

SUPERIOR COURT
OF THE
STATE OF DELAWARE

RICHARD F. STOKES
JUDGE

SUSSEX COUNTY COURTHOUSE
1 THE CIRCLE, SUITE 2
GEORGETOWN, DE 19947
TELEPHONE (302) 856-5264

April 22, 2013

George W. Smith, Jr.
9320 Benson Road
Lincoln, DE 19960

**RE: George W. Smith, Jr., v. Unemployment Insurance Appeal Board
C.A. No. S12A-10-004 RFS**

Date Submitted: March 12, 2013

Dear Mr. Smith:

This is my decision on your appeal of the Unemployment Insurance Appeal Board's finding that you must pay back the unemployment benefits that you improperly received. You filed a claim for unemployment benefits on December 27, 2009. You received unemployment benefits beginning on or around January 23, 2010. You received benefits totaling \$15,695.00. Subsequently, you were disqualified from the receipt of unemployment benefits for fraud for failing to report earnings from two employers while you were receiving unemployment benefits. Except for a nine week period in which you agreed you fraudulently received benefits, you appealed the rest of your disqualification. This Court affirmed the Board's finding that you were disqualified from the receipt of unemployment benefits due to fraud.¹

¹ *George W. Smith, Jr., v. Hertrich's of Milford and Unemployment Insurance Appeal Board*, 2012 WL 1408023 (Del. Super. March 9, 2012).

On May 23, 2012, a claims deputy issued five overpayment determinations. You appealed all five overpayment determinations. A hearing was held on August 1, 2012, and on August 17, 2012, the Appeals Referee affirmed all five overpayment determinations. You timely appealed the decision of the Appeals Referee to the Board. The Board found you liable for the overpayment of benefits in a decision dated September 26, 2012. You now appeal to this Court.

STANDARD OF REVIEW

The Supreme Court and this Court repeatedly have emphasized the limited appellate review of the factual findings of an administrative agency. The Court must determine whether the Board's findings and conclusions 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 appellate court does not weigh the evidence, determine questions of credibility, or make its own factual findings.⁴ It merely determines if the evidence is legally adequate to support the agency's factual findings.⁵ Absent an error of law, the Board's decision will not be disturbed where there is substantial evidence to support its conclusions.⁶

DISCUSSION

Your unemployment appeal process was separated into two phases. The first phase was the

² *Unemployment Insurance Appeal Board v. Martin*, 431 A.2d 1265, 1266 (Del. 1981).

³ *Oceanport Ind. v. Wilmington Stevedores*, 636 A.2d 892, 899 (Del. 1994); *Battista v. Chrysler Corp.*, 517 A.2d 295, 297 (Del.1986), *app. disp.*, 515 A.2d 397 (Del. 1986)(TABLE).

⁴ *Johnson v. Chrysler Corp.*, 213 A.2d 64, 66 (Del. 1965).

⁵ 29 *Del.C.* § 10142(d).

⁶ *Dallachiesa v. General Motors Corp.*, 140 A.2d 137 (Del. Super. 1958).

eligibility phase. During that phase, the Board issued a decision, which was affirmed by this Court, that you were ineligible for unemployment benefits because you failed to report earnings from an employer. The second phase was the recovery phase. The Claims Deputy found that you received an overpayment of benefits totaling \$15,695.00. The Appeals Referee and the Board affirmed the Claims Deputy's decision.

You argue now that the overpayment amount is unjustified because your unemployment benefits were based upon your employment with Price Honda and not Hertrich. While your unemployment benefits may have been based upon your time employed with Price Honda, it was your failure to report your earnings with Hertrich that disqualified you from receiving unemployment benefits. Thus, the issue before the Board and now before this Court, is whether you received an overpayment of benefits. The issue is not whether you were eligible for unemployment benefits. It has already been determined that you were ineligible for unemployment benefits. 19 *Del.C.* § 3325 provides as follows:

“Any person who has received any sum as benefits under this chapter to which it is finally determined that the person was not entitled shall be liable to repay in cash said overpayment, to the Department for the Unemployment Compensation Fund, or to have such sum deducted from future benefits payable to the person under this chapter. **The person shall be so liable regardless of whether such sum was received through fraud or mistake, or whether that person was legally awarded the payment of benefits at the time but on appeal was subsequently found not to be entitled thereto.”**(emphasis added).

Since you were ineligible for unemployment benefits, it is clear that you have to repay all of the benefits that you received. You argue that you should only have to repay the unemployment benefits you received while you were working at Chipotle. This is incorrect. The previous decision

of the Department of Labor, and affirmed by this Court, found you were disqualified from the receipt of unemployment benefits from the time your benefits began on or around January 23, 2010 and ending on or around December 11, 2010. The decision that you were eligible or ineligible for benefits is no longer reviewable. Therefore, since you were not entitled to unemployment benefits, you must pay back all of the unemployment benefits you received. The Board's finding that you must repay the overpayment of benefits that you received is based upon substantial evidence in the record in and is accordance with the applicable law.

CONCLUSION

The decision of the Unemployment Insurance Appeal Board is **AFFIRMED**.

IT IS SO ORDERED.

Very truly yours,

/s/ Richard F. Stokes

Richard F. Stokes