

*Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.*

**ENTRY ORDER**

SUPREME COURT DOCKET NO. 2003-434

FEBRUARY TERM, 2004

	} APPEALED FROM:
	}
Billy Bennett	} Employment Security Board
	}
v.	}
	} DOCKET NO. 05-02-196-07E
Department of Employment	}
and Training	}
	}
	}

In the above-entitled cause, the Clerk will enter:

Claimant appeals the Employment Security Board's decision denying him unemployment compensation benefits based on his failure to accept an offer of suitable employment. See 21 V.S.A. ' 1344(a)(2)(C) (individual who fails, without good cause, to accept offer of suitable work shall be disqualified from obtaining benefits for relevant period). We affirm.

Claimant was laid off from his meat processing job on December 23, 2002, and given a January 20, 2003 date to return to work. He put in a claim for unemployment compensation benefits on the date that he was laid off. When he attempted to call in his claim for the week ending January 25, 2003, he was referred to a customer service representative, who told him that he had to check with his employer to see if any work was available. There is disputed evidence in the record as to what attempts claimant made at that point to renew his work for employer. Eventually, the claims adjudicator found that claimant could not be disqualified from receiving benefits for the disputed period because he had neither been offered nor refused work with his employer. Employer appealed, and, following a hearing, the appeals referee reversed the determination of the claims adjudicator, concluding that employer had made an offer of employment by giving claimant a specific return date of January 20, 2003, and that claimant had refused that offer by failing to return to work on that date. The Board affirmed the referee's determination, and claimant appeals, arguing that the Board's decision is not supported by the record.

The gist of claimant's argument on appeal is that he did not refuse an offer of employment, in light of both the history of his employment with employer and the particular circumstances of this case. According to claimant, in his three years working for employer, he had been laid off on several occasions and given return dates that were not meant to be precise. Often, on such occasions, he would contact employer a few days beyond the return date and return to work. Further, in this instance, claimant testified that, after the DET office told him to contact employer, he did so but was told that no work was available. Claimant argues that, under these circumstances, the Board's decision to deny him unemployment benefits was arbitrary and capricious.

We conclude that there is credible evidence in the record to support the Board's denial of benefits. See Whitcomb v. Dep't of Employment & Training, 147 Vt. 525, 528 (1986) (Board's findings will be affirmed if supported by any credible evidence); Trombley v. Dep't of Employment & Training, 146 Vt. 332, 334 (1985) (Board's findings will be upheld if supported by credible evidence, even if there is substantial evidence to contrary). Employer's plant manager testified that he informed claimant that he would be laid off on December 23, 2002, and that he was to return to work on January 20, 2003. The plant manager also testified that three other employees were laid off on the same date

as claimant, that there was work available on January 20, 2003, and that the other three employees returned to work on that date, as instructed. Further, employer's comptroller testified that, on January 3, 2003, when claimant came in to get his paycheck, he spoke to claimant at length about returning to work on January 20. Nevertheless, claimant did not return to work on or before January 20. Claimant testified that he contacted employer on several occasions after being told to do so by the employment office in late January, but that employer had no work for him. Employer's plant manager and comptroller testified, however, that they had no contact with claimant after December 23 and January 3, respectively. Under these circumstances, the Board's conclusion that claimant refused an offer of suitable work for the disputed period is supported by its findings, which, in turn, are supported by the evidence. This is not a case, as claimant asserts, in which the offer of work was so vague that it cannot be considered an offer at all. Cf. Calabi v. Dep't of Employment Sec., 135 Vt. 392, 393 (1977) (letter commencing negotiation of employment, without indicating starting date, hours, and wages, could not be considered offer of work for purposes of unemployment compensation).

Claimant also suggests, without formally arguing, that work might not have been available for him on the date he was told to return to the plant. To the extent that this argument is properly raised, it is unavailing. The testimony at the hearing revealed that when claimant was laid off, the work force at the plant had dwindled to six people, but went back up to eleven workers in preparation for the Easter holidays. All three of the workers that were laid off with claimant and told to return on January 20 were rehired on that date. In addition, two workers from another part of the company's operations were brought in to assist with the work that claimant had done. The fact that only three new employees were hired on January 20 is, at most, modifying evidence that does not undermine the plant manager's testimony that work was available for claimant on the date he was told to report back for work. See Kasnowski v. Dep't of Employment Security, 137 Vt. 380, 381 (1979) (findings of Board will not be disturbed on appeal unless there is no evidence to support decision; persuasiveness of evidence and credibility of witnesses is for trier of fact to weigh); In re Wheelock, 130 Vt. 136, 141 (1972) (findings of referee and Board will be affirmed if supported by credible evidence, even in presence of substantial evidence to contrary).

Affirmed.

BY THE COURT:

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Jeffrey L. Amestoy, Chief Justice

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John A. Dooley, Associate Justice

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Paul L. Reiber, Associate Justice