

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

DEMETRICE SMITH,

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C.A. No: 13A-10-002 (RBY)

_____ **Appellant,**

:

:

v.

:

:

**UNEMPLOYMENT INSURANCE
APPEAL BOARD,**

:

:

:

Appellee.

:

Submitted: February 21, 2014

Decided: April 1, 2014

*Upon Consideration of Appellant's Appeal from
the Unemployment Insurance Appeal Board*

AFFIRMED

ORDER

Demetrice Smith, *Pro se.*

James T. Wakley, Esquire, Deputy Attorney General, Department of Justice,
Wilmington, Delaware for Unemployment Insurance Appeal Board.

Thomas H. Ellis, Esquire, Deputy Attorney General, Department of Justice,
Wilmington, Delaware for Delaware Division of Unemployment Insurance.

Young, J.

SUMMARY

Appellant Demetrice Smith (“Claimant”) has filed an appeal challenging a decision by the Unemployment Insurance Appeal Board (“the Board”). In its decision, the Board found that Claimant defrauded the Department of Labor in an effort to obtain unemployment benefits to which he was not entitled. The Board further found that, because Claimant did not appeal the earlier decision by the Delaware Division of Unemployment Insurance (“the Division”) before the stated deadline, the decision became final and unreviewable on December 24, 2011. Therefore, the Board asserts, Claimant’s argument challenging his disqualification for unemployment benefits is foreclosed from review.

The Court finds that: 1) the overpayment notices required by 19 *Del. C.* § 3325 were sent to Claimant, and 2) there is substantial evidence to conclude that the overpayment amounts were calculated correctly. Accordingly, the Decision of the Board is **AFFIRMED**.

FACTS AND PROCEDURAL POSTURE

Claimant filed claims for unemployment insurance benefits on June 6, 2010, December 5, 2010, and May 1, 2011. On December 14, 2011, the Division Claims Deputy established that Claimant was paid 52 weeks of unemployment insurance due to fraud, amounting to \$3,863.00, during the period when he was specifically prohibited from collecting benefits, between August 7, 2010 and August 6, 2011. The Division Claims Deputy also issued a determination that disqualified Claimant from receiving benefits after finding that he had failed to report his earnings from employers Wal-Mart, Adecco, and K&L Renovations. The Claims

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Deputy's disqualification determination was sent with an explanation of Claimant's appeal rights at the bottom portion of the document, together with a statement that, "an overpayment will be issued based on this decision," including a notification that the determination would become final on December, 24, 2011, if Claimant did not file an appeal. Claimant did not appeal the Claims Deputy's disqualification determination.

On June 7, 10, and 11, 2013, a Claims Deputy issued four overpayment determinations pursuant to 19 *Del. C.* § 3325, from which Claimant appealed. After a hearing on September 25, 2013, a Division Appeals Referee issued four decisions reversing each of the Claims Deputy's four overpayment determinations as a result of the Division witness' failure to introduce documentary proof of the benefit payments made to Claimant. The Division appealed the Appeals Referee's decision to the Board. The Board reversed after reviewing the existing record; after taking additional testimony; and after considering the Division's payment history screens of benefits paid to Claimant. On October 14, 2013, Claimant filed the instant appeal to the Court. On January 13, 2014, Claimant filed an Opening Brief. On February 6, 2014, Appellee filed an Answering Brief.

STANDARD OF REVIEW

For administrative board appeals, this Court is limited to reviewing whether the Board's decision is supported by substantial evidence and free from legal errors.¹ Substantial evidence is that which "a reasonable mind might accept as

¹ 29 *Del C.* § 10142(d); *Avon Prods. v. Lamparski*, 203 A.2d 559, 560 (Del. 1972).

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adequate to support a conclusion.”² It is “more than a scintilla, but less than preponderance of the evidence.”³ An abuse of discretion will be found if the board “acts arbitrarily or capaciously...exceeds the bounds of reason in view of the circumstances and has ignored recognized rules of law or practice so as to produce injustice.”⁴ Where an agency has interpreted and applied a statute, the court’s review is *de novo*.⁵ In the absence of an error of law, lack of substantial evidence or abuse of discretion, the Court will not disturb the decision of the board.⁶

DISCUSSION

In his Opening Brief, Claimant argues that the Board’s decision should have been based on new evidence, rather than the same evidence of his unemployment benefits history that the Division considered in his first hearing on July 9, 2013. Claimant challenges his disqualification. That is an issue foreclosed from review. A claimant may not challenge the merits of a disqualification decision by appealing an overpayment decision.⁷

² *Olney v. Cooch*, 425 A.2d 610, 614 (Del. Super. 1981) (citing *Consolo v. Fed. Mar. Comm’n*, 383 U.S. 607, 620 (1966)).

³ *Id.* (quoting *Cross v. Calfano*, 475 F.Supp. 896, 898 (D. Fla. 1979)).

⁴ *Delaware Transit Corp. v. Roane*, 2011 WL 3793450, at *5 (Del. Super. Aug. 24, 2011) (quoting *Straley v. Advanced Staffing, Inc.*, 2009 WL 1228572, at *2 (Del. Super. April 30, 2009)).

⁵ *Lehman Brothers Bank v. State Bank Commissioner*, 937 A.2d 95, 102 (Del. 2007).

⁶ *Anchor Motor Freight v. Ciabattoni*, 716 A.2d 154, 156 (Del. 1998).

⁷ *Duncan v. Delaware Department of Labor*, 2002 WL 31160324 (Del. Super. Ct. Sept. 10, 2002). *Thompson v. UIAB*, 2011 WL 1225587 (Del. Super. Ct. Mar. 25, 2011); *Tomer v. Jobe's Landscape, Inc.* 2012 WL 2344638 (Del. Super. Ct. June 14, 2012).

In fact, the only issues that the Court may review on Claimant's appeal are: 1) whether the overpayment notices required by 19 *Del. C.* § 3325 were sent to Claimant, and 2) whether the overpayment amounts were calculated correctly.⁸ It is clear from the record that Claimant received the notices required by 19 *Del. C.* § 3325, including an explanation of Claimant's appeal rights at the bottom of the notice. However, Claimant did not appeal the Claims Deputy's disqualification determination. That inaction rendered the decision final and unreviewable by December 24, 2011.

Additionally, the Division's payment history screens provided a substantial basis for the Board's decision. The record reflects that on December 14, 2011, Claimant was found to have defrauded the Department of Labor to obtain unemployment benefits to which he was not entitled. This finding barred Claimant from obtaining unemployment benefits for a period of one year.

The Division sufficiently established, through Division representative Tanisha Stewart's testimony and Division records, that Claimant received a total of \$3,863.00 during the period he was specifically prohibited from collecting benefits. Pursuant to 19 *Del. C.* § 3325, a claimant who receives an overpayment of employment benefits is liable to the Department of Labor for the repayment of those benefits, even if the funds were received through mere mistake. The Board's decision is supported by substantial evidence, and is free from legal errors.

CONCLUSION

For the foregoing reasons, the decision of the Board is **AFFIRMED**.

⁸ *Id.*

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IT IS SO ORDERED.

/s/ Robert B. Young
J.

RBY/lmc

oc: Prothonotary
cc: Counsel (*via File & ServeXpress*)
Mr. Demetrice Smith, *pro se* (*via U.S. mail*)
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