

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR KENT COUNTY

DANIEL F. THOMAS,	:	
	:	C.A. No: 11A-08-004(RBY)
Appellant,	:	
	:	
v.	:	
	:	
MATTHEW SMITH BUS	:	
COMPANY,	:	
	:	
Appellee.	:	

Submitted: March 2, 2012

Decided: May 23, 2012

Upon Consideration of Appellant's Appeal
from the Decision of the
Unemployment Insurance Appeals Board
AFFIRMED

ORDER

Daniel F. Thomas, *Pro Se.*

Matthew Smith Bus Company, *Pro Se.*

Young, J.

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SUMMARY

_____ Daniel Thomas (Thomas) appeals the decision of the Unemployment Insurance Appeals Board (the Board) affirming the denial of unemployment benefits. Thomas has failed to present argument that the Board committed an error of law. Thomas' assertions of fact are contradicted by the record, thereby defeating any argument that the Board's decision was not supported by substantial evidence. The decision below is **AFFIRMED**.

FACTS

_____ On January 16, 2011, Thomas submitted a claim for unemployment insurance benefits. On April 18, 2011, the Claims Deputy denied Thomas benefits on the grounds that he quit his job voluntarily when, at his own request, he stopped working on a regular basis, working thereafter only "as needed." On May 25, 2011, the Appeals Referee affirmed the Claims Deputy, finding that Thomas left work voluntarily and without good cause attributable to work.

On August 16, 2011, the Board affirmed the Appeals Referee. In doing so, the Board modified her ruling, finding that Thomas was ineligible for the receipt of benefits because he was not unemployed or partially unemployed within the meaning of 19 *Del. C.* § 3302(17). Specifically, the Board found that Thomas maintained part-time, "as-needed" employment. The Board's decision is based upon the following facts reflected in the record.

Beginning in the Fall of 2009, Thomas was employed as a bus driver by the Matthew Smith Bus Company in Dover, Delaware. Originally, Thomas worked full-time. At some point, Thomas began to have a problem with his right leg which was aggravated by the performance of his bus route. Accordingly, Thomas requested an

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amended schedule to alleviate his physical stress. At his request, he was taken off of his regular route, but maintained part-time employment with the bus company. Pursuant to the new arrangement, Thomas was placed on the substitute bus driver list. The bus company was to contact Thomas when he was needed for work.

At the hearing before the Appeals Referee, Thomas testified that he was not contacted to work after March 14, 2011. In contradiction, testimony was presented asserting that Thomas worked one or two days a week from January onward. Specifically, Thomas' supervisor stated that Thomas worked certain days in January, February and March of 2011. Moreover, although Thomas' former, full-time route was unavailable at the time of the hearing, Thomas was given the option of retaking those hours at some point after his hours were reduced. He did not do so.

The Board heard testimony from the bus company's representative that Thomas' part-time employment was still in effect at the time of the hearing. The Board was informed that Thomas worked two weeks in June of 2011. Further, the Board heard testimony that Thomas was to receive hours when school resumed soon after the hearing.

STANDARD OF REVIEW

_____An appeal from an administrative Board's final order to this Court is restricted to a determination of whether the Board's decision is free from legal error and whether the Board's findings of fact and conclusions of law are supported by substantial evidence in the record.¹ Substantial evidence is that which "a reasonable

¹ 29 Del. C. §10142(d); *Avon Prods. v. Lamparski*, 203 A.2d 559, 560 (Del. 1972).

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mind might accept as adequate to support a conclusion.”² It is more than a scintilla, but less than a preponderance of the evidence.³ It is a low standard to affirm and a high standard to overturn. If the record contains substantial evidence, then the Court is prohibited from re-weighing the evidence or substituting its judgment for that of the agency.⁴ Questions of law are reviewed *de novo*.⁵

DISCUSSION

_____Thomas does not suggest that the Board made an error of law in reaching its conclusion that he did not meet the definition of “unemployed” as codified in 19 *Del. C.* § 3302(17). He does not present any argument that the Board erred in applying the statute. He does not argue that the Board should have found him eligible for partial benefits under Regulation 15.⁶ Rather, Thomas presents a series of factual assertions without consideration of this Court’s standard of review. Specifically, Thomas contends that he did not quit his position; that he was under the impression that there was no work available; and that he was still employed.

In accord with Thomas’ assertion, the Board found that he did not quit his employment, and that he was, in fact, still employed. As evidenced by his testimony

² *Olney v. Cooch*, 425 A.2d 610, 614 (Del. Super. 1981) (citing *Consolo v. Fed. Mar. Comm’n*, 383 U.S. 607, 620 (1966)).

³ *Breeding v. Contractors-One-Inc.*, 549 A.2d 1102, 1104 (Del. 1988) (citing *DiFilippo v. Beck*, 567 F. Supp. 110 (D. Del. 1983)).

⁴ *Janaman v. New Castle County Bd. of Adjustment*, 364 A.2d 1241, 42 (Del. Super. 1976).

⁵ *Anchor Motor Freight v. Ciabattoni*, 716 A.2d 154 (Del. 1998).

⁶ 19 *Del. Admin. Code* 1200-UNEMP 15.

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and the testimony of his supervisors, he was employed part-time on an “as-needed” basis at his request. His supervisors testified that he was afforded part-time work pursuant to that arrangement from January of 2011 to June of 2011. He was offered a return to his full-time position, but declined. He was scheduled to work when school resumed at the conclusion of the summer.

Absent an error of law or lack of substantial evidence, this Court will not disturb the decision of the Board. Thomas has presented no argument that the Board committed an error of law. Further, because his factual assertions are either in keeping with the Board’s decision or contradicted by the record, he has not shown that the Board’s decision was not supported by substantial evidence.

CONCLUSION

The decision below is **AFFIRMED**.

SO ORDERED.

/s/ Robert B. Young

J.

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