

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR KENT COUNTY

DARLENE SULLIVAN,)
) C.A. No. K14A-06-003 JTV
 Appellant,)
)
 v.)
)
 UNEMPLOYMENT INSURANCE)
 APPEAL BOARD,)
)
 Appellee.)

Submitted: October 8, 2014
Decided: November 20, 2014

Darlene Sullivan, *Pro Se*.

Paige J. Schmittinger, 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 Darlene Sullivan ("the claimant"), from a decision of the Unemployment Insurance Appeals Board ("the UIAB") affirming a decision of an Appeals Referee that the claimant was liable for an overpayment of unemployment benefits.

2. On August 28, 2011, the claimant filed for unemployment benefits code 10 with a weekly benefit amount of \$146.¹ At the time of her filing, the claimant was employed by Powerhouse Ministries, a 501C3 organization, which is exempt from unemployment tax. Wages paid by a 501C3 organization are not considered wages for eligibility for unemployment insurance. The claimant fully disclosed to the Department of Labor that she worked for a 501C3 organization. Despite her disclosure of her employer's tax status, she began receiving benefits of \$146 a week. Because her employer was a 501C3 organization, the benefits were paid in error.

3. Eventually, the Department of Labor discovered the error. As a result, and pursuant to 19 *Del. C.* § 3325², a Claims Deputy determined an overpayment of

¹ See Record of the Case, 2 (hereinafter "R. at ___").

² Section 3325, Title 19, Delaware Code, provides as follows:

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

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benefits had been established.³ The overpayment totaled \$2,749 and covered a nineteen week period from September 3, 2011 to January 7, 2012.⁴

4. The claimant filed a timely appeal and on April 21, 2014, a hearing was held before an Appeals Referee. The Appeals Referee upheld the Claims Deputy's decision. The claimant subsequently appealed to the UIAB, which affirmed the Appeals Referee's decision.

5. On appeal, the claimant contends she is entitled to the benefits because she was honest, followed the proper procedures, and was initially awarded the benefits through no fault of her own.

6. 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.⁵ Substantial evidence is defined as "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion."⁶ "The appellate court does not weigh the evidence, determine questions of credibility, or make its own factual

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.

³ R. at 1.

⁴ *Id.*

⁵ *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)).

⁶ *Id.* (citing *Streett v. State*, 669 A.2d 9, 11 (Del. 1995)).

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findings.”⁷ If there is substantial evidence and no mistake of law, the UIAB’s decision must be affirmed.⁸

7. While it is true that the claimant disclosed that she worked for a 501C3 organization, I find that there is substantial evidence to support the UIAB’s decision that the claimant owes \$2,749 in overpaid unemployment benefits, and that the decision is free of legal error. The amount of the overpayment is confirmed by the Department of Labor’s payment history to the claimant.⁹ Since wages paid by a 501C3 organization are not considered wages for purposes of unemployment benefits, there were no wages upon which an unemployment benefit amount could be calculated. The record indicates the claimant worked for a 501C3 organization, and therefore, was not entitled to unemployment benefits.

8. 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

⁷ *Id.* (citing *Johnson v. Chrysler Corp.*, 213 A.2d 64, 66 (Del. 1965)).

⁸ *City of Newark v. Unemployment Ins. Appeals Bd.*, 802 A.2d 318, 323 (Del. Super. 2002).

⁹ R at 2.