

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE**

**IN AND FOR NEW CASTLE COUNTY**

WADE CAREY, )  
                  )  
Appellant,      )      C.A. No. N13A-08-003 CEB  
                  )  
v.                )  
                  )  
UNEMPLOYMENT INSURANCE )  
APPEAL BOARD,     )  
                  )  
Appellee.        )

Date Submitted: April 3, 2014

Date Decided: June 5, 2014

**ORDER**

*Upon Consideration of  
Appeal From the Unemployment Insurance Appeal Board.  
**AFFIRMED.***

On this 5th day of June, 2014, upon consideration of the *pro se* appeal of Wade Carey (“Claimant”) from the decision of the Unemployment Insurance Appeal Board (the “Board”), requiring reimbursement for an overpayment of benefits, it appears to the Court that:

1.     Claimant opened an unemployment claim on February 27, 2011, after which he received a total of \$604 in unemployment payments for the two weeks that span February 27, 2011 through March 12, 2011.

2. On April 6, 2011, a Delaware Department of Labor (“DOL”) claims deputy issued a determination disqualifying Claimant from the receipt of benefits after finding that he was not “unemployed” within the meaning of the term as defined by 19 Del. C. § 3302(17). The Claimant has not appealed that determination.

3. On April 2, 2013, a DOL claims deputy issued an overpayment determination in accordance with 19 Del. C. § 3325, requiring Claimant to repay the \$604 he received before the ineligibility determine had been made. Claimant timely appealed that decision to an Appeals Referee.

4. On May 7, 2013, a hearing was held before the Appeals Referee, where testimony was taken from Claimant and a representative from the DOL. The Referee affirmed the claim deputy’s determination, and Claimant appealed to the Board. The Board held a hearing on July 24, 2013, where it heard additional testimony from Claimant and the same representative from the DOL. After reviewing the record and considering the additional testimony, the Board affirmed the Referee’s decision. Claimant subsequently appealed to this Court.

5. This Court may only review Claimant’s appeal to determine if the Board’s decision is supported by substantial evidence and free from legal error.<sup>1</sup>

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<sup>1</sup> See, e.g., *Unemployment Ins. Appeal Bd. v. Duncan*, 337 A.2d 308, 309 (Del. 1975); *Meacham v. Delaware Dept. of Labor*, CIV.A. 01A-08-808, 2002 WL 442168, at \*1 (Del. Super. Ct. Mar. 21, 2002).

Substantial evidence means “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.”<sup>2</sup> Errors of law will be reviewed *de novo*.<sup>3</sup> When lacking legal error, the Board’s decisions are reviewed for an abuse of discretion.<sup>4</sup> The Court will find an abuse of discretion when the Board “exceeds the bounds of reason in view of the circumstances and has ignored recognized rules of law or practice so as to produce injustice.”<sup>5</sup> Ultimately, the Court “will not intrude on the [Board’s] role as trier of fact by disturbing the [Board’s] credibility determinations or factual findings.”<sup>6</sup>

6. Claimant’s primary argument on appeal is that he was eligible for unemployment benefits for that two week period in which he received the \$604. He has not, however, alleged any different facts or circumstances that make his defense to the overpayment dispute any more compelling than his claim to eligibility for benefits – an issue decided adversely to him and over which he has not appealed.

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<sup>2</sup> *Olney v. Cooch*, 425 A.2d 610, 614 (Del. 1981) (quoting *Consolo v. Federal Maritime Commission*, 383 U.S. 607, 620 (1966)).

<sup>3</sup> *Miller v. Garda CL Atl., Inc.*, CIV.A.N10A-04-002JRS, 2011 WL 1344900, at \*1 (Del. Super. Ct. Apr. 7, 2011).

<sup>4</sup> *Id.*

<sup>5</sup> *McIntyre v. Unemployment Ins. Appeal Bd.*, CIV.A.07A-12-001 PLA, 2008 WL 1886342, at \*1 (Del. Super. Ct. Apr. 29, 2008) (citation omitted), *aff’d*, 962 A.2d 917 (Del. 2008).

<sup>6</sup> *Toribio v. Peninsula United Methodist Homes, Inc.*, CIV.A. 08A02001PLA, 2009 WL 153871, at \*2 (Del. Super. Ct. Jan. 23, 2009).

7. A claimant cannot challenge the merits of a disqualification decision by appealing an overpayment decision.<sup>7</sup> “The time for filing an appeal is an express statutory condition of jurisdiction that is both mandatory and dispositive. The appellate jurisdiction of a court cannot be invoked or properly exercised unless an appeal is perfected within the time period fixed by law.”<sup>8</sup> If the claimant fails to appeal the disqualification decision, the decision becomes final and binding for failure to exhaust all administrative remedies.<sup>9</sup> Once this occurs, the Appeals Referee is precluded from considering such evidence in an overpayment decision.<sup>10</sup>

8. Claimant was afforded the opportunity to appeal the disqualification decision and failed to do so. Once the disqualification decision became final after the appeal process, Claimant relinquished any right to appeal that decision. Claimant’s failure to timely appeal precludes review of the underlying merits of the disqualification decision.

9. Therefore, the Court will only consider evidence relevant to the overpayment decision, which Claimant timely appealed. The sole issues before the

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<sup>7</sup> *Tomer v. Jobe's Landscape, Inc.*, CIV.A. S11A-10002ESB, 2012 WL 2344638 (Del. Super. Ct. June 14, 2012); *Thompson v. UIAB*, CIV.A.S10A-01-006THG, 2011 WL 1225587 (Del. Super. Ct. Mar. 25, 2011); *Duncan v. Delaware Dep't of Labor*, CIV.A. 02A-02-005SCD, 2002 WL 31160324 (Del. Super. Ct. Sept. 10, 2002).

<sup>8</sup> *Duncan*, 2002 WL 31160324, at \*2.

<sup>9</sup> *Tomer*, 2012 WL 2344638, at \*2; *Thompson*, 2011 WL 1225587, at \*2; *Duncan*, 2002 WL 31160324, at \*2.

<sup>10</sup> *Tomer*, 2012 WL 2344638, at \*2; *Thompson*, 2011 WL 1225587, at \*2; *Duncan*, 2002 WL 31160324, at \*2.

Court are: 1) whether the overpayment was directed to Claimant; and 2) whether the overpayment amounts were calculated correctly.<sup>11</sup>

10. As to the first question, Claimant received notice of the overpayment decision because he timely appealed the determination. There is also no argument from either party that Claimant failed to receive notice of the determination. As such, the Court finds that the overpayment was directed to Claimant.

11. Next, the Court finds no error with the Board's determination that the overpayment amount was correctly calculated. The Board heard testimony from the DOL representative as to how the overpayment was calculated. Claimant made no attempt in either his hearing before the Appeals Referee or before the Board to prove a calculation error. Likewise, Claimant has never argued that he did not receive the \$604. Absent any evidence of erroneous calculation, the Court finds the Board's decision to be based on substantial evidence and free from legal error.

12. Based on the foregoing, the Court is satisfied that the Board applied the correct legal standards and that its decision is supported by substantial evidence. Accordingly, the decision of the Board denying benefits to Claimant must be **AFFIRMED**.

**IT IS SO ORDERED.**

/s/ **Charles E. Butler**  
Charles E. Butler, Judge

Original to Prothonotary

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<sup>11</sup> *Duncan*, 2002 WL 31160324, at \*2.