

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

JOHN W. DAY, JR.,)	
)	
Employee-Appellant,)	
)	
v.)	C.A. No. N11A-11-007 JRJ
)	
TERUMO MEDICAL,)	
)	
Employer-Appellee)	
)	
and)	
)	
UNEMPLOYMENT INSURANCE)	
APPEAL BOARD,)	
)	
Appellee.)	

Date Submitted: August 17, 2012

Date Decided: October 26, 2012

OPINION

*Upon Appeal from the Unemployment Insurance Appeal Board: **AFFIRMED***

John W Day, Jr., *pro se*, 3027 Rosetree Lane, Rosetree Hunt, Newark, DE 19702, Employee-Appellant.

Terumo Medical, *pro se*, 950 Elkton Boulevard, Elkton, MD 21921, Employer-Appellee.

Caroline Lee Cross, Esquire, Deputy Attorney General, Department of Justice, Carvel State Office Building, 820 North French Street, 6th Floor, Wilmington, DE 19801, Attorney for Appellee Unemployment Insurance Appeal Board.

JURDEN, J.

I. INTRODUCTION

John W. Day, Jr., (the “Employee”) appeals the decision of the Unemployment Insurance Appeal Board (the “Board”) affirming the denial of unemployment benefits. The Board determined that the Employee voluntarily quit his job without good cause attributable to his work. The Court finds that the Board’s decision is supported by substantial evidence and that the Board did not err as a matter of law. Consequently, the Board’s decision is **AFFIRMED**.

II. FACTS AND PROCEDURAL HISTORY

The Employee worked temporarily for Terumo Medical (the “Employer”)¹ from January 25, 2011 to May 20, 2011.² During that time, the Employee worked in the Quality Assurance Lab where he inspected Bipores (a medical device).³ The Employee wore scrubs to work, “like the nurses wear.”⁴ This was important because the Employee “sweat[s] an awful lot” and scrubs allowed his body to stay cool.⁵

The Employer offered the Employee a full-time position as a Dilator inspector some time around mid-May.⁶ Knowing this new job would take him into a clean room,⁷ the Employee asked for a tour before accepting.⁸ The Employee “knew you had to wear a suit and stuff and . . . was concerned about the heat.”⁹ The Employer consented.¹⁰

¹ Terumo’s full, legal name appears to be “Terumo Medical Corporation,” not “Terumo Medical.” Record at 1; *see also* Terumo, <http://www.terumomedical.com/> (last visited Oct. 8, 2012). The Court can only speculate as to why the word “Corporation” has not been used throughout the proceeding or in the case name. Nevertheless, the Court will continue to leave it out in an effort to avoid any potential administrative confusion.

² Transcript of Record at 30 and 35, *Day v. Terumo Medical*, N11A-11-007 JRJ (Del. Super. Aug. 9, 2012) [hereinafter Record]; *see also* Appellant’s Opening Brief at 1, *Day v. Terumo Medical*, N11A-11-007 JRJ (Del. Super. May 23, 2012) [hereinafter Brief].

³ Record at 20.

⁴ *Id.*

⁵ *Id.* The transcript of the record does not specifically state the beneficial effects of wearing scrubs, but the inference is clear from the totality of the record, as well as Appellant’s Opening Brief. *See, e.g.*, Brief at 1.

⁶ Record at 18 and 19; *see also* Brief at 1.

⁷ Brief at 1. This fact is not found in the transcript of the record; however, because (1) it does not change the outcome of the case, (2) there is no reason to dispute its validity, and (3) it aids in the narrative, the Court will include it here.

⁸ Record at 20.

⁹ *Id.*

¹⁰ *Id.* at 21.

The room was “cool”;¹¹ unfortunately, the Employee “just had [his] hairnet on [and] wasn’t able to put a hood on or[] the suit.”¹² The Employee asserts that he “wouldn’t have accepted the job” had he been able to wear the suit (or even just the hood) during that initial tour.¹³ Nevertheless, the Employee accepted the full-time job and began work on Monday, May 23, 2011.¹⁴

After only two days of work, the Employee complained to Human Resources that the suit was “way to[o] hot.”¹⁵ He “didn’t think [he] would be able” to work in the suit because it “retained all [his] body heat and [he] couldn’t breath.”¹⁶ The “white uniform” was like a “sauna suit,” he said: a full-body suit with a hole only for the face.¹⁷ The hood was “very confining and [he] felt very claustrophobic with it on.”¹⁸ The Employee was “very uncomfortable and sweating.”¹⁹ When asked about the twenty-five or thirty other people working alongside him in the same kind of suit, the Employee responded: “[T]heir body just doesn’t sweat as much as I do.”²⁰

A supervisor informed the Employee that the Employer did not “have anything else to offer [him] at [that] time.”²¹ The Employee was asked to “think about it for a while.”²² The Employee “thought about it a couple of days,” but complained again on Wednesday, June 1, 2011.²³ The Employee quit on Friday, June 3, 2011.²⁴ The Employee testified that he was offered a bigger

¹¹ *Id.*

¹² *Id.*

¹³ *Id.* at 13, 21, 27-28, and 35; *see also* Brief at 1, wherein the Employee says that he “was not afforded the opportunity to wear the hood.” However, there is no testimony in the record or in the briefs as to whether the Employee’s request was denied or whether the Employee failed to ask in the first place.

¹⁴ Record at 18.

¹⁵ *Id.* at 22.

¹⁶ *Id.*

¹⁷ *Id.* at 21-22.

¹⁸ *Id.* at 22.

¹⁹ *Id.* at 23.

²⁰ *Id.*

²¹ *Id.* at 24.

²² *Id.*

²³ *Id.*

²⁴ *Id.*

uniform “right before [he] left,” but “said no that won’t help. . . . [His] body just puts off too much heat and that suit no matter how big it would be would just hold a lot of the heat.”²⁵

The Employee saw a doctor and had blood drawn the day he quit.²⁶ But the Employee did not receive the results until nearly a month later.²⁷ The Employee has hyperhidrosis,²⁸ a condition of excessive perspiration.²⁹ The Employee’s doctor wrote the diagnosis on a note, which the Employee took to the Employer.³⁰ As of the date the Employee testified before the Board, he was again working temporarily for the Employer, inspecting Bipores.³¹

The Employee filed for unemployment benefits on June 6, 2011.³² His claim was denied three weeks later.³³ The Appeals Referee (the “Referee”) affirmed the denial on August 8, 2011.³⁴ The Board affirmed the Referee’s decision on October 12, 2011.³⁵ The Board found that the Employee “left his work for reasons personal to [the Employee] and that the conditions of employment did not change from the time he started in the body suit until his last day of work.”³⁶ The Board also found that the Employee’s “doctor did not instruct [him] to quit his job.”³⁷ Thus, held the Board, “the reason for [the Employee’s] voluntary quit were not attributable to the Employer” and “[he] is disqualified from the receipt of benefits.”³⁸ The Employee timely appealed the Board’s decision on November 10, 2011.³⁹

²⁵ *Id.* at 25.

²⁶ *Id.* at 26.

²⁷ *Id.*

²⁸ *Id.* at 32.

²⁹ *Id.* at 33.

³⁰ *Id.* at 27.

³¹ *Id.* 39-40.

³² *Id.* at 1.

³³ *Id.* at 11.

³⁴ *Id.* at 31.

³⁵ *Id.* at 42.

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.* at 46.

III. STANDARD OF REVIEW

The Superior Court is limited when reviewing a decision on appeal from the Board. Factual findings, “if supported by evidence . . . , shall be conclusive, and . . . the Court shall be confined to questions of law.”⁴⁰ Thus, the Court “does not sit as a trier of fact with authority to weigh the evidence, determine questions of credibility, and make its own factual findings and conclusions.”⁴¹ Instead, “[t]he position of the [Court] on appeal is to determine only whether or not there was substantial evidence to support the findings of the Board.”⁴² Substantial evidence “means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion”;⁴³ it is “more than a scintilla but less than a preponderance.”⁴⁴ Accordingly, this Court shall determine whether the Board’s findings of fact are supported by substantial evidence⁴⁵ and shall review questions of law *de novo*.⁴⁶ The Court bifurcates a mixed question of fact and law into its component parts and applies the appropriate aforementioned standard to each isolated issue.⁴⁷

IV. ISSUES

The Court finds two alternative issues.⁴⁸ The first is whether the Board erred in affirming the denial of benefits because the Employee failed to show “good cause for leaving and that his reason or

⁴⁰ 19 Del. C. § 3323(a).

⁴¹ *Johnson v. Chrysler Corp.*, 59 Del. (9 Storey) 48, 51 (Del. 1965).

⁴² *Gen. Motors Corp. v. Freeman*, 164 A.2d 686, 689 (Del. 1960).

⁴³ *Oceanport Indus., Inc. v. Wilmington Stevedores, Inc.*, 636 A.2d 892, 899 (Del. 1994), citing *Olney v. Cooch*, 425 A.2d 610, 614 (Del. 1981).

⁴⁴ *Olney*, 425 A.2d at 614.

⁴⁵ See *Strunk v. Ne. Music Programs*, 2012 WL 1409625, at *2 (Del. Super. Jan. 18, 2012), citing *K-Mart, Inc. v. Bowles*, 1995 WL 269872, at *2 (Del. Super. Mar. 23, 1995).

⁴⁶ See *id.*, citing *Harris v. Logisticare Solutions*, 2010 WL 3707421, at *2 (Del. Super. Sept. 10, 2010); cf. *Oceanport*, 636 A.2d at 899.

⁴⁷ See *Oceanport*, 636 A.2d at 899.

⁴⁸ The appeals process is mostly a matter of legal argument, not factual investigation. Unfortunately, the Employee does not argue or address any legal issues, questions, criteria, or requirements. Instead, he retreats to what he knows: his story—the bare facts. This is not surprising; true loss lies in personal experience, not in artful articulation. And it is understandable that a *pro se* litigant might struggle to identify and detail the specifics of injuries borne, let alone navigate the framework, rules, and requirements necessary to pursue a legal remedy of those wrongs. But the Employee’s inability to articulate the wrong does not negate its existence, nor does it ease the sting. In such a case, in the interest of justice, the burden falls upon the Court to sift through the bare, factual pleas and discover the arguments concealed therein. See *Dickens v. Costello*, 2004 WL 396377, at *1 (Del. Super. Feb. 23, 2004) (“This Court has consistently granted more leniency to a *pro se* litigant in articulating his legal arguments in support of his grounds for relief. Because the Plaintiff is

reasons for doing so were directly related to his work or to his employer.”⁴⁹ The second issue is one that might be inferred from the Board’s decision, though it is never overtly expressed: whether the Board erred in denying the Employee benefits because he did not have a certificate from his doctor advising him to “leave his work due to [his] condition.”⁵⁰

V. ANALYSIS

A. Voluntary Quit and Good Cause

An individual is “disqualified for benefits . . . [if] the individual (1) left work voluntarily (2) without good cause attributable to such work”⁵¹ The Employee has the burden of proving that he left with “good cause.”⁵²

1. Voluntary Quit

An employee quits voluntarily when there is “a conscious intention to leave or terminate the employment . . . as opposed to being discharged.”⁵³ Here, the Employee does not dispute the fact that he quit voluntarily. He filled out the “voluntary quit” paperwork.⁵⁴ The Employer asked him to think about staying, but the Employee eventually decided he could not. The Employer even offered the Employee a larger suit, but the Employee declined. Thus, the Employee quit voluntarily, leaving the Court one question: whether the Employee left for good cause attributable to his work.

2. Good Cause Attributable to Work

Whether the Employee quit for good cause attributable to his work is a mixed question of fact and law. The cause or causes of the Employee’s decision to quit and whether they are attributable to

acting *pro se*, the Court will attempt to unearth the merits of his most recent motion.”) (internal citation omitted); *see also Trotman v. Bayhealth Med. Center, Inc.*, 2000 WL 33109616, at *2 n.7 (Del. Super. Nov. 6, 2000); *cf. Erickson v. Pardus*, 551 U.S. 89, 94 (2007); and *Hughes v. Rowe*, 449 U.S. 5, 9 (1980).

⁴⁹ Record at 31.

⁵⁰ *Id.* at 42.

⁵¹ 19 *Del. C.* § 3314(1) (numbers added).

⁵² *Lorah v. Home Helpers, Inc.*, 21 A.3d 596, No. 662, 2010, at *2 (Del. May 26, 2011) (TABLE), citing *Longobardi v. Unemployment Ins. Appeal Bd.*, 287 A.2d 690, 692 (Del. Super. 1971), *aff’d* 293 A.2d 295 (Del. 1972).

⁵³ *Laime v. Casapulla’s Sub Shop*, 1997 WL 524063, at *3 (Del. Super. May 20, 1997) (internal citations omitted).

⁵⁴ *See* Record at 1.

his work constitute the facts. On appeal, the Court reviews the Board's findings of fact *only* to ascertain if relevant evidence exists such that "a reasonable mind might accept [that evidence] as adequate to support [the Board's] conclusion."⁵⁵ On the other hand, whether these facts rise to the level of good cause, and thereby justify the receipt of unemployment benefits, is a question of law, which the Court reviews *de novo*.

An employee has "good cause" for quitting a job if it "would justify one in voluntarily leaving the ranks of the employed and joining the ranks of the unemployed."⁵⁶ However, "a voluntary quit must be for reasons connected with the employment and not upon personal grounds."⁵⁷ Examples include "such circumstances as a substantial reduction in wages or hours or a substantial deviation in working conditions from the original agreement of hire to the employee's detriment."⁵⁸ Thus, the existence and nature of a deviation in working conditions is a question of fact. Whether that deviation is large enough or different enough to warrant the label "substantial," and thereby justify benefits, is a question of law.

⁵⁵ *Oceanport Indus., Inc. v. Wilmington Stevedores, Inc.*, 636 A.2d 892, 899 (Del. 1994), citing *Olney v. Cooch*, 425 A.2d 610, 614 (Del. 1981).

⁵⁶ *O'Neal's Bus Service, Inc. v. Employment Sec. Comm'n*, 269 A.2d 247, 249 (Del. Super. 1970).

⁵⁷ *Brainard v. Unemployment Comp. Comm'n*, 76 A.2d 126, 127 (Del. Super. 1950) (*MRPC Fin. Mgmt. LLC v. Carter* cites *Brainard* to support the proposition that "a voluntary quit for good cause must be for reasons connected with the employment[]" and not personal." 2003 WL 21517977, at *4 n.29 (Del. Super. June 20, 2003). The Court notes that footnote 29 in *MRPC* asserts that *Brainard* was superseded by 19 *Del. C.* § 3301. *Brainard* was decided in October, 1950. Section 3301 was first enacted in 1937, recodified in Delaware's 1953 Revised Code, then revised in 1995 to make the language "gender neutral[]." Section 3301 declares the importance of economic security for the "health, morals and welfare" of the citizens of Delaware and grants the authority to use police power to enact a measure "for the compulsory setting aside of an unemployment reserve" to benefit of those who are unemployed "through no fault of their own." Section 3301 does not appear to contradict *Brainard* in any way. Since 1950, a total of fifty-three cases have cited *Brainard*, the first in 1961. Six of those fifty-three cases were decided after *MRPC*. No case but *MRPC* mentions *Brainard* being superseded. Thus, because there appears to be no evidence to support the assertion that *Brainard* was superseded by section 3301, and because *Brainard* continues to be good law, the Court cites *Brainard* here without hesitation.)

⁵⁸ Record at 42, citing *Hopkins Constr., Inc. v. Unemployment Ins. Appeal B.*, 1998 WL 960713, at *3 (Del. Super. Dec. 17, 1998); see also *Finney v. Hercules, Inc.*, 2001 WL 1448468, at *3 (Del. Super. Oct. 3, 2001) (internal citations omitted) ("Reasons for voluntarily leaving employment for good cause include: reasons connected with employment and not for personal reasons, not being paid when wages are due, a substantial reduction in wages or hours, or a substantial, detrimental deviation from the original employment agreement."); and *Miller v. Sleep Inn & Suites*, 2012 WL 3860659, at *1 (Del. Super. July 24, 2012), citing *Hopkins* ("Good cause" may include such circumstances as a substantial reduction in wages or hours or a substantial deviation in working conditions from the original agreement of hire to the employee's detriment.").

In addition, “an employee does not have good cause to quit merely because there is an undesirable or unsafe situation connected with his employment.”⁵⁹ In such circumstances, the employee “must do something akin to exhausting his administrative remedies by, for example, seeking to have the situation corrected by proper notice to his employer.”⁶⁰ Thus, which administrative remedies the Employee pursued is a question of fact. Whether the Employee pursued enough remedies to warrant benefits is a question of law.

Here, the Employee quit his job because he was uncomfortable working in a full-body suit. About this, there is no dispute. The suit in question trapped the Employee’s body heat, exacerbating the Employee’s pre-existing proclivity toward perspiration. This was the foundation of the Employee’s repeated pleas and the Board agreed. The Board even attributed the root cause of the Employee’s discomfort to his (later) medically-verified, perspiratory condition, just as the Employee wished.

But a tendency to sweat—even profusely—cannot by itself justify unemployment benefits for voluntarily quitting a job. If so, someone in the Employee’s situation could voluntarily quit *any* job he deemed too hot or too stuffy and receive benefits. Likewise, any other personal sensitivity might be grounds for voluntarily quitting a job and receiving benefits, be they physiological or psychological. The law does not support opening such a door. The relevant issue, then, is whether the discomfort in question was the Employee’s personal problem or a problem attributable to the Employer. The Board found the former. This Court agrees.

The Employee asserts repeatedly that he would not have taken the job if he had been given a chance to wear the suit before accepting. The Court believes the declaration. But it is not enough to change the outcome. The Employee testified that he knew *before* he accepted the job that he would

⁵⁹ *O’Neal’s*, 269 A.2d at 249.

⁶⁰ *Id.*

have to wear the suit. According to the Employee, this is why he asked for a tour of the clean room: the Employee suspected it would be too hot in the suit.⁶¹

That the Employee did not wear the suit during the tour is regrettable. Nevertheless, the Employee accepted employment knowing fully the conditions of the job; likewise, he received exactly what was offered: full time work in a clean room wearing a full-body suit. What the Employee did not know was how his body would react. Here, the Court will not hold the Employer responsible for the peculiarities of the Employee's integumentary system,⁶² especially when twenty-five or thirty others worked in the suits with no problems. The Employee took a risk and was free to quit, but may not collect unemployment benefits as a result.

The Employee could, hypothetically, rely on *O'Neal's Bus Service, Inc. v. Employment Security Commission*, arguing that he should receive benefits because he did "something akin to exhausting his administrative remedies" when he took his problem to Human Resources.⁶³ But *O'Neal* does not apply because the Employee quit upon personal grounds. In *O'Neal*, a school bus driver voluntarily quit because he felt "the conduct of the pupils on the bus placed him in great fear for the safety of the pupils and the safety of other motorists."⁶⁴ The bus company never challenged the veracity of this claim.⁶⁵ Thus, the Court upheld the uncontested statements of fact that such a "safety hazard" did exist.⁶⁶ Only then, after finding the existence of "an undesirable or unsafe situation connected with his employment," did the Court add that such was not by itself sufficient for the receipt of benefits, but that "something akin to exhausting his administrative remedies" was also

⁶¹ Record at 20 ("And before I even took that job I asked them in HR if I could take a walk through because I was concerned about, I knew you had to wear a suit and stuff and I was concerned about the heat because I sweat an awful lot.").

⁶² See Human Physiology/Integumentary System,

http://en.wikibooks.org/wiki/Human_Physiology/Integumentary_System (last visited Oct. 22, 2012).

⁶³ 269 A.2d 247, 249 (Del. Super. 1970).

⁶⁴ *Id.* at 248.

⁶⁵ *Id.* at 249.

⁶⁶ *Id.*

required.⁶⁷ Here, because the Employee's reasons for quitting voluntarily were personal, his appeals to Human Resources do not justify the receipt of benefits.

In conclusion, the Employee argues that he quit his job because his body suit was hotter than expected; in other words, because the conditions of the job were different than he believed they would be when he accepted. To justify the receipt of unemployment benefits under this claim, the deviation in working conditions at issue must be both attributable to the Employer and substantial. The Employee has the burden of showing both; he did not. This Court finds that the Board was correct when it concluded that the conditions of the Employee's employment did not change at all.⁶⁸ Thus, the reasons for the Employee's voluntary quit were not attributable to the Employer, making them personal. The Board correctly denied benefits.

B. Involuntary Quit and Illness

The Employee cannot receive benefits if he voluntarily quit without good cause attributable to his work.⁶⁹ But the Code continues: "[I]f an individual has left work involuntarily because of illness, no disqualification shall prevail after the individual becomes able to work and available for work and meets all other requirements under this title, but the Department shall require a doctor's certificate to establish such availability"⁷⁰ This Court upholds the Board's decision that neither the Employee's condition nor the resulting discomfort was attributable to the Employer. However, the Court believes that the Employee might incorrectly infer from the Board's decision that a doctor's note instructing the Employee to quit might have changed the outcome.

⁶⁷ *Id.*

⁶⁸ Specifically, the Board found that the "conditions of employment did not change from the time [the Employee] *started working* in the body suit until his last day of work." Record at 42 (emphasis added). While true, the critical issue here is whether there was a "substantial deviation in the working conditions *from the original agreement of hire.*" *Hopkins Constr., Inc. v. Unemployment Ins. Appeal Bd.*, 1998 WL 960713, at *2 (Del. Super. Dec. 17, 1998) (emphasis added); see also *Cephas v. Delmarva Temp. Staffing, Inc.*, 2012 WL 2367528, at *2 (Del. Super. May 2, 2012), citing *Hopkins*; and Record at 31, where the Referee paraphrases the language in *Hopkins*. The Employee's testimony shows there was not. Thus, the Employee was merely dissatisfied with the resulting, originally-agreed-upon conditions and the Board's ultimate conclusions remain sound.

⁶⁹ 19 Del. C. § 3314(1).

⁷⁰ *Id.*

The Board mentioned twice in its decision that the Employee's doctor did not instruct him to quit his job.⁷¹ And a cursory reading of the quoted code could be deceiving. The removal of disqualification has conditions; namely, the individual is (1) able to work *and* a doctor must certify that the individual in question is (2) available to work. An individual is *not* eligible for benefits if a doctor advises him to quit because of illness. Quite the contrary, an individual is disqualified for unemployment benefits if he is unable *or* unavailable to work and only becomes qualified again if his doctor provides a certificate establishing the Employee's renewed availability.⁷² Here, the Employee was able and available at all times to work, but chose not to due to discomfort. Even assuming, *arguendo*, that the Employee was not able or available to work due to his condition, that alone would have disqualified the Employee from receiving unemployment benefits. Thus, the Board correctly denied benefits.

VI. CONCLUSION

Because the Employee quit voluntarily upon personal grounds, not for reasons attributable to his Employer, the Board's decision to deny unemployment benefits is **AFFIRMED**.

IT IS SO ORDERED.

Jan R. Jurden, Judge

cc: Prothonotary

⁷¹ Record at 42.

⁷² *Nilnamow v. E.F. Techs., Inc.*, 2011 WL 1102977, at *4 (Del. Super. Mar. 24, 2011) ("An individual will be disqualified for benefits . . . if the DOL determines 'that total or partial unemployment is due to the individual's inability to work,' but the disqualification will 'terminate when the individual becomes able to work and available for work as determined by a doctor's certificate,' and can satisfy all other statutory requirements for eligibility."); *see also Clemmons v. Lifecare at Lofland Park*, 2003 WL 21090169, at *3 (Del. Super. Apr. 25, 2003).