

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

ANGELA T. WATSON, )  
 ) C.A. No. K11A-03-005 JTV  
 Appellant, )  
 )  
 v. )  
 )  
 UNEMPLOYMENT INSURANCE )  
 APPEAL BOARD, )  
 )  
 Appellee. )

*Submitted: October 19, 2011*

*Decided: January 31, 2012*

Angela T. Watson, *Pro Se*.

Katisha D. Fortune, Esq., Department of Justice, Wilmington, Delaware. Attorney  
for Appellee.

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

**VAUGHN, President Judge**

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**ORDER**

Upon consideration of the appellant's brief and the record of the case, it appears that:

1. Angela T. Watson, the appellant, has filed this appeal from the Unemployment Insurance Appeal Board's decision denying her unemployment benefits. The Board affirmed an Appeals Referee's decision.

2. On September 28, 2010, the appellant filed a claim for federal extended unemployment benefits.<sup>1</sup> On October 19, 2010, a Claims Deputy found that the appellant was disabled from performing the duties required for her occupation, and therefore was disqualified from any benefits pursuant to 19 *Del. C.* § 3326(h)(1)-(2). The Claims Deputy's decision was based on pay orders submitted for October 2, October 9, and October 16, 2010 and medical documentation dated October 5, 2010 which indicated that the appellant was totally disabled from working in her occupation from November 26, 2008 to the present. The medical documentation was signed by Dr. Marilyn Barnes. In order to qualify for federal extended benefits, a person must be able and available to work, and actively seeking work.

3. An appeal was filed to an Appeals Referee. At the hearing before the Appeals Referee, held on November 15, 2010, the appellant testified that she was on medical leave for two years; that she had surgery on October 6, 2010; that her doctor told her not to do anything for two weeks; and that she was currently able and available and actively seeking work. She also testified that her primary doctor was

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<sup>1</sup> The appeals referee found that the claimant filed a claim for the federal extended benefits effective September 26, 2010.

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Dr. Tutse Tonwe and that he, not Dr. Barnes, should have been the one who furnished the medical record.

4. The Appeals Referee affirmed the Claims Deputy, relying upon 19 *Del. C.* § 3326(h)(1)b & (2). Those provisions provide that a person is not eligible for benefits for any week in which the person fails to actively engage in a systematic and sustained effort to obtain work during such week, and that a person found to be ineligible for this reason remains ineligible for every week thereafter until such person has been employed in four subsequent weeks (whether or not consecutive). The Appeals Referee reasoned that the appellant failed to actively engage in an effort to obtain work due to medical disability for the weeks ending October 2, October 9 and October 16, 2010, the latter being the second week after her October 6 surgery; and that she was, therefore, under the aforementioned statutory provisions, ineligible for benefits until she worked in each of four subsequent weeks, which had not occurred.

5. The appellant appealed the Appeals Referee's decision to the Board. At the Board hearing she testified that she is not currently on medical leave and that the medical form filled out by Dr. Barnes was improperly completed. She submitted a new medical certificate, signed by Dr. Tonwe on November 15, 2010, which indicated that she was no longer totally disabled from performing the duties of her occupation and could perform any work which did not expose her to mold.

6. The Board affirmed the Appeals Referee. In doing so, the Board did not rely upon 19 *Del. C.* § 3326(h)(1)b and (2). It relied upon 19 *Del. C.* § 3314(8), which disqualifies a person from benefits if unemployment is due to a person's inability to work. The Board concluded that the appellant was unable to work in any

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environment where she might be exposed to mold; that the appellant failed to produce any evidence that she is qualified for any work where such a limitation would not be an issue; and that she had, therefore, failed to meet her burden of proving that she was currently able to work and available to work.

7. The appellant states in her notice of appeal the following: “UIAB stated that I have work limitations, but according to my family doctor I have no limitations and I am not disabled.” In her opening brief the appellant contends that the document issued by Dr. Barnes was improper and that the form completed by Dr. Tonwe is the correct form with the correct information. She contends that Dr. Joan F. Coker was the doctor who performed her tonsillectomy and adenoidectomy surgery on October 6, 2010, and per Dr. Coker’s instructions she was able to return to work within fourteen days.<sup>2</sup> The appellant contends that since her surgery, ten months ago, she has continued to call in and fill out necessary forms on time; and that the information on the form filled out by her doctor, Dr. Tonwe, should qualify her for unemployment benefits.

8. The scope of review of findings of the Unemployment Insurance Appeal Board is limited to a determination of whether there was substantial evidence sufficient to support the Board’s findings.<sup>3</sup> Substantial evidence is defined as “such relevant evidence as a reasonable mind might accept as adequate to support a

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<sup>2</sup> Dr. Barnes, the appellant contends, was only the pre-op doctor, and therefore the form should not be considered the valid form.

<sup>3</sup> *Unemployment Ins. Appeal Bd. of Dep’t of Labor v. Duncan*, 337 A.2d 308, 308-09 (Del. 1975).

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conclusion.”<sup>4</sup> On appeal, the court does not weigh evidence, determine questions of credibility, or make its own factual findings.<sup>5</sup> If there is substantial evidence and no mistake of law, the Board’s decision must be affirmed.<sup>6</sup>

9. The statutory basis relied upon by the Board was 19 *Del. C.* § 3314(8), which provides that a claimant is disqualified from benefits under the following circumstances:

An individual shall be disqualified for benefits:

(8) 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.<sup>7</sup>

10. Under Delaware law, an individual seeking unemployment benefits is only considered to be “available for work” if “she is 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.”<sup>8</sup> The determination of availability is subjective, and is measured

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<sup>4</sup> *Majaya v. Sojourners’ Place*, 2003 WL 21350542, at \*4 (Del. Super. June 6, 2003).

<sup>5</sup> *Id.*

<sup>6</sup> *City of Newark v. Unemployment Ins. Appeal Bd.*, 802 A.2d 318, 323 (Del. Super. 2002).

<sup>7</sup> 19 *Del. C.* § 3314(8).

<sup>8</sup> *Briddell v. DART First State*, 2002 WL 499437, at \*1 (Del. Super. March 28, 2002) (citing *Petty v. University of Delaware*, 450 A.2d 392, 395 (1982)).

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by the ability of an employee to secure work, with that skill, in an identifiable labor market.<sup>9</sup> In *Morris v. U.I.A.B*, this Court affirmed the Board's conclusion that "unemployment compensation is not health insurance and that its benefits are not available to those who are unable to work due to illness."<sup>10</sup>

11. It is clear that the Board concluded that the qualification that the appellant not work in an environment where she could be exposed to mold in Dr. Tonwe's medical certificate was significant, and that without evidence to explain what work the appellant could perform where that qualification would not be an issue, the appellant failed to establish that she was able to work and available for work under 19 *Del. C.* § 3314(8). After having considered the evidence and the Board's decision, and applying the applicable standard of review, I find that the uncertainty concerning the mold limitation is sufficient to create substantial evidence to support the Board's decision. I also find that the grounds relied upon by the Appeals Referee independently supports the denial of benefits.

12. Therefore, the Board's decision is ***affirmed***.

**IT IS SO ORDERED.**

/s/ James T. Vaughn, Jr.  
President Judge

cc: Prothonotary  
Order Distribution  
File

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<sup>9</sup> *Id.*

<sup>10</sup> 340 A.2d 162, 163 (Del. Super. 1975).