

SUPERIOR COURT
OF THE
STATE OF DELAWARE

RICHARD F. STOKES
JUDGE

SUSSEX COUNTY COURTHOUSE
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GEORGETOWN, DE 19947
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June 17, 2013

Holly A. Passwaters
4833 Federalsburg Road
Laurel, DE 19956

Thomas H. Ellis, Esquire
Department of Justice
820 North French Street
Wilmington, DE 19801

RE: *Holly Passwaters v. Unemployment Insurance Appeal Board*
C.A. No. S12A-10-007 RFS

Dear Ms. Passwaters and Mr. Ellis:

Claimant Holly A. Passwaters was found to be ineligible for receipt of unemployment benefits because she was not available for work pursuant to 19 *Del.C.* § 3315(3).¹ The Court affirms this decision of the Unemployment Insurance Appeal Board (“Board”).

Posture. A Department of Labor (“DOL”) claims deputy found that Claimant could not be considered available for work because she was primarily a student and not attached to the labor market. Claimant’s employer took no part in the proceedings.

Claimant appealed. At the hearing before an appeals referee, a DOL

¹The record shows that Claimant was found eligible for unemployment benefits as to the manner of her separation from work. Claimant’s appeal pertained to the other prong of the test, that is, whether she was able and available for work.

representative explained that DOL had sent Claimant a questionnaire asking for more information because Claimant stated on her application that she was a full-time student. In the fall and spring semesters she attended Delaware Technical and Community College (“DTCC”) on a full-time basis. In the summer she attended DTCC part-time. On the questionnaire, Claimant said she was looking for part-time work and that she would not leave school if work interfered with her class schedule.

The Appeals referee found that Claimant was willing to work only if an employer would accommodate her class schedule and that school was Claimant’s highest priority. Thus, the appeals referee affirmed the claims deputy, finding that Claimant was not available for work pursuant to 19 *Del.C.* § 3315(3).

On appeal to the Board, Claimant explained her answers on the DOL questionnaire. She stated that she said that she would not leave school for work only for the two weeks remaining in her term. She stated that she said no to full-time work for the same reason. She said she was currently in college full time and was looking for part-time work. In contrast to earlier remarks, Claimant testified that she would put school aside if full-time work became available.

Claimant listed her current availability for work as follows: Mondays after 11 a.m.; Tuesday evenings; all day Wednesday; Friday afternoons and week-ends.

The DOL representative stated that the Department would rely on the record below.

The Board’s decision. The Board found Claimant to be a full-time student at DTCC at the time of her separation from work. The Board did not find Claimant to be credible in her testimony that she would forego school for full-time employment. The Board noted that Claimant was currently registered for a full-time college schedule and available to work on a limited basis determined by her classes. For these reasons, the Board found Claimant to be an ordinary college student whose primary purpose was to obtain an education. The Board affirmed the appeals referee’s denial of eligibility to receive unemployment benefits.

Standard of review. This Court’s role on a decision of an administrative agency is to determine whether the agency’s factual findings are supported by

substantial evidence and whether the decision is free from legal error.²

Discussion. On appeal to this Court, Claimant asserts that she is available for work. In other words, she argues that the Board's decision is not supported by substantial evidence. The Court finds otherwise. The record is clear that from the time Claimant filed her petition for unemployment benefits, she identified herself as a full-time student who was seeking part-time work with hours that would integrate into her class schedule. She reiterated this fact on the DOL questionnaire. At both the appeals referee's hearing and the Board hearing, Claimant listed the limited hours she would work based on her classes schedule.

Based on the record evidence, the Court finds that the Board's factual conclusion that Claimant was unavailable for work is supported by substantial evidence.

Moreover, one of the eligibility requirements for receiving unemployment benefits is that the individual is "available" for work, pursuant to 10 *Del.C.* § 3315(3). A full-time student may rebut this presumption by showing he is not an ordinary college student whose primary purpose is to obtain an education and who is available for work on only a limited basis.³ This is a fact-based inquiry, which includes such factors as the claimant's unemployment history, economic requirements, good faith efforts to obtain unconditional work and whether school would take precedence over an unconditional employment offer.⁴

The Board considered the primary factors listed here, and it should be added that Claimant's work history showed part-time work based on the parameters of a full-time college schedule. Claimant testified that she had been looking for various types of work, but with an eye toward work flexibility so the college schedule would be undisturbed. The Board's finding that Claimant was an ordinary college student whose primary purpose is to obtain an education was without error.

Conclusion. For these reasons, the decision of the Board denying

²*Histid v. E.I. DuPont de Nemours & Co.*, 621 A.2d 340 (Del.1993).

³*Morgan v. Unemployment Ins. App. Bd.*, 416 A.2d 1227, 1229-30 (Del.1952).

⁴*Id.*; *Jackson v. Unemployment Ins. App. Bd.*, 2010 WL 4513297 (Del.Super.).

unemployment benefits to Claimant Holly Passwaters is **AFFIRMED**.

IT IS SO ORDERED.

Very truly yours,

/s/ Richard F. Stokes

Richard F. Stokes