientation, and had already begun working for Color-Box.

(7) Despite this determination, the Superior Court affirmed the UIAB's decision, finding Gaskill was disqualified from benefits under 19 *Del. C.* § 3314(1) because Gaskill "left work voluntarily without good cause attributable to such work. . . ."[7] The Superior Court found the record below supported an application of § 3314(1) to disqualify Gaskill from receiving benefits, therefore, the UIAB's misapplication of § 3314(3) did not amount to legal error requiring reversal.

(8) On appellate review of decisions of administrative boards, this Court's scope of review is "limited to determining whether the Board's conclusions are supported by substantial evidence and free from legal error."[8] Substantial evidence means "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion."[9] We do not weigh the evidence, determine questions of credibility, or make our own factual findings.[10] A claim that the UIAB committed an error of law is reviewed *de*

[7] DEL. CODE ANN. tit. 19, § 3314(1).

[8] *Thompson v. Christiana Care Health Sys.*, 25 A.3d 778, 781-82 (Del. 2011).

[9] *Olney v. Cooch*, 425 A.2d 610, 614 (Del. 1981) (quoting *Consolo v. Fed. Mar. Comm'n*, 383 U.S. 607, 620 (1966)).

[10] *Hoffecker v. Lexus of Wilmington*, 2012 WL 341714 (Del. Feb. 1, 2012).

novo.[11] Absent an error of law, we review a Board decision for abuse of discretion.[12]

(9) The record reflects that the Appeals Referee and the UIAB only analyzed whether Gaskill was disqualified from receiving benefits under § 3314(3). However, a claimant may also be disqualified from receiving benefits under § 3314(1) because he "left work voluntarily without good cause attributable to such work. . . ."[13] Whether an employee has voluntarily quit or left employment for good cause is a question of law subject to review by this Court.[14] As used in § 3314(1), good cause "must be such cause as would justify an individual to leave the ranks of the employed and join the ranks of the unemployed."[15] Good cause is established if: "(i) an employee voluntarily leaves employment for reasons attributable to issues within the employer's control and under circumstances in which no reasonably prudent employee would have remained employed; and (ii) the employee first exhausts all reasonable alternatives to resolve the issues before voluntarily terminating his or her employment."[16]

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[11] *Potter v. State*, 2013 WL 6035723 (Del. Nov. 13, 2013).

[12] *Id.*

[13] DEL. CODE ANN. tit. 19, § 3314(1).

[14] *See Thompson v. Christiana Care Health Sys.*, 25 A.3d 778, 784 (Del. 2011).

[15] *Id.* at 782.

[16] *Id.* at 783.

(10) In this appeal, Gaskill contends that he did not refuse an offer of employment, but that he could not work the mandatory schedule because of his custody arrangement with his child's mother. While this Court agrees that Gaskill is not disqualified from benefits due to his refusal of an offer of employment, we nevertheless conclude the record provides substantial evidence to disqualify Gaskill from benefits for voluntarily leaving work without good cause attributable to such work pursuant to § 3314(1).

(11) The record demonstrates that Gaskill voluntarily chose to leave the Color-Box assignment because of his custody arrangement. Gaskill accepted employment with BesTemps and the Color-Box assignment, and indicated he was available to work every weekend. However, he was dismissed by Color-Box after six hours of orientation because he refused to accept the mandatory schedule on the basis of his custody arrangement—a purely personal reason unrelated to employment. Gaskill never informed Color-Box of this conflict prior to accepting the employment offer, and the Appeals Referee specifically found that Gaskill did not exhaust his child care options before attending the Color-Box orientation or before accepting employment through BesTemps. Furthermore, Gaskill did not follow up with BesTemps to pursue further employment opportunities.

(12) The record reflects that Gaskill voluntarily left his employment for personal reasons and, thus, without good cause under the statute. Gaskill also failed to make a significant effort to inform BesTemps and Color-Box of his scheduling conflicts prior to resigning, and he failed to pursue further job assignments. Accordingly, there is substantial evidence to support the UIAB's decision to disqualify Gaskill from receipt of unemployment benefits. To the extent the UIAB relied upon § 3314(3) to deny Gaskill's claim for unemployment benefit, we find such legal error to be harmless because there is substantial evidence in the record to demonstrate that Gaskill voluntarily left his employment for personal reasons, without good cause, and was disqualified under § 3314(1).[17]

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Henry duPont Ridgely
Justice

[17] *See Hoffecker v. Lexus of Wilmington*, 2012 WL 341714 (Del. Feb. 1, 2012) (applying a harmless error analysis).