

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

DAVID W. DALE,)
) C.A. No. K14A-05-002 JTV
 Appellant,)
)
 v.)
)
 UNEMPLOYMENT INSURANCE)
 APPEAL BOARD,)
)
 Appellee.)

Submitted: September 15, 2014

Decided: November 21, 2014

David W. Dale, *Pro Se.*

Catherine Damavandi, Esq., Department of Justice, Wilmington, Delaware.
Attorney for Appellee.

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

VAUGHN, President Judge

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ORDER

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

1. This is an appeal by David W. Dale ("the claimant") from an Unemployment Insurance Appeals Board's (the "Board") decision that the claimant was liable for an overpayment of unemployment benefits in the amount of \$471.

2. The claimant filed a claim for unemployment benefits effective April 28, 2013 in a weekly amount of \$199. At the time of filing, the claimant also signed a Claimant Notice of Receipt of Benefit Rights and Responsibilities, in which the claimant acknowledged that he understood his responsibility to repay any benefits he received but was not entitled to.

3. The Department of Labor acquired from the employer, Kevin Dale Electric, an income history for the claimant through a quarterly audit of earnings. During the time period at issue, the claimant received income from Kevin Dale Electric in the amount of \$425.50 for the week ending May 4th, \$172.50 for the week ending May 18th, and \$379.50 for the week ending May 25th, which resulted in overpayments of unemployment benefits of \$199, \$73, and \$199 respectively.

4. The claimant did not report any earnings during those periods of time and overpayments were therefore drawn to him. The claimant testified that he did not report his earnings because he did not know that he was supposed to and that things were out of sequence.

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5. Under 19 *Del. C.* §3325¹, an individual who is disqualified to receive unemployment benefits but receives such benefits shall repay those benefits to the Department.

6. The function of the reviewing court is to determine whether substantial evidence supports the Board's findings and whether those findings are free from legal error.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 Board's decision must be affirmed.⁴

7. Based upon my review of the record, I am satisfied that Mr. Dale did receive overpayments totaling \$471, for weeks in question. Therefore, Mr. Dale is liable to repay those benefits to the Department of Labor pursuant to 19 *Del. C.* §3325. I conclude that the Board's decision is supported by substantial evidence and free from legal error.

¹ 19 *Del. C.* § 3325, "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."

² *Noel-Lizkiewicz v. La-Z-Boy*, 68 A.3d 188, 191 (Del. 2013).

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. 2002).

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8. For the foregoing reasons, the decision of the Board is ***affirmed***.

IT IS SO ORDERED.

 /s/ James T. Vaughn, Jr.

cc: Prothonotary
cc: Order Distribution
File