IN THE SUPERIOR COURT OF THE STATE OF DELAWARE IN AND FOR KENT COUNTY

LUCITA B. KOLESKI,)
) C.A. No. K13A-10-006 JTV
Appellant,	
)
v.)
)
DEPARTMENT OF LABOR,	
DIVISION OF UNEMPLOYMENT)
INSURANCE REPAYMENT)
BOARD,)
Appellee.)

Submitted: February 21, 2014 Decided: May 28, 2014

Lucita Kolesi, Pro Se.

James T. Wakley, Esq., Department of Justice, Wilmington, Delaware. Attorney for Appellee.

Upon Consideration of Appellant's
Appeal From Decision of the
Unemployment Insurance Repayment Board
AFFIRMED

VAUGHN, President Judge

ORDER

Upon consideration of the appellant's opening brief and the record of the case, it appears that:

- 1. This is an appeal by claimant Lucita B. Koleski from a decision of the Unemployment Insurance Appeal Board which affirmed an Appeals Referee's upholding of a Claims Deputy's overpayment determination.
- 2. On September 4, 2012, Mrs. Koleski was discharged from her position at the Service Source DBA Opportunity Center. Mrs. Koleski filed a claim for unemployment insurance benefits with an effective date of September 2, 2012, and received 11 weeks worth of benefits totaling \$2,804.
- 3. On December 18, 2012, a Claims Deputy issued a determination that disqualified Mrs. Koleski from receiving benefits after the Claims Deputy found that Mrs. Koleski was terminated for cause. Mrs. Koleski did not appeal the Claims Deputy's decision. Therefore, on December 28, 2012, the Claims Deputy's determination became final.
- 4. On August 26, 2013, a Claims Deputy issued an overpayment determination in the amount of \$2,804. Mrs. Koleski appealed that decision. On September 24, 2013, a hearing was held before an Appeals Referee. The Appeals Referee upheld the Claims Deputy's decision. Mrs. Koleski subsequently appealed to the UIAB, which affirmed the Appeals Referee's decision.
- 5. Mrs. Koleski contends that she was not aware that she had to file an appeal from the Claims Deputy's decision to terminate her benefits; once her benefits were terminated, she was forced into bankruptcy; repaying the benefits would cause

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her a serious financial hardship; and her husband lost his job because of a government budget cut.

- 6. The Department of Labor contends that Mrs. Koleski waived her statutory right to appeal the Claims Deputy's decision to terminate her unemployment benefits because she did not appeal the decision; that the decision to terminate Mrs. Koleski's unemployment benefits is now final; and that Department of Labor records show that Mrs. Koleski now owes \$2,804 in overpaid unemployment benefits.
- 7. The function of the reviewing court is to determine whether substantial evidence supports the UIAB's findings and whether those findings are free from legal error.¹ Substantial evidence is defined as "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion."² "The appellate court does not weigh the evidence, determine questions of credibility, or make its own factual findings."³ If there is substantial evidence and no mistake of law, the UIAB's decision must be affirmed.⁴
- 8. I find that there is substantial evidence to support the UIAB's decision that Mrs. Koleski owes \$2,804 in overpaid unemployment benefits. This amount is

¹ *Noel-Liszkiewicz v. La-Z-Boy*, 68 A.3d 188, 191 (Del. 2013) (citing *Stoltz Mgmt. Co. v. Consumer Affairs Bd.*, 616 A.2d 1205, 1208 (Del. 1992)).

² *Id.* (citing *Streett v. State*, 669 A.2d 9, 11 (Del. 1995)).

³ *Id.* (citing *Johnson v. Chrysler Corp.*, 213 A.2d 64, 66 (Del. 1965)).

⁴ City of Newark v. Unemployment Ins. Appeals Bd., 802 A.2d 318, 323 (Del. Super. Mar. 2, 2002).

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confirmed by the Department of Labor's payment history to Mrs. Koleski.⁵ I also find that the UIAB's decision is free from legal error.

9. For the foregoing reasons, the decision of the UIAB is *affirmed*.

IT IS SO ORDERED.

/s/ James T. Vaughn, Jr.

oc: Prothonotary

cc: Order Distribution

File

⁵ Certified Transcript from the Department of Labor, R-22.