IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

JOHN J. HARRIS,	)	
	)	
Appellant,	)	
	)	
v.	)	C.A. No. 09A-12-015 WCC
	)	
LOGISTICARE SOLUTIONS,	)	
and	)	
UNEMPLOYMENT INSURANCE	)	
APPEAL BOARD,	)	
	)	
Appellees.	)	

Submitted: June 14, 2010
Decided: September 10, 2010

OPINION

Appeal from Unemployment Insurance Appeal Board. AFFIRMED.

John M. Larosa, Esquire; Two East Seventh Street, Suite 302, Wilmington, DE 19801-3707. Counsel for Appellant.

Philip G. Johnson, Esquire, Department of Justice, 820 N. French Street, Wilmington, Delaware 19801. Counsel for Unemployment Insurance Appeal Board.

CARPENTER, J.

John J. Harris ("Harris" or "Appellant") has filed an appeal from the December 17, 2009 written decision issued by the Unemployment Insurance Appeal Board (the "Board") which adopted the Referee's decision and denied Appellant benefits. For the foregoing reasons, this Court affirms that decision and finds that the Appellant is not eligible to receive benefits having voluntarily left work without good cause.[1]

Facts

John J. Harris was employed by Logisticare Solutions ("Logisticare") from February 2, 2003 through February 23, 2009. When Harris was hired as a Field Inspector he was the first person to hold the position within the company, and his responsibilities included inspecting vehicles, teaching defensive driving, and supervising the training of drivers. At the time he was hired, Harris was assisted by an administrative assistant who regularly translated Harris's handwritten reports and generated typewritten reports by computer. Harris also completed other documentation by hand and it was accepted by Logisticare in that form. Harris primarily worked out of his home in Elkton, Maryland.

[1] Logisticare has failed to file a brief in this matter and thus this opinion is based on the arguments made by the Appellant as well as the record before the UIAB.

In January 2009, Logisticare came under new management and several changes took place. First, a new company-wide policy was enacted requiring all employees to submit only computer generated reports. As such, Harris was now expected to submit his reports using a computer format instead of the handwritten ones he had submitted in previous years. He received one-on-one basic computer training involving the inputting of figures on Excel spreadsheets and typing reports in a Microsoft Word application. However, despite Harris's attempt to learn how to use the computer, he was unable to grasp the skills necessary to generate such reports without continual assistance. In addition, there was increased management oversight of the Appellant that included a requirement that he visit the Dover home office of Logisticare at least once a week[2] and requests that he increase his presence and review of the company's activities in Sussex County.

Harris claims that as a result of the new management and expectations with regard to his work responsibilities, he began experiencing health related problems such as humiliation, exhaustion, and embarrassment due to the stress of the situation. Ultimately, Harris voluntarily resigned.

[2] This requirement to a large degree was added so that office assistance could be provided to the Appellant in his efforts to produce computer generated reports.

Procedural History

On February 26, 2009, Appellant filed for unemployment insurance benefits with the Department of Labor. The Department of Labor Claims Deputy awarded Appellant unemployment benefits on March 12, 2009 finding that Appellant "left his employment with good cause."[3] Logisticare appealed this decision.

On April 24, 2009, the Appeals Referee reversed the Claims Deputy's decision and held that the claimant was disqualified from receiving benefits.[4] Appellant then appealed to the Unemployment Insurance Appeal Board on May 1, 2009.[5]

A hearing was held before the Board on September 2, 2009. On December 17, 2009, the Board released its decision and affirmed the Referee's decision below denying benefits based on a tie vote.[6] Where there is a tie [at the Board level], the immediately preceding administrative decision controls."[7]

On December 28, 2009, Appellant filed a Notice of Appeal and petitioned this Court for judicial review pursuant to 19 *Del. C.* §3323(a).[8]

[3] R at 14.
[4] R at 23.
[5] R at 59-63.
[6] R at 78.
[7] *Id*. *See also Granison v. Roizman & Co.*, 2005 WL 400577, at *2 (Del. Super. Jan. 3, 2005).
[8] R at 119-122.

Standard of Review

This Court's review of a UIAB decision is limited to whether the Board's findings and conclusions are "free from legal error and supported by substantial evidence in the record."[9] Absent an abuse of discretion, UIAB discretionary decisions will be upheld.[10] However, abuse of discretion occurs where the UIAB "acts arbitrarily or capriciously or exceeds the bounds of reason in view of the circumstances, and has ignored recognized rules of law or practice so as to produce injustice."[11] The Court reviews questions of law *de novo* to determine whether the Board erred in formulating or applying legal precepts.[12]

Discussion

Appellant raises two grounds on appeal for the Court's review: (1) whether the Board committed an error of law in failing to frame the central issue pursuant to *Sweeney v. Wright*[13], and (2) whether the Board abused its discretion by disregarding evidence as to the effect the change in policy had on of the Appellant's original employment agreement and its detriment on the employee.[14] As a general note, because the Board adopted the Referee's decision below based on a tie vote at the

[9] *Fed.St. Fin. Serv. v. Davies*, 2000 WL 1211514, at *2 (Del. Super. June 28, 2000).
[10] *Funk v. Unemployment Ins. Appeal Bd.*, 591 A.2d 222, 225 (Del. 1991).
[11] *PAL of Wilmington v. Graham*, 2008 WL 2582986, at *4 (Del. Super. June 18, 2008).
[12] *Id.* (citing *Nardi v. Lewis*, 2000 WL 303147, at *2 (Del. Super. Jan. 26, 2000)).
[13] 1994 WL 164587 (Del. Super. Mar. 25, 1994).
[14] Appellant's Opening Br. at 2.

Board level[15], the Court will review the reasoning used by the Referee in reaching her decision.

Whether an employee is entitled to unemployment benefits pursuant to 19 *Del. C.* §3315 turns on whether the employee voluntarily quit or was terminated from the job. If it is determined that the employee voluntarily quit, the next question to be addressed is whether the employee had "good cause" to leave employment. If the employee voluntarily quit without "good cause," the employee is generally disqualified from receiving benefits. In our case here, it is undisputed that the Appellant voluntarily quit and thus the only issue here is whether Appellant left for "good cause."

Appellant first contends that the Board committed an error of law in too narrowly framing the legal issue it believed was before it in determining whether Appellant had "good cause" to voluntarily leave his employment. The Board's decision states that the issue before them was "whether the [Appellant] has met his burden of persuasion that [he] left his work voluntarily but for good cause on or about February 23, 2009, as a result of his frustration over having to produce computer-generated reports[.]"[16] Appellant argues that the proper legal issue based upon

[15] *Granison*, 2005 WL 400577, at *2.
[16] R at 23, 77, 78.

Sweeney v. Wright[17] is "whether the [Appellant] had good cause attributable to the workplace to voluntarily terminate his employment because there was a substantial deviation from the original employment agreement and the substantial deviation was detrimental to the employee."[18]

While the Appellant is correct that the *Sweeney v. Wright* standard is the appropriate one to use in determining whether the Appellant has established "good cause," the Court is unable to find that the initial framing of the issue before the Board was improper or in any way affected the presentation of the evidence before it. The second paragraph of the Board's decision reflects that it was aware of this standard,[19] and a review of the hearing transcript reflects that it does not appear that the Appellant was in any way limited or hampered in his presentation before the Board. In fact, all of the issues raised in his brief to this Court were presented to the Board. As such, the Court finds that the Board considered the proper standard for a "good cause" determination and there is no basis for reversing its decision on this ground.

Perhaps more important is that the Appeals Referee decision clearly establishes that she used the appropriate review standard. The first paragraph of the Conclusion

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[17] 1994 WL 164587, at *1.
[18] Appellant's Opening Br. at 12.
[19] Citing *Hopkins Constr., Inc. v. Del. Unemployment Ins. Appeals Bd.,* 1998 WL 960713 (Del. Super. Dec. 17, 1998).

of Law section stated:

> The issue in this case is whether the claimant had good cause to leave his job. An employee who voluntarily terminates his employment will be disqualified from the receipt of benefits unless he can show that he had good cause for leaving and that his reason or reasons for doing so were directly related to his work or to his employer. Good cause may include circumstances such as substantial reduction in hours, wages, or a substantial deviation in the working conditions from the original agreement of hire to the detriment of the employee.

Based upon the above, the Court finds that the correct legal standard was used in the administrative process to decide whether "good cause" had been established by the Appellant and no legal error has occurred.

The Court also finds that neither the Board or the Appeals Referee disregarded evidence as to the potential deviation from the Appellant's original employment agreement. Evidence as to those changes was presented to the Board and considered by it. However, instead of ignoring those changes as argued by the Appellant, the Court finds that the Appeals Referee and the Board simply found that the changes were not a substantial deviation. Unless the evidence does not support the discretionary decision made by the Board, this Court will not disturb the Board's findings. Here the Court actually agrees with the assessment of the case by the Appeals Referee and the Board and will not reverse their decisions.

In spite of the clever arguments made by the Appellant, the changes that led to the Appellant's decision to resign are not a substantial deviation in his job duties or responsibilities. It is the same job that the Appellant had been performing for the six years of his employment with Logisticare. The fact that the manner he is now required to report on those activities is different does not reflect a substantial change in employment. In addition, Logisticare here has not created a deadline when the change to computerized reporting was to have been accomplished and they have committed significant resources to assist the Appellant in this transition. It appears they recognized that this reporting function would be difficult for the Appellant to readily succeed in and were working diligently to assist him in accomplishing this task. It also appears they recognized the Appellant's good work performance in the past and it was their desire to keep him as an employee. The fact that the Appellant has given up on adapting to the computerized task does not make it a change in his employment status.

Further, there is no dispute that the Appellant's territorial responsibility has included the State of Delaware since the inception of his employment. The fact that Logisticare now has requested that additional time and supervision be given to the Company's activities in Sussex County is simply an appropriate and reasonable management decision that has not changed what he has always been obligated to

perform during his employment. The Court appreciates that additional time in Dover and Sussex County is an inconvenience to the Appellant, deviates from his past routine and is travel that he would prefer not to do. It is, however, not a change in the scope of his work. Clearly management is allowed to make reasonable business decisions in how the work of their employees should be conducted and as long as those changes are within the confines of one's job responsibility, they will not be considered substantial deviations.

The facts here reflect a good worker that is either unwilling or unable to adapt to reasonable management decisions regarding how his work is to be performed. His decision to resign is simply a recognition by him that the changes are ones that he prefers not to undertake. This is a reasonable and personal decision by him and one that no one should criticize. This is an unfortunate situation since it appears both the Appellant and Logisticare would prefer to continue with this working relationship. However, the decision made here was one personal to the Appellant and is not related to a critical or substantial change in the Appellant's duties and responsibility by Logisticare. As such, the Appellant has failed to establish "good cause" for leaving this employment which is required to receive unemployment benefits.

Conclusion

For the reasons set forth above, the Board's decision is hereby affirmed.

IT IS SO ORDERED.

/s/ William C. Carpenter, Jr.
Judge William C. Carpenter, Jr.