IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR KENT COUNTY

BARKER ENTERPRISES, INC. dba AMERICAN THERAPY & REHABILITATION,	:	C.A. No. K14A-07-003 TBD
Appellant,	:	
v.	:	
DELAWARE DEPARTMENT OF LABOR, DIVISION OF UNEMPLOYMENT INSURANCE APPEALS BOARD,	:	
Appellee.	:	

Submitted: February 3, 2015
Decided: April 22, 2015

ORDER

Upon an Appeal from the Decision of the
Unemployment Insurance Appeals Board.
Affirmed.

Frances A. Barker, Barker Enterprises, Inc., *pro se*

Victoria W. Counihan, Esquire, Department of Justice, Wilmington, Delaware; attorney for Delaware Division of Unemployment Insurance.

WITHAM, R.J.

Before the Court is the *pro se* appeal of Appellant Barker Enterprises, Inc. DBA American Therapy & Rehabilitation (hereinafter "Appellant") from the decision of the Division of Unemployment Insurance (hereinafter "the Division") denying Appellant's appeal pursuant to 19 *Del. C.* § 3317(c). The Court has reviewed the record in this matter and the parties' submissions. For the following reasons, the Division's decision is **AFFIRMED**.

BACKGROUND

On January 5, 2014, Claimant filed for benefits. A Form UC-119 is filled out by an employer to describe the reason for an employee's separation who has filed a claim for unemployment benefits.[1] This was completed by the Appellant and sent back to the Division. The Appellant wrote that the reason for separation was that Claimant, Susan Comegy (hereinafter "Claimant"), "was hired on 3/6/13 on a 90 day probation period. After 6 weeks she could do the job she was hired for after consistent training[...]"[2] After approximately three months, Appellant realized its mistake in writing that the Claimant ***could*** fulfill her job requirements, as opposed to stating that she ***could not***. Appellant/Employer submitted a letter to the Division of Unemployment, bringing attention to the error and writing that it was a mistake.

The Appellant also testified that Claimant was in fact not capable of performing her job and that the form incorrectly left out the word "not."

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[1] Respondent's Answering Br. at *1.

[2] Appellant's Document A.

On July 7, 2014, the Appeals Referee with the Delaware Department of Labor issued its decision informing Appellant that its account should be charged for benefit wages because no disqualifying reason was given as to why the Claimant could no longer work for Appellant. Appellant was charged in the amount of $2,341.60. This total is based on the fourth quarter 2012 through the third quarter 2013. The Appeals Referee issued its decision after the Claims Deputy determined that the Employer's merit rating account was properly charged for benefit wages on April 24, 2014 thereby affirming the Claims Deputy's determination.

The Department sent a notice to Appellant stating that it had reviewed the wages charged to the account and believed that the benefit wages were in fact properly charged.[3] The Appeals Referee stated that because the form indicated that the Claimant was capable of doing her job, and that because the Division relied upon Appellant's information that was initially provided, Appellant should pay wage benefits. The Referee's decision stated that this reliance was reasonable and thus the merit rating account was properly charged. The Appellant timely appealed to this Court.[4]

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[3] R. at 23.

[4] It appears that Frances A. Barker is a representative of the corporate entity and is not an attorney. Therefore, she cannot represent a corporation on appeal. See *Belfint, Lyons & Shuman, PA v. Marc D. Pevar and the Pevar Company*, 862 A.2d 385 (Del. 2004). This Court improperly accepted appellate jurisdiction and will nevertheless decide the case. The Court also notes that Appellant failed to sign the Opening Brief. Pursuant to Del. Super. Ct. R.11, "[e]very pleading, motion, and other paper shall be signed by at least 1 attorney of record in the attorney's individual name, or, if the party is not represented by an attorney, shall be signed by the party." Even though

STANDARD OF REVIEW

In reviewing a benefit wage charge determination, the Court may determine only whether the ruling is supported by substantial evidence and free from error of law.[5] "The Court reviews questions of law *de novo* to determine 'whether the Board erred in formulating or applying legal precepts.'"[6] There is no abuse of discretion unless the Board based its procedural decision "on clearly unreasonable or capricious grounds" or the Board "exceeds the bounds of reason in view of the circumstances and had ignored recognized rules of law or practices so as to produce injustice."[7] If there is no abuse of discretion, the Court must affirm the Board's decision if the Board did not otherwise commit an error of law.[8]

DISCUSSION

Section 3317(c), Title 19 of the Delaware Code provides that the employer is subject to benefit wage charges to its experience merit rating account if the employer's statement on a separation note fails to contest the claimant's entitlement

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the party failed to provide her signature, the Court is still accepting the brief.

[5] *Caffe Gelato, Inc. v. Tulenko*, 2015 WL 757544, at *4 (Del. Super. Feb. 23, 2015) *citing Stoltz Mgmt. Co. V. Consumer Affairs Bd.*, 616 A.2d 1205, 1208 (Del. 1992).

[6] *Caffe Gelato* citing *Funk v. Unemployment Ins. Appeal Bd.*, 591 A.2d 222, 225 (Del.1991).

[7] *Powell v. Unemployment Ins. App. Bd.*, 2013 WL 3834045, at *1 (Del. Super. July 23, 2013) (citing *Hartman*, 2004 WL 772067, at *2)).

[8] *Wilson v. Franciscan Care Ctr.*, 2006 WL 1134779, at *1 (Del. Super. Apr. 18, 2006) (citing *Funk*, 591 A.2d at 225)).

to benefits.[9] Under 19 *Del.C.* § 3355(d), the Court may not consider additional evidence, "but the Court may order additional evidence to be taken before the appeals tribunal."[10] Further, if the findings of the appeals tribunals are supported "by the evidence and in the absence of fraud, shall be conclusive, and the jurisdiction of the Court shall be confined to questions of law."[11]

The issue before the Board throughout the appeals process was whether Claimant was entitled to benefits based on the comments authored by the Employer in the separation note.[12] The Appellant, during both the Hearing and in the Opening Brief, admits to making a mistake by failing to identify that the Claimant was **not** capable of her work duties.[13] The Division reasonably relied on the information provided by Appellant when making its decision. The Appellant failed to list a disqualifying issue as to why Claimant is not entitled to benefits, and for this reason, the Court does not find any abuse of discretion on the part of the Board.

The Court is conscious of the fact that Appellant is litigating this appeal *pro se*. Courts are at liberty to reasonably interpret a *pro se* litigant's filings, pleadings

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[9] 19 *Del.C.* § 3317(c).

[10] 19 *Del. C.* § 3355(d).

[11] *Id.*

[12] Appellant states during the Appeal Hearing that at issue was whether the Employer was a base employer for the Claimant. However, this question was answered by the Referee when Employer was told that yes, it is the base employer for the Claimant. R. at 7.

[13] R. At 5, App. Op. Br. at 2.

and appeals "in a favorable light to alleviate the technical inaccuracies typical in many *pro se* legal arguments. . . ."[14] However, barring extraordinary circumstances, "procedural requirements are not relaxed for any type of litigant. . . ."[15] Appellant has failed to show that extraordinary circumstances existed that prevented her from correctly filling out the separation notice paperwork. The issue before this Court is if there is substantial evidence in the record sufficient to support that the Division's findings are free from legal error, and the Court finds that they are.[16]

The Board's decision denying Appellant's appeal was neither clearly unreasonable nor capricious, nor did the Division otherwise exceed the bounds of reason. Accordingly, the Board did not abuse its discretion.

CONCLUSION

Consequently, it is apparent that the Appeals Referee properly applied the statutory law to the facts of this case. Therefore, the decision of the Division of Unemployment Insurance Appeals is affirmed.

IT IS SO ORDERED.

/s/ William L. Witham, Jr.
Resident Judge

WLW/dmh

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[14] *McGonigle v. George H. Burns, Inc.*, 2001 WL 1079036, at *2 (Sept. 4, 2001).

[15] *Id.*

[16] *Unemployment Ins. Appeals Board v. Martin*, 431 A.2d 1265 (Del. 1981).