

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

JOSEPH BALINSKI, III	:	
	:	
Appellant,	:	C.A. No. 06A-05-004 SCD
	:	
v.	:	
	:	
UNION PARK AUTOMOTIVE, and	:	
UNEMPLOYMENT INSURANCE	:	
APPEAL BOARD,	:	
Appellee.	:	

Submitted: January 10, 2007
Decided: April 4, 2007

**APPEAL FROM A DECISION OF THE
UNEMPLOYMENT INSURANCE APPEAL BOARD
AFFIRMED**

ORDER

This 4th day of April, 2007, upon consideration of the appeal filed by the appellant, *pro se*, of his denial of unemployment compensation benefits, it appears:

1. Joseph Balinski, III, (“Balinski”) was employed by Union Park Automotive from July 20, 2005, to November 1, 2005.
2. There is little in dispute factually. Balinski acknowledges that he became upset with another employee, Gavin Martin, on November 1, 2005. He testified that he was upset with Martin because his work load had been reduced, and because Gavin said things which he believed reflected age discrimination. Balinski went to see Mr. Usarmarso, whom he believed to be the owner of the dealership, and was referred to John Patterson, a supervisor.¹

¹ [Balinski’s Counsel]: And who is Gavin?

3. Balinski met with Patterson and said he was quitting. Patterson told him to go to lunch to cool off, with further discussion to take place after lunch. Balinski did not return after lunch. The next morning he did not appear for work. Patterson and Henry, the body shop manager called Balinski the next day. Mr. Patterson testified that during the course of that discussion he confirmed that Balinski had quit and it was up to Mr. Henry whether or not to rehire the appellant.²

4. Balinski immediately sought unemployment compensation benefits. On November 16, 2005, a Claims Deputy found that the appellant was disqualified from receipt of benefits. That decision was appealed and the claim was presented to a Referee

Joseph Bilinski: Gavin was my assistant, he is assistant body shop manager. He is the one who assigned the jobs.

[Balinski's Counsel]: All right and he was the one you were having a problem with?

Joseph Bilinski: Yes.

[Balinski's Counsel]: And why were you having that problem with him?

Joseph Bilinski: I don't know why, but I was having a problem with him. Apparently it was because of my age.

[Balinski's Counsel]: Why do you say that?

Joseph Bilinski: Well because he was always making smart remarks. You know you old son of a bitch and stuff like that.

[Balinski's Counsel]: All right so what happened the day that you left?

Joseph Bilinski: The day I went into the office and asked him if he could have somebody help me either get a roll back to bring a job he just assigned me or if somebody help me push it in.

[Balinski's Counsel]: Push what in?

Joseph Bilinski: Push the car in and that is when he got very belligerent, threw the work order down and says hell with it. I will get somebody else to do it.

[Balinski's Counsel]: And what did you say?

Joseph Bilinski: That is when I left.

[Balinski's Counsel]: Okay what do you mean you left?

Joseph Bilinski: I left and went up to the show room to talk to somebody in a supervisory, somebody in a higher level.

[Balinski's Counsel]: And who was that?

Joseph Bilinski: Apparently it was, I went in to see Jim Ersomorso [sic] and he called, he called Mr. Patterson.

[Balinski's Counsel]: All right and what did you say to Mr. Patterson?

Joseph Bilinski: Just told him that what had happened. I had a problem with Gavin. He said well just cool it. Go to lunch and settle down and then come on back but I didn't come back.

[Balinski's Counsel]: Okay.

Joseph Bilinski: They called me the next morning, which at that time I was willing to come back to work. But Mr. Patterson says that there is no need be because it doesn't work when people come back to work.

December 14, 2005 Hearing Transcript at 9-11.

² *Id.* at 23-24.

on December 14, 2005. The Referee concluded that the appellant was not entitled to benefits because he had not given his employer notice of his grievances so that it could be addressed before resigning, and he had not exhausted his administrative remedies. The factual basis for those conclusions is provided by the testimony of Balinski.³

5. Balinski appealed the decision of the Referee. A hearing was held on Wednesday, March 29, 2006. The Board reached the same conclusions as the Referee, on the same basis.

6. On appeal, Balinski raises the following issues:

- (1) That he did not have a fair hearing before the Referee because she denied his attorney's request to continue the hearing.
- (2) That the corporate representative John Patterson was allowed to testify by telephone at the hearing before the Referee.
- (3) That he was not provided with all the documents that he subpoenaed from Union Park which would have shown how much work he did and how much time he spent.

³ The Referee: Okay. Prior to, do you remember the day that you quit or the day that you had the issue that you went to speak with Mr. Patterson? Do you remember what day that was?

Joseph Bilinski: No I don't.

The Referee: That is all right. Prior to that day did you ever have any conversations with Mr. Patterson or Mr. Ersomorso [sic] or anyone else regarding your issues with the assistant body shop manager?

Joseph Bilinski: No.

The Referee: Okay. Okay did you have any prior conversations or make any complaints to Mr. Patterson or anybody else regarding your lack of work?

Joseph Bilinski: No, oh yes I did, to Mr. Henry.

The Referee: Okay and when did you...

Joseph Bilinski: ...And to Gavin Martin.

The Referee: Okay when did you...

Joseph Bilinski: ...He was aware of it.

The Referee: Okay when did you speak to Mr. Henry?

Joseph Bilinski: Well it was an ongoing thing. I mean they scheduled work in and out of the shop. They know who is getting work and who wasn't getting work.

The Referee: Okay when did you speak to Mr. Henry about your complaint about receiving less work?

Joseph Bilinski: Just off the cuff you know where is the work? Do you have any work for us and that type of thing.

The Referee: Did you ever tell your assistant body shop manager, Mr. Patterson or Mr. Henry, that if the workload didn't increase that you would be forced to find another job or go somewhere else?

Joseph Bilinski: No.

Id. at 13-14.

(4) That Sue Coughlin, an employee of Union Park, testified untruthfully.

7. The Referee exercised her discretion in refusing to continue the hearing. Balinski does not deny that he had adequate notice of the hearing. He retained an attorney on the day of the hearing and apparently thought that entitled him to a continuance. Given the nature of the issues in dispute, there is no indication that the Referee abused her discretion by refusing to continue the hearing.⁴ Furthermore, the entire proceeding was reviewed *de novo* by the Board. Consequently, there was no prejudice to Balinski resulting from the way the review was conducted by the Referee.

8. The Board has the authority, pursuant to its rules, to accept telephone testimony, at its discretion.⁵ The appellant identifies no prejudice resulting from the telephonic participation of Patterson. I find that it is within the authority of the Board to conduct its business in the manner best keeping with its objectives, including telephonic participation.

9. Assuming that the appellant was entitled to documents which would, as he represented, show that he was earning lesser sums of money during the period of his employment, the evidence would not have changed the outcome of the claim. Balinski admits that he did not express his concerns about workload in a meaningful way. He says

⁴ *Cain v. Delaware State Board of Accountancy*, 1989 WL 135766 (Del. Super.), *see also* Department of Labor Division of Unemployment Insurance, Notice of Hearing Instructions. Postponement: “You must be prepared to present your case at the time noted. The hearing will be postponed only in certain circumstances upon notification to the Appeals Unit. Postponements requested the day before a hearing will be denied except in cases of emergency (e.g. death in the family, severe illness) and the hearing will proceed or a dismissal of the case, with a right of further appeal, will be issued.” Appellant included a copy of the hearing instructions in his opening brief.

⁵ Department of Labor Division of Unemployment Insurance, Notice of Hearing Instructions. Telephone Hearings: “In certain extenuating cases, the Chief Referee may allow a claimant and/or an employer to participate in an appeal hearing by telephone.”

he made “off the cuff” comments.⁶ Balinski’s testimony about his earnings was challenged by John Patterson who said his earnings increased, not decreased.⁷

10. The appellant argues that a witness, Sue Coughlin, testified untruthfully. It is the prerogative of the Board to make determinations of fact, and to decide issues of credibility.⁸

11. 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.⁹ “Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.”¹⁰ The Board's findings are conclusive if supported by “competent evidence having probative value.”¹¹ The appellate court merely determines if there is sufficient evidence in the record to support the agency's factual findings.¹² Absent an error of law, the Board's decision will not be disturbed where there is substantial evidence to support its conclusions.¹³

12. Pursuant to 19 *Del. C.* § 3314, “An individual shall be disqualified for benefits:
(1) For the week in which the individual left work voluntarily without good cause

⁶ December 14, 2005 Hearing Transcript at 13.

⁷ *Id.* at 17-21.

⁸ *Coleman v. Dept. of Labor*, 288 A.2d 285, 287 (Del. Super. 1972).

⁹ *Employment Ins. Appeals Board of the Dept. of Labor v. Duncan*, 337 A.2d 308, 309 (Del.1975).

¹⁰ *Oceanport Ind. v. Wilmington Stevedores*, 636 A.2d 892, 899 (Del.1994).

¹¹ *Geegan v. Unemployment Compensation Commission*, 76 A.2d 116, 117 (Del.1950).

¹² *Duncan*, 337 A.2d at 308-09 (1975).

¹³ *Longobardi v. Unemployment Ins. Appeal Bd.*, 287 A.2d 690, 692 (Del. Super. 1971), *aff'd*, 293 A.2d 295 (Del. 1972).

attributable to such work and for each week thereafter until the individual has been employed in each of 4 subsequent weeks (whether or not consecutive) and has earned wages in covered employment equal to not less than 4 times the weekly benefit amount.”

13. The record supports the Board’s finding that the appellant voluntarily terminated his employment, without good cause. There is no legal error.

WHEREFORE, the decision of the Board is AFFIRMED.

IT IS SO ORDERED.

Judge Susan C. Del Pesco

Original to Prothonotary

xc: Joseph Balinski, III, 215 Stroud Street Wilmington, DE 19805
David G. Culley, Esq., attorney for Union Park Automotive
Mary Page Bailey, Esq., attorney for U.I.A.B.