

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

ROBIN R. McINTYRE,)	
)	
Appellant,)	
)	C.A. No. 07A-12-001 PLA
v.)	
)	
UNEMPLOYMENT)	
INSURANCE APPEAL)	
BOARD,)	
)	
Appellee.)	

**ON APPEAL FROM THE
UNEMPLOYMENT INSURANCE APPEAL BOARD
AFFIRMED**

Submitted: April 23, 2008
Decided: April 29, 2008

This 29th day of April, 2008, upon consideration of the appeal of Robin R. McIntyre (“McIntyre”) from the decision of the Unemployment Insurance Appeal Board (the “Board”) finding him disqualified to receive unemployment benefits, it appears to the Court that:

1. McIntyre was employed as a meter reader by the City of Wilmington (the “City”) for approximately nineteen years until October 2006. After leaving his employment with the City, McIntyre worked with a home repair business in Pennsylvania from October 15, 2007 until October 26, 2007, a period of approximately two weeks. While a meter reader,

McIntyre also concurrently worked for Habitat for Humanity for a period of six months.

2. McIntyre applied for unemployment benefits sometime in late 2006.¹ The first hearing before the Department of Labor was rescheduled because McIntyre was late. McIntyre failed to appear for the second hearing because his daughters were sick. As a result, McIntyre was found to be disqualified from receiving benefits effective the week ending on December 2, 2006. Since that time, McIntyre has not returned to work.

3. McIntyre reapplied for benefits on August 26, 2007. Relying upon 19 *Del. C.* § 3314(2), the Claims Deputy held that for McIntyre to receive benefits, he was required to earn four times his weekly amount of \$330.00 and work for four weeks, although not necessarily consecutively. The deputy found that his employment for two weeks in Pennsylvania in October 2006 was insufficient to qualify him for benefits. He also determined that McIntyre's work for Habitat for Humanity occurred before he was found to be disqualified for benefits and thus did not satisfy the four-week requirement of the statute. On appeal, the Board affirmed the Appeals Referee's decision.

¹ The record is unclear as to when McIntyre first applied for benefits.

4. McIntyre has now filed the instant *pro se* appeal to this Court. In his opening brief, McIntyre disputes the Board's determination that he is disqualified for benefits. He asserts that he earned \$1,475.00 over a three week period. He does not specify when this three-week period occurred or from what source he earned the income. He has not submitted any documentation to support his claim.

5. This Court's appellate review of a Board decision is limited. "In reviewing the decisions of the UIAB [Unemployment Insurance Appeal Board], this Court must determine whether the findings and conclusions of the UIAB are free from legal error and supported by substantial evidence in the record."² Substantial evidence means "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion."³ The "substantial evidence" standard means "more than a scintilla but less than a preponderance of the evidence."⁴ The Court "does not weigh the evidence, determine questions of credibility, or make its own factual findings."⁵ A

² *Federal Street Financial Service v. Davies*, 2000 WL 1211514, at *2 (Del. Super. Ct. Jun. 28, 2000) (citing *Unemployment Insurance Appeal Board v. Martin*, 431 A.2d 1265 (Del. 1981)).

³ *Anchor Motor Freight v. Ciabottoni*, 716 A.2d 154, 156 (Del. 1998).

⁴ *Breeding v. Contractors-One-Inc.*, 549 A.2d 1102, 1104 (Del. 1988).

⁵ *Hall v. Rollins Leasing*, 1996 WL 659476, at *2 (Del. Super. Ct. Oct. 4, 1996) (citing *Johnson v. Chrysler Corp.*, 213 A.2d 64, 66 (Del. 1965)).

discretionary decision of the Board will be upheld absent an abuse of discretion.⁶ An abuse of discretion occurs when the Board “exceeds the bounds of reason in view of the circumstances and has ignored recognized rules of law or practice so as to produce injustice.”⁷ The Court reviews questions of law *de novo* to determine whether the Board “erred in formulating or applying legal precepts.”⁸

6. 19 *Del. C.* § 3314(2) disqualifies an individual from receiving benefits “[f]or the week in which the individual was discharged . . . for just cause . . . and for each week thereafter until the individual has been employed in each of four subsequent weeks (whether or not consecutive) and has earned wages in covered employment equal to not less than four times the weekly benefit amount.”⁹ In this case, McIntyre admitted that he has not returned to work since the claims deputy found him disqualified to receive benefits in December 2006. He offered no wage statements or other testimony evidencing that he earned \$1,320.00, four times his weekly benefit

⁶ *Funk v. Unemployment Ins. Appeal Bd.*, 591 A.2d 222, 225 (Del. 1991).

⁷ *Nardi v. Lewis*, 2000 WL 303147, at *2 (Del. Super. Ct. Jan. 26, 2000) (citations omitted).

⁸ *Id.*

⁹ 19 *Del. C.* § 3314(2).

of \$330.00. As a result, the Board's decision that McIntyre was not qualified for benefits is supported by substantial evidence.

7. The Court is also precluded from considering McIntyre's assertion that he earned \$1,475.00 over a three-week period since he did not offer this evidence to the Board during his hearing.¹⁰ Even if McIntyre had presented evidence in support of his claim, it would not alter the Court's decision. While \$1,475.00 is more than four times McIntyre's weekly benefit amount, he is still required by statute to work for at least four weeks before he is entitled to receive unemployment benefits. Even if the Court accepted his unsubstantiated claim that he earned \$1,475.00 during three weeks, McIntyre would still be disqualified from receiving benefits under 19 *Del. C.* § 3314(2) because he has not worked at least four weeks. If McIntyre's claim is that he earned \$1,475.00 for three weeks of employment, in addition to the two weeks he was employed in October 2006, he had to present this evidence, with appropriate documentation, to the Board in the first instance.

8. Because McIntyre failed to offer any evidence to the Board establishing that he had worked for four weeks after he was disqualified

¹⁰ See, e.g., *Griffin v. Daimler Chrysler*, 2000 WL 33309877, at *2 (Del. Super. Ct. Apr. 27, 2000) ("The Appellant failed to appear at the Board hearing, and the merits were not addressed by the Board. As such, the Court lacks jurisdiction to review the merits of the case because the Appellant did not exhaust all administrative remedies by not presenting his case to the Board.").

from benefits in December 2006, or that he had earned at least four times his weekly benefit amount of \$330.00, the Board's decision is supported by substantial evidence. Accordingly, the decision of the Board is hereby **AFFIRMED.**

IT IS SO ORDERED.

Peggy L. Ableman, Judge

Original to Prothonotary

cc: Robin R. McIntyre
Mary Page Bailey, Esq.
Thomas H. Ellis, Esq.