

SUPERIOR COURT
OF THE
STATE OF DELAWARE

E. SCOTT BRADLEY
JUDGE

1 The Circle, Suite 2
GEORGETOWN, DE 19947

April 22, 2014

Otis F. Smith, III
22307 Eskridge Rd
Seaford, DE 19973

AWAD Group, LLC
216 N. DuPont Blvd.
Smyrna, DE 19977
Attention: Jackie Svaby

RE: *Otis F. Smith, III v. AWAD Group, LLC*
C.A. No. S13A-10-003-ESB

Date Submitted: February 25, 2014

Dear Mr. Smith and Ms. Svaby:

This is my decision on Otis F. Smith's appeal of the Unemployment Insurance Appeal Board's dismissal of his claim for unemployment benefits. The Board dismissed Smith's claim because he failed to appear for a hearing before the Board on his appeal of the Appeals Referee's finding that he was not entitled to unemployment benefits. Smith worked as a busboy/dishwasher at an IHOP restaurant owned by the AWAD Group, LLC. Smith was terminated for repeatedly missing work.

Smith filed a claim for unemployment benefits. IHOP opposed his claim. The Claims Deputy ruled in favor Smith, finding that he was not terminated for just cause.

IHOP filed an appeal to the Appeals Referee. The Appeals Referee reversed the Claims Deputy's decision, finding that Smith's behavior constituted wilful and wanton misconduct in violation of IHOP's attendance policy, giving IHOP "just cause" to terminate him. Smith filed an appeal to the Board. The Board sent Smith a written notice setting forth the date, time and location of the hearing on his appeal. The written notice also told Smith that his "failure to appear for [his] hearing in a timely manner could result in [his] appeal being dismissed." Smith did not appear at the hearing before the Board. The Board dismissed Smith's appeal after waiting the customary 10 minute grace period. Smith then filed an appeal of the Board's decision with 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. On appeal from a decision of the Board, this Court is limited to a determination of whether there is substantial evidence in the record sufficient to support the Board's findings, and that such findings are free from legal error.¹ Substantial evidence means such relevant

¹ *Unemployment Ins. Appeals Board of the Dept. of Labor v. Duncan*, 337 A.2d 308, 309 (Del. 1975).

evidence as a reasonable mind might accept as adequate to support a conclusion.² The Board's findings are conclusive and will be affirmed if supported by "competent evidence having probative value."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

Smith argues that (1) false and inaccurate statements exist in the Appeals Referee's decision, and (2) he does not believe enough information exists in the record to warrant a reversal of the Claims Deputy's decision. Smith's arguments do not address why he missed the Board hearing. This Court's appellate review of a Board decision is limited. Since the Board did not hold a hearing on the merits of Smith's case, the only issue this Court can properly address is whether or not the

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

³ *Geegan v. Unemployment Compensation Commission*, 76 A.2d 116, 117 (Del. Super. 1950).

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).

Board abused its discretion in dismissing his appeal. This issue has been addressed previously in *Archambault v. McDonald's Restaurant*.⁷ In that case the Court stated:

The Board maintains statutory authority to promulgate regulations designed to ensure the prompt and orderly determination of the parties' rights. In that regard, the Board has adopted Unemployment Insurance Appeals Board Rule B which provides in pertinent part, that "[a]ll parties are required to be present for a hearing at the scheduled time. Any party who is not present within 10 minutes after the scheduled start time for hearing shall be deemed to waive his right to participate in said hearing." The Court cannot conclude that the Board abused its discretion by dismissing Claimant's appeal. This Court has previously recognized "the importance of adhering to a hearing schedule to efficiently manage and dispose of cases and the need to enforce rules such as Rule B to engender cooperation from the interested parties." Thus, the Court concludes that the Board did not act arbitrarily by dismissing Claimant's appeal for failure to appear.⁸

The Board in this case did not abuse its discretion when it dismissed Smith's appeal for not appearing on time for the hearing. Smith was provided with notice and an opportunity to be heard. The written notice told Smith that his "failure to appear for [his] hearing in a timely manner can result in [his] appeal being dismissed." The Board waited the customary 10 minutes after the scheduled start time, but Smith failed to appear. Smith was put on notice of the consequences of not appearing at the hearing on time. Therefore, he has no reason at all to complain about the Board's

⁷ 1999 WL 1611337 (Del.Super. Mar. 22, 1999); See also *Strazzella v. Joe Tejas, Inc.*, 2008 WL 376354 (Del Super. Feb. 12, 2008).

⁸ *Id.* at 1999 WL 1611337, at *2.

dismissal of his appeal and claim for unemployment benefits.

CONCLUSION

The Unemployment Insurance Appeal Board's decision is **AFFIRMED**.

IT IS SO ORDERED.

/s/ E. Scott Bradley

E. Scott Bradley

ESB/sal

oc: Prothonotary

cc: Parties