

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

WILLIAM ROHAN,	)	
	)	
Appellant,	)	
	)	C.A. No. 08A-08-006 MJB
	)	
v.	)	
	)	
WORKFORCE and	)	
UNEMPLOYMENT	)	
INSURANCE APPEAL BOARD	)	
	)	
Appellees.	)	

Submitted: January 5, 2009

Decided: June 26, 2009

Upon Appeal of the Decision of the Unemployment Insurance Appeal Board.
AFFIRMED.

OPINION AND ORDER

William Rohan, 13400 Coastal Highway, Unit 705S, Ocean City, MD, *Pro Se*
Appellant

Ralph Durstein, III, Esquire, and Thomas Ellis, Esquire, Department of Justice,
820 N. French Street, Wilmington, DE 19801, counsel for Appellee
Unemployment Insurance Appeal Board.

Workforce, 2880 Pottsville Minersville, Hwy/Ste 148, Minersville, PA 17954.

BRADY, J.

INTRODUCTION

Before the Court is the appeal of William Rohan (“Rohan”) from a decision of the Unemployment Insurance Appeal Board (the “Board”). In that decision, the Board affirmed the Appeals Referee’s (“Referee”) prior decision which denied benefits to Rohan and determined that he left his employment voluntarily, without good cause. For the reasons stated herein, the Board’s decision is **AFFIRMED**.

FACTUAL AND PROCEDURAL BACKGROUND

Rohan was employed by Workforce as a concrete laborer for three days in January 2008. Rohan testified that on the third day, January 12, at approximately 1:30 a.m., he injured his right elbow while working. Rohan informed his supervisor of the injury and asked to be taken to the hospital. The supervisor refused and told Rohan that he could not use him if he was injured. Rohan called his father for a ride to the hospital. It was snowing at the time therefore Rohan and his father went home rather than straight to the hospital. Rohan called Workforce to report that he was going to seek medical attention as soon as the roads were clear. His father drove him to the hospital later that morning.

The day following his injury, Rohan was seen by a physician at the Good Samaritan Medical Center in Pottsville, Pennsylvania. The Return to Work Instructions from Good Samaritan placed Rohan off work January 13 and 14, 2008, with a follow-visit on January 14. The instructions also included

precautionary information about the prescription pain medication Rohan was prescribed, mostly relating to the sedative nature of the medication.¹ The instructions make clear that Rohan was given a limited amount of medication, enough to last four or five days. No refills were provided.

Approximately two weeks following the injury, a supervisor from Workforce offered Rohan a “light-duty” position. The position would have required Rohan to sit on the side of the highway for six hours per day writing down the company logos on passing cars and trucks. Rohan informed Workforce that his right arm was in a sling and that he, therefore, could not write with his right hand. He also contended he could not write with his left hand, as it was not his dominant hand. According to Rohan, the temperature outside at this time was near-freezing. Rohan also informed Workforce that he was taking prescription pain medication, was going through physical therapy three times per week and could not perform that job given his condition. Workforce informed Rohan that his workers’ compensation benefits would be terminated because he refused an offer of employment which they believed he was capable of performing.

Rohan filed his original claim for unemployment benefits with the Department of Labor (“Department”) on March 16, 2008. The Claimant/Employee Separation Statement provided to the Claims Deputy by Workforce states that

¹ For example, the restrictions indicate that Rohan should not operate heavy machinery or perform jobs that require one to be alert, etc.

Rohan left the job site without notice and failed to follow the procedures one should follow when injured at work. Workforce also states therein that Rohan was offered a light-duty position in compliance with his work restrictions. There were other documents submitted to the Claims Deputy for review, including a letter from Northeast PT Associates Physical Therapy dated March 28, 2008, stating that Rohan began physical therapy on March 25, 2008, and would continue to be seen three times a week for the following four weeks. The Claims Deputy issued a decision dated April 7, 2008, disqualifying Rohan from the receipt of benefits.

Rohan appealed the decision of the Claims Deputy to the Appeals Referee, who, after a hearing on May 5, 2008, affirmed the decision of the Claims Deputy. Rohan appealed the decision to the Board. In addition to the information already discussed above, Rohan submitted another document to the Board: Return to Work Instructions from Orthopedic Associates of Pottsville, Inc., dated March 12, 2008, placing him on modified duty for four weeks and stating that Rohan should avoid the use of his right shoulder and arm. The signing physician did not circle the word “hand,” thus indicating the use of Rohan’s hand was not restricted.

The Board held a hearing on July 9, 2008, and affirmed the decision of the Referee.² The Board found that Rohan’s motivation for leaving his laborer

² Workforce was properly notified of the hearing but informed the Board that it would be unable to attend.

position was unrelated to his job,³ and therefore Rohan did not have good cause for quitting work.⁴ The Board further found that the light-duty position Workforce offered met the restrictions of the return to work instructions Rohan submitted to the Board because, although Rohan alleged that he could not write, the return to work instructions did not restrict the use of his writing hand. Additionally, the Board based their decision on the fact that the instructions do not address restrictions based on any weather conditions or medications, and the prescription information makes it clear that the number of pills provided was limited and would not have lasted past the week for which Rohan testified he had been covered by workers' compensation. The Board disqualified Rohan from the receipt of unemployment benefits beginning the week in which he was discharged.

STANDARD OF REVIEW

The Court's review of the Board's decision is two-fold. First, the Court must determine whether substantial evidence supports the Board's finding and second, whether the Board's proceedings were free from legal error.⁵ Substantial evidence means such relevant evidence as a reasonable mind might accept as

³ An individual who leaves work voluntarily, and without good cause attributable to his job, is disqualified from the receipt of unemployment benefits. 19 *Del. C.* §3314(1).

⁴ The claimant must show "good cause" for voluntarily terminating employment. *Longobardi v. U.I.A.B.*, 287 A.2d 690, 692 (Del. Super. Dec. 21, 1971). Good cause for quitting a job must be such cause as would justify one in voluntarily leaving the ranks of the employed and joining the ranks of the unemployed. *O'Neal's Bus Service, Inc. v. Employment Security Comm'n.*, 269 A.2d 24, 249 (Del. Super. Sept. 15, 1970).

⁵ *Ingram v. Barrett's Business Service, Inc.*, 794 A.2d 1160 (Del. 2007).

adequate to support a conclusion.⁶ It is the responsibility of the Board to resolve questions of credibility and conflicts in the evidence; the Court may determine only whether there is satisfactory proof to support a factual finding.⁷

APPLICABLE LAW

A person is not entitled to unemployment compensation if he left a job voluntarily and without good cause attributable to the work.⁸ The burden is upon the claimant to establish good cause.⁹ Good cause has been defined as that which would “justify one in voluntarily leaving the ranks of the employed and joining the ranks of the unemployed.”¹⁰ The good cause for voluntarily leaving employment must be for reasons connected with the employment and not for personal reasons.¹¹

In *Giddens v. Delaware Hospital for the Chronically Ill*, this Court upheld the Board’s determination that the claimant resigned for personal reasons which were unrelated to her injury.¹² There, the claimant sustained a work-related injury and was temporarily assigned to light-duty assignments. In an apparent dispute about her work assignment, the claimant failed to report to work for approximately three weeks. The Board found there was no medical documentation in the record

⁶ *Breeding v. Contractors-One-Inc.*, 549 A.2d 1102, 1104 (Del. 1988).

⁷ *Abex Corp. v. Todd*, 235 A.2d 271, 273 (Del. Super. Oct. 24, 1967).

⁸ 19 Del. C. §3315.

⁹ *Longobardi*, 287 A.2d at 692.

¹⁰ *O’Neal’s Bus Service, Inc.*, 269 A.2d at 249.

¹¹ *Brainard v. Unemployment Compensation Comm’n*, 76 A.2d 126, 127 (Del. Super. Oct. 19, 1950).

¹² 2006 WL 2242753 (Del. Super. June 30, 2006).

indicating claimant was unable to work or documenting the nature or extent of the claimant's injury, and that the claimant had been released from restrictions by one doctor. The Court found a substantial basis to support the Board's determination that the claimant quit voluntarily, and for personal reasons, when she failed to demonstrate that her failure to attend her job was due to a medical condition.¹³

ANALYSIS

Similarly, in this case, there is substantial evidence to support the Board's factual findings and conclusions of law. First, the Board properly recognized that Rohan bears the burden of demonstrating "good cause" for voluntarily terminating his employment.¹⁴ There is substantial evidence supporting the Board's finding. There was no medical documentation provided to Workforce stating Rohan could not write, or that the use of his right hand was restricted; the Good Samaritan Return to Work Instructions placed Rohan off work for two days only: January 13 and 14; the precautions related to the prescription pain medication prescribed by Good Samaritan make clear that Rohan was given a limited amount of medication which would not have lasted past the week for which Rohan testified he received workers' compensation benefits; the second set of Return to Work Instructions, issued approximately two months after the injury and which placed Rohan on modified duty for four weeks beginning March 12, 2008, restricted the use of

¹³ *Id.* at 2.

¹⁴ *See supra*, n. 4.

Rohan's right shoulder and arm, but not his hand; and there was no showing that the work assignment offered was unsafe.¹⁵ There is simply no evidence in the record that Rohan could not write or that his healthcare providers restricted the use of his hand, and there is no evidence in the record that the position offered was dangerous.

Rohan has failed to demonstrate that his failure to work was due to his medical condition. Rohan simply refused the light-duty position offered by his employer; a position, based upon the medical documentation provided to the Board, Rohan was fully capable of performing.

The Board did not base its decision upon whether Rohan followed Workforce's policy for reporting a workplace injury, nor was the Board so required. The Court, therefore, does not address that aspect of the employer's argument. The Board's conclusion that Rohan did not have good cause to terminate his employment relates solely to Rohan's denial of the light-duty position offered subsequent to his injury.

CONCLUSION

Rohan did not have good cause to refuse the light-duty position the employer offered. The light-duty position offered to Rohan was consistent with the medical restrictions imposed by his health care providers. Rohan's assertion that

¹⁵ The second set of Return to Work Instructions was written by Dr. Stout of Orthopedic Associates of Pottsville, Inc.

he could not perform the light-duty position because of the pain medication he was prescribed is not supported by the record. There is no evidence that the light-duty position would have been unsafe. Based on the foregoing, the decision of the Board is hereby **AFFIRMED**.

IT IS SO ORDERED.

_____/s/____

M. Jane Brady
Superior Court Judge