

Not Reported in A.2d, 1990 WL 91108 (Del.Super.)
(Cite as: 1990 WL 91108 (Del.Super.))

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UNPUBLISHED OPINION. CHECK COURT
RULES BEFORE CITING.

Superior Court of Delaware, New Castle County.
CAROUSEL STUDIO, Appellant,
v.
UNEMPLOYMENT INSURANCE APPEAL
BOARD, Appellee.

C.A. No. 89A-AU-7.
Submitted: Nov. 8, 1989.
Decided: June 26, 1990.

James F. Maher, of Young, Conaway, Stargatt &
Taylor, for appellant.

Suzanne Quinn, appellee, pro se.

MEMORANDUM OPINION

BABIARZ, Judge.

*1 The Unemployment Insurance Appeal Board conducted a hearing concerning Suzanne Quinn's appeal of the decision of the Appeals Referee that she left her employment without just cause and was thus disqualified for benefits under 10 *Del.C.* § 3315(1). After hearing additional testimony offered by both parties, the Board reversed the decision of the Referee and held that Quinn had been discharged without cause and thus was eligible for benefits under 10 *Del.C.* § 3315(2). Currently before the Court is Carousel's appeal from the Board's decision.

Carousel contends that it was denied procedural due process in that the Board, without adequate notice, conducted a *de novo* review exceeding its authority and that Quinn was allowed to relitigate the issues before the Board, whereas Carousel's representative was not accorded a reasonable opportunity to reply or similarly

relitigate the issues before the Board closed the record. Furthermore, Carousel contends that it was denied substantive due process in that Quinn produced no new credible and probative information sufficient to support the reversal of the Appeals Referee's decision.

No particular form of proceeding is required to constitute procedural due process in administrative proceedings; all that is required is that the liberty and property interests of the parties be protected by the rudimentary requirements of fair play. *Mitchell v. Delaware Alcoholic Beverage Commission*, Del.Super., 193 A.2d 294, 311-312 (1963) rev'd on other grounds, Del.Super., 196 A.2d 410 (1963). 19 *Del.C.* § 3321(a) provides that the Board may prescribe the manner in which hearings before the Board are conducted.

The Notice of Hearing before the Board sent to Carousel summarized the procedures as set forth in the *Unemployment Insurance Handbook for Employers* (1989):

An appeal has been filed against an Appeal Referee's decision concerning a claim for unemployment benefits. A hearing has been scheduled before the [UIAB]. This hearing is not a *de novo* review and the parties will not be permitted to relitigate the case in its entirety. Each party will be given the opportunity to present additional relevant evidence and legal argument as to why the Referee's decision should be upheld or reversed.

If witnesses are needed to help you present your case you must arrange for their appearance at the hearing.

In the exercise of quasi-judicial or adjudicatory administrative power, administrative hearings like judicial proceedings are governed by the fundamental requirements of fairness which are the essence of due process, including fair notice of the scope of the proceedings and adherence of the

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agency to the stated scope of those proceedings. See *General Chemical Division, Allied Chemical and Dye Corp., v. Fasano*, 94 A.2d 600 (1953); *Shields v. Utah Idaho Central Railroad Company*, 305 U.S. 177, 59 S.Ct. 160, 83 L.Ed. 111 (1938); *Morgan v. United States*, 304 U.S. 1, 58 S.Ct. 733, 82 L.Ed. 1129 (1937).

Due process as it relates to the requisite characteristics of the proceedings entails providing the parties to the proceeding with the opportunity to be heard, by presenting testimony or otherwise, and the right of controverting, by proof, every material fact which bears on the question of right in the matter involved in an orderly proceeding appropriate to the nature of the hearing and adapted to meet its ends. See generally 2 *Am.Jur.Administrative Law* § 353, p. 166.

*2 After reviewing the transcript of the hearings before the Referee and the Board, I am satisfied that a fair and impartial hearing was conducted before the Board. At the beginning of the hearing the Board advised the parties to keep in mind that the proceeding before the Referee was a part of its record and that they wanted to hear “any new evidence or testimony or dispute of any findings of fact of the Referee. Both parties were unrepresented by counsel, therefore the Board acted properly in permitting the parties latitude in presenting their cases. It should not be expected that the issues would be addressed with the directness and skill of an attorney trained in the art of advocacy. Each party was afforded an equal opportunity to present its case, and, under the circumstances, the Board restricted the scope of the hearing as much as possible to only relevant issues bearing upon the Referee's decision.

The Notice of Hearing advised Carousel that additional relevant testimony would be permitted by the parties. At the close of the designated time for the hearing, one of the Board members expressed that after hearing the testimony he still did not understand why Judith Donahue, the owner of Carousel, alleges that Quinn abandoned her job.

Donahue was afforded an opportunity to readdress specific issues that were unclear to the members of the Board and likewise Quinn was afforded a rebuttal. During the hearing Donahue raised no objections to any of the testimony offered by Quinn and was offered ample opportunity to offer testimony addressing Quinn's allegations. Furthermore, Donahue raised no objection to the close of the proceedings which had already been extended to permit her an additional opportunity to clarify or add to her prior testimony. I am satisfied that both parties presented their case to the Board and Carousel was, therefore, afforded procedural due process.

Carousel next contends that the Board disregarded the record before the Referee and conducted a *de novo* review of the case. The record, however, does not support this contention. At the onset of the hearing the Board announced that the record before the Referee was a part of its record and the Referee's findings were incorporated by reference in the summary of evidence portion of its written decision.

Although the Board never addressed the Referee's findings specifically or indicated reasons why those findings were unacceptable, there is no requirement that the Referee's decision be specifically addressed. Rather, the Board's obligation, when it assumes that the evidence submitted to the Referee is part of the record, is that it must review the record of the Referee before it decides the case or due process may be violated. See *Kowalski v. Unemployment Insurance Appeal Board*, Del.Super., C.A. No. 88A-JL-3, Gebelein, J. (Jan. 22, 1990). Carousel has not provided the Court with anything more than a naked allegation that the Board disregarded the record generated before the Referee. Neither the Board's conduct at the hearing nor the content of its written opinion indicate that the Board disregarded the record before the Referee. I am satisfied that the Board did not exceed its powers of review and considered all the evidence submitted in both hearings.

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*3 Carousel contends that Quinn presented the Board with no new credible and probative information sufficient to support the reversal of the Appeals Referee's decision.

This Court's appellate jurisdiction over the decisions of the Board is very limited. The factual determinations of the Board, if supported by substantial evidence, and in the absence of fraud, shall be conclusive and the jurisdiction of this Court shall be confined to questions of law. See [19 Del.C. § 3323\(a\)](#); see also [Delgado v. Unemployment Insurance Appeal Board](#), Del.Super., 295 A.2d 585 (1972); [Boughton v. Division of Unemployment Insurance of Department of Labor](#), Del.Super., 300 A.2d 25 (1972); [Ortiz v. Unemployment Insurance Appeal Board](#), Del.Super., 305 A.2d 629 (1973), rev'd on other grounds, Del.Super., 317 A.2d 100 (1974).

The dispute between Quinn and her employer resulting in this action concerns whether Quinn was fired or quit. At the Referee's hearing, Quinn and Donahue were the only witnesses who testified. The testimony offered by the two regarding the events which led to the termination of Quinn's employment was relatively consistent, however, each interpreted the significance of their actions and their intentions differently. Because neither Quinn stated to Donahue that she was quitting her job nor did Donahue state to Quinn that she was fired, the Referee was required to make decisions concerning the intentions of the parties based upon their testimony, ultimately involving determinations of credibility. Quinn contested many of the factual determinations of the Referee and appealed his decision to the Board on that basis.

In [Renshaw v. Widener University and Unemployment Insurance Appeal Board](#), Del.Super., C.A. No. 84A-NO-16, Babiarz, J. (Jan. 2, 1987), like the case at hand, determinations of intent had to be made requiring the Referee to weigh the credibility of the parties' testimony. The decision of the Referee was appealed to the Board and reversed without a hearing. The Court stated

that under ordinary standards of review, in the absence of a supplementary or *de novo* hearing, the Board would be obliged to accept the factual determination of the Referee, if supported by substantial evidence. *Id* at 2.

Although in [Renshaw](#) the Court interpreted [19 Del.C. § 3320](#) as granting the Board *carte blanche* in reviewing the factual findings of a Referee, it stated its reluctance to affirm a decision of the Board which amounted to a naked judgment of credibility different from that arrived at by the officer who heard the testimony. The Court, nonetheless, affirmed the Board's decision because it was based upon a logical and reasoned analysis of the evidence presented at the hearing before the Referee and did not offend the general principle that great deference is owed to the factual findings of a trial officer. *Id* at 2 (citing [Levin v. Smith](#), Del.Super., 513 A.2d 1292 (1986)).

Thus, the standard in Delaware is that the Board need not accept the findings of the Referee if its decision is a logical and reasoned analysis of the entire record and supported by substantial evidence. See [Kowalski](#), *supra* at 22-25. In the instant case, not only did the Board have the record before the Referee, it was able to independently observe the demeanor of Quinn and Donahue and weigh their credibility. The Board also heard the testimony of Cyndi Kowalczyk from the Department of Labor, an impartial witness whose testimony supported Quinn's case.

*4 It is not the Court's province to reevaluate evidence presented to the Board and make its own decisions as to the credibility of the witnesses, the weight of their testimony, or the reasonable inferences that may be drawn therefrom. [Coleman v. Department of Labor](#), 288 A.2d 285 (1972). Therefore, if there is such relevant and competent evidence as a reasonable mind might accept as adequate to support the conclusions of the Board, the Court will not disturb its findings. See [Quaker Hill Place v. State Human Rights Commission](#), Del.Super., 498 A.2d 175, 179 (1985).

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The findings of the Board serving as the factual predicate to its determination that Ms. Quinn was fired and had not quit are supported by the evidence. The evidence is quite clear that both Quinn and Donahue were dissatisfied and tension between the two was increasing. In the morning of the final day of Quinn's employment an argument ensued at which time both parties expressed their dissatisfaction with the employment arrangement. After finding that Quinn had not expressed an intention to quit her job but that a leave of absence had been discussed, the Board focused its attention on the haste with which Donahue acted in contacting the Chamber of Commerce and the Department of Rehabilitation to notify them that Quinn had quit her job. A reasonable inference can be drawn that, in light of the increasing tension between the two and the arguments that ensued, Donahue, frustrated with the entire situation and possibly angered by Quinn's comment that Donahue was the worst person she ever worked for, hastily and impulsively acted in a manner which would lead one to conclude that she had discharged Quinn.

Although the evidence could arguably support a contrary conclusion that Quinn quit, the Court must give deference to the Board's findings. The Board had before it the record before the Referee and had the opportunity to observe the demeanor of the witnesses firsthand and make its own assessment of the credibility of the witnesses and draw its own conclusions and inferences from the witnesses' testimony. I find that there is such relevant and competent evidence as a reasonable mind might accept as adequate to support the conclusions of the Board; therefore the decision of the Board is affirmed.

IT IS SO ORDERED.

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