

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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2004-349

APRIL TERM, 2005

Paul Grindel	}	APPEALED FROM:
	}	
	}	
v.	}	Employment Security Board
	}	
Department of Employment and Security	}	
Training and The Stanley House c/o US Express	}	DOCKET NO. 01-04-184-11

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

Claimant appeals from an Employment Security Board (ESB) decision finding him disqualified from receiving unemployment compensation benefits during a period of physical disability and requiring claimant to repay the benefits he received in error. We affirm.

Claimant was laid off from his job at The Stanley Works in May 2003. On September 29, 2003, the employer's plant manager contacted claimant and offered him a job in the plant's sawmill. The job paid the same as claimant's previous position and required the same skill level. Claimant declined the job, citing a severe hand injury he received on September 26. The plant manager contacted claimant again the next day, and again claimant refused the offer to work because his hand injury prevented him from doing the job.

Claimant filed claims for continuing unemployment compensation benefits following his hand injury, but he did not disclose the job offer from The Stanley Works. That omission gave rise to a proceeding before a claims adjudicator for the Department of Employment and Training (DET). DET investigated claimant's benefits and determined that he was ineligible for unemployment compensation beginning the week that The Stanley Works offered him employment through January 10, 2004. The DET claims adjudicator ordered claimant to repay the \$5,744 in benefits claimant received during that time. Claimant appealed the decision to the ESB, and now to this Court.

In upholding the decision that claimant was ineligible for unemployment compensation benefits while recuperating from the hand injury, the ESB explained that unemployment compensation is not intended to ease the consequences of unemployment caused by an illness or disability. Willard v. Vt. Unemployment Comp. Comm'n, 122 Vt. 398, 404 (1961). Therefore, the statute governing unemployment compensation requires the claimant to be "able to work" and "available for work" to be eligible for benefits. 21 V.S.A. § 1343(a)(3). When an individual refuses otherwise suitable work because of an injury or illness, the individual is neither "able to" nor "available" for work. See Willard, 122 Vt. at 404-05 (explaining that the conditions a worker places on employment, whether voluntary or involuntarily due to a physical disability, may render the worker unavailable for work and ineligible for unemployment compensation).

Claimant acknowledges that he declined the offer to work in the sawmill because of his hand injury. Claimant challenges the ESB's repayment order, arguing that he did not misrepresent the reason for declining work. Claimant asserts that he notified both DET and The Stanley Works of the injury promptly after it occurred.

Although the record appears to support claimant's assertions about his prompt disclosure of the injury, that disclosure is, ultimately, irrelevant to the question of claimant's duty to repay benefits received erroneously. The material misrepresentation giving rise to claimant's repayment obligation was his failure to disclose the job offer from The Stanley Works in September 2003. As the ESB found, the claim cards claimant filed with DET after his accident required claimant to certify that he had not refused an offer of suitable work since injuring his hand. Claimant does not dispute that he was offered a job that he could have performed but for his injured hand. By statute, claimant was ineligible for benefits while his hand prevented him from doing suitable work. Claimant may perceive the repayment order as a penalty but that perception is misplaced. The ESB's order simply reflects the fact that claimant was paid benefits in error because his disabling hand injury made him ineligible by rendering him both unable and unavailable for suitable work.

Affirmed.

BY THE COURT:

John A. Dooley, Associate Justice

Denise R. Johnson, Associate Justice

Frederic W. Allen, Chief Justice (Ret.),
Specially Assigned