IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR KENT COUNTY

LYNN HAMPTON,	)	
	)	C.A. No. K12A-06-007 JTV
Appellant,	)	
	)	
v.	)	
	)	
COURTLAND MANOR,	)	
	)	
Appellee.	)	

Submitted: January 18, 2013
Decided: April 29, 2013

Lynn Hampton, *Pro Se.*

Nicholas H. Rodriguez, Esq., Schmittinger & Rodriguez, Dover, Delaware.
Attorney for Appellee.

Upon Consideration of Appellant's
Appeal From Decision of
Unemployment Insurance Appeal Board
AFFIRMED

VAUGHN, President Judge

Hampton v. Courtland Manor
C.A. No. K12A-06-007 JTV
April 29, 2013

ORDER

Upon consideration of the parties' briefs and the record of the case, it appears that:

1. This is an appeal by Lynn Hampton ("Ms. Hampton") from a decision of the Unemployment Insurance Appeals Board (the "Board" or the "UIAB") denying her application for unemployment compensation benefits. Initially, a Claims Deputy found that Ms. Hampton was not disqualified from receiving unemployment benefits because her employer, Courtland Manor, fired her without just cause. An Appeals Referee affirmed the Claims Deputy's decision. The Board reversed the decision of the Appeals Referee. It held that pursuant to 19 *Del. C.* § 3314(8) Ms. Hampton was disqualified from the receipt of unemployment benefits because her unemployment was caused by her inability to work and unavailability for work due to medical reasons.

2. Courtland Manor employed Ms. Hampton as a Certified Nursing Assistant ("CNA") from March 19, 2008 through December 13, 2011. On May 17, 2011, she was injured in a slip and fall at work. Ms. Hampton did not work from May 18, 2011 to June 28, 2011 because of injuries to her lower back and thighs that she sustained as a result of the fall. On June 28, 2011, she returned to "light duty" status consistent with a functional capacity report ("FCE")[1] that was performed on

[1] The FCE results are referred to in several physician's reports, but the actual document is not in the record from the UIAB. For the first time, Ms. Hampton attached the FCE and other miscellaneous documents to her opening brief. However, the claimant may not enlarge the record with material that was not considered during the administrative proceedings. *Petty v. Univ. of Delaware*, 450 A.2d 392, 396 (Del. 1982). Therefore, I will not consider these documents.

June 22, 2011. Ms. Hampton worked under the "light duty" restrictions through September 2, 2011.

3. On August 22, 2011, she underwent an independent medical examination with Dr. Gelman. Dr. Gelman opined that she was clear to return to "full-time employment within her own physiologic tolerance."[2] Conversely, Ms. Hampton's family doctor, Dr. Horn, was of the opinion that she should remain restricted to sedentary work.

4. Courtland Manor personnel met with Ms. Hampton on September 2, 2011 and requested that she return to full duty on September 9, 2011. On September 8, 2011, Dr. Horn, via a doctor's note, placed Hampton on non-work status until September 26, 2011 due to "medical reasons, depression and anxiety."[3] On September 26, 2011, Dr. Horn extended Hampton's no-work status until December 1, 2011 due to "medical condition."[4] On November 29, 2011, Dr. Horn provided a final doctor's note, stating that Hampton was "unable to do current occupation," and would be out of work indefinitely.[5] Courtland Manor advised Ms. Hampton, by letter dated December 13, 2011, that her employment was terminated. The reason given

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However, my understanding from the medical records that refer to the FCE is that it released Ms. Hampton to perform "sedentary work." *See* Record of the Case, 64-70 (hereinafter "R. at __").

[2] R. at 57.

[3] R. at 59.

[4] R. at 60.

[5] R. at 61.

was that the documentation provided to Courtland Manor by her doctors demonstrated that she was "medically unable to work."[6] The separation date provided was September 2, 2011, the last day she had actually worked. On February 24, 2012, Dr. Gelman evaluated the claimant again and reiterated his opinion that she was capable of full time employment. This time, however, he recommended a sedentary and/or light duty position. On March 7, 2012, Ms. Hampton acquired a doctor's note from Dr. Katz that designated her capable of sedentary work.

5. Ms. Hampton contends that although she is physically unable to perform her role as a CNA, she was and is able to work in a sedentary capacity per her doctor's orders and the FCE report. She contends that she is qualified to perform clerical duties, and has done so in the past. Ms. Hampton further contends that she experienced constant harassment from co-workers and Courtland Manor's administration following her injury. She asserts that the harassment, her unrelenting back pain and worries over accidentally injuring a patient because of her diminished physical capabilities contributed to her being pulled out of work indefinitely.

6. Courtland Manor contends that the Board's decision is based on substantial evidence and is free from legal error. The employer contends that Hampton's treating physician asserted that she was completely incapable of work. It contends that she has not since been released from no-work status.

7. The function of the reviewing court is to determine whether substantial

[6] R. at 62.

evidence supports the Board's findings, and whether they are free from legal error.[7] Substantial evidence is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion."[8] "The appellate court does not weigh the evidence, determine questions of credibility, or make its own factual findings."[9] It is within the exclusive purview of the Board to judge witness credibility and resolve conflicts in testimony.[10] If there is substantial evidence and no mistake of law, the Board's decision must be affirmed.[11]

8. Ms. Hampton bears the burden of establishing her entitlement to receive unemployment compensation.[12] The Delaware Supreme Court, in *Petty v. University of Delaware*, opined that the terms "'able to work' and 'available to work,' though complementary, are not synonymous."[13] Each of these conditions must be met for the receipt of benefits.[14] Additionally, the *Petty* court stated that "an individual seeking unemployment benefits is 'available' for work . . . only to the extent that she is

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

[8] *Jones v. Unemployment Ins. Appeals Bd.*, 2001 WL 755379, at *1 (Del. Super. June 11, 2001) (citing *Oceanport Ind. v. Wilmington Stevedores*, 636 A.2d 892, 889 (Del. 1994)).

[9] *Id.* (citing *Johnson v. Chrysler Corp.*, 213 A.2d 64, 66 (Del. 1965)).

[10] *Thompson*, 25 A.3d at 782.

[11] *City of Newark v. Unemployment Ins. Appeals Bd.*, 802 A.2d 318, 323 (Del. Super. 2002).

[12] *Drewry v. Air Liquide-Medal, LLC*, 2011 WL 6400550, at *2 (Del. Super. Dec. 13, 2011).

[13] 450 A.2d 392, 395 (Del. 1982).

[14] *Id.*

willing, able and ready to accept employment which she has no good cause to refuse, that is, she is genuinely attached to the labor market."[15] Therefore, "availability to work includes both an 'ability to work and qualification through skill, training or experience for a particular occupation, commonly expressed in terms of an identifiable labor market.'"[16]

9. I find that the Board correctly applied 19 *Del. C.* § 3314(8), which provides that a claimant is disqualified from benefits under the following circumstances:

> 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.[17]

10. The Board's ultimate finding was that Ms. Hampton "failed to meet her burden of establishing that she was and is able to work and available for work."[18] There is substantial evidence in the record to support that conclusion. The Board was entitled to accept the opinions of Ms. Hampton's treating physician, Dr. Horn, over those of Dr. Gelman, whom was less familiar with the claimant's medical condition.

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[15] *Id.*

[16] *Powell v. Generations Home Care, Inc.*, 2012 WL 1415760, at *1 (Del. Super. Feb. 9, 2012) (quoting *Petty*, 450 A.2d at 395).

[17] 19 *Del. C.* § 3314(8).

[18] *Hampton v. Courtland Manor*, UIAB Appeal Docket No. 40824932, at 3 (June 22, 2012), R. at 90.

It observed that the medical documentation that Ms. Hampton presented to Courtland Manor after her accident kept her completely out of work after September 8, 2011 for non-specific medical reasons. The Board did not find Dr. Horn's November 29, 2011 doctor's note providing that Claimant was "unable to do current occupation," or Dr. Katz's March 7, 2012 note designating her capable of "sedentary" work sufficient to demonstrate that she was able to work and available for work. I am inclined to agree.

11. The notes from Dr. Horn and Dr. Katz, as well as the other medical documents in the record, are lacking in particularity. Moreover, the November 29 note is unavailing because it is ambiguous. Although it arguably lends itself to the interpretation that Ms. Hampton was "able" to work in some non-CNA capacity, it was Ms. Hampton's burden to make that clear to her employer, and, later, to the Board. When the November 29 note was received by Courtland Manor, Ms. Hampton had not reported for work in almost three months because of her medical issues. The November 29 note does not "express a materially different opinion on the claimant's ability to work."[19] The Board noted at the hearing that the "doctor's note doesn't state what else [she] can do."[20] The note did not clearly indicate that Ms. Hampton was ready to return to work at all, let alone in any specific capacity. Consequently, it failed to establish that she was able to work or available for work.

12. On March 7, 2012, in the first physician's report that Ms. Hampton provided after Dr. Horn's November 29, 2011 note, Dr. Katz designated Ms.

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[19] *Briddell v. Dart First State*, 2002 WL 499437, at *3 (Del. Super. Mar. 28, 2002).

[20] Hearing Tr. at 7 (June 5, 2012), R. at 85.

Hampton as available for "sedentary" work in accordance with the June 22, 2011 FCE. The Board remarked that the note "does not change [its] opinion of the case" as the classification was provided "without significant further explanation."[21] Ms. Hampton did, in fact, perform modified duties for Courtland Manor from June 28, 2011 through September 2, 2011, however, she was subsequently pulled out of work completely by Dr. Horn beginning on September 8 with no certain return date. As was the case with Dr. Horn's November 29 note, Dr. Katz's March 7, 2012 note did not establish that Ms. Hampton was able to work and available for work.

13. Ms. Hampton concedes that she has been unable to return to work as a CNA following her work accident. The Board was aware of Ms. Hampton's contentions that she was trying to find sit-down work and that she had done clerical work in the past.[22] She was able to present *some* evidence to the Board that she is qualified for and physically capable of working in a sedentary office position.[23] However, it is not this Court's role to "weigh the evidence, determine questions of

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[21] *Hampton v. Courtland Manor*, UIAB Appeal Docket No. 40824932, at 3 (June 22, 2012), R. at 90.

[22] *Id.* at 2, R. at 89.

[23] Medical documents in the record consistently provide, without further elaboration, that Ms. Hampton is able to work in a sedentary capacity in accordance with the FCE. The claimant never explains the inherent contradiction that was created when this opinion was offered concurrently with her *complete* inability to work from September 8, 2011 through, at a minimum, November 29, 2011. For example, physician's reports from Dr. Katz dated October 12, 2011 and November 16, 2011 represent that Ms. Hampton is cleared for sedentary work. R. at 67, 68. That is the very same period during which Dr. Horn deemed her completely incapable of work.

credibility, or make its own factual findings."[24] Ms. Hampton's assertion that she is able to work and available for work is entirely premised upon non-descriptive or ambiguous doctors' notes and her statement that she has "always been able to do clerical work."[25] The Board found that this did not carry her burden. After careful consideration of the record, I have concluded that the Board's decision that Ms. Hampton's was not able to work or available for work is supported by substantial evidence and is free of legal error.

14. Based on the foregoing, the decision below is ***affirmed***.

IT IS SO ORDERED.

/s/ James T. Vaughn, Jr.

oc: Prothonotary
cc: Order Distribution
File

[24] *Jones v. Unemployment Ins. Appeals Bd.*, 2001 WL 755379, at *1 (citing *Johnson v. Chrysler Corp.*, 213 A.2d at 66).

[25] Hearing Tr. at 7 (June 5, 2012), R. at 85.