

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

GINGER MAGUIRE,)
)
 Appellant,)
)
 V.)
)
 DIVISION OF EMPLOYMENT)
 INSUREANCE and)
 THE UNEMPLOYMENT)
 INSURANCE APPEAL BOARD,)
)
 Appellees.)

C.A. No. N15A-06-003-CEB

Date Submitted: October 21, 2015
Date Decided: January 25, 2016

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

ORDER

This 25th day of January, 2016, upon consideration of the *pro se* appeal of Ginger Maguire (“Claimant”) from the decision of the Unemployment Insurance Appeal Board to dismiss Claimant’s appeal as untimely and affirm the determination that Claimant received an overpayment of benefits, it appears to the Court that:

1. On June 13, 2013, the Division of Unemployment Insurance issued a Notice of Determination finding that Claimant fraudulently collected unemployment benefits during the nineteen weeks from January 19, 2013 through May 25, 2013. Claimant filed an appeal and an Appeals Referee affirmed the determination. Claimant then filed an appeal to the Appeal Board and it affirmed the Referee's decision. Claimant appealed the Board's decision to the Superior Court and the decision was ultimately affirmed on January 29, 2015, finding that there was substantial evidence to support the determination that Claimant's conduct fell within the definition of fraud.¹ Claimant has no further appeal rights as to the issue of disqualification for fraud.

2. On February 2, 2015, the Division of Unemployment Insurance issued a Notice of Determination that Claimant received an overpayment of benefits in the amount of \$6,270.00 during the period in she was disqualified from receiving benefits.² Claimant appealed the determination and an administrative hearing was

¹ See *Maguire v. Unemployment Ins. Appeal Bd.*, 2015 WL 399139, at *1 (Del. Super. Jan. 29, 2015).

² Pursuant to 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

held before Appeals Referee Dina Burge on March 24, 2015. The only issue before the Appeals Referee was whether Claimant received overpayment in the amount stated in the February 2, 2015 Notice of Determination. At the hearing, Claimant admitted that she received payments during the period that she was disqualified, but argued that the payments were not paid as a result of her fraudulent conduct. The Appeals Referee held that the issue of fraud was already affirmed by this Court and therefore could not be readdressed during the hearing. The Appeals Referee issued a written decision on March 26, 2015, stating that Claimant received overpayments in the amount of \$6,270.00 and that she was liable to repay that amount to the Department of Labor. The decision also indicated that the last day to file an appeal with the Board was April 5, 2015.

4. Claimant filed an appeal from the Referee's decision on April 20, 2015, The Board denied Claimant's appeal as untimely filed and affirmed the decision of the Appeals Referee. Claimant appealed the Board's decision to this Court on July 2, 2015. In her opening brief, Claimant maintains that she did not intentionally engage in the fraudulent conduct that disqualified her from receiving benefits.

5. The Court's review is limited to a determination of whether the Board's decision is supported by substantial evidence and free from legal error.³

payment of benefits at the time but on appeal was subsequently found not to be entitled thereto.

³ *Arrants v. Home Depot*, 65 A.3d 601, 604 (Del. 2013).

Substantial evidence is “relevant evidence that a reasonable mind might accept as adequate to support a conclusion of law.”⁴ On appeal, this Court will not “weigh the evidence, determine questions of credibility, or make its own factual findings.”⁵ Errors of law are reviewed *de novo*.⁶ In the absence of legal error, the Board’s decision is reviewed for abuse of discretion.⁷ The Board has abused its discretion only when its decision “exceeds the bounds of reason in view of the circumstances and has ignored recognized law or practice so as to produce injustice.”⁸

6. The record reveals that Board did not abuse its discretion in denying Claimant’s appeal. A party in an unemployment compensation dispute has 10 days in which to seek review by the Board of a Referee’s decision.⁹ When notification of the Referee’s decision is effected by mail, the 10-day period begins to run on the date of mailing.¹⁰ The Referee’s decision indicates that it was mailed on March 26, 2015, and also indicates the last day to file appeal as April 5, 2015. Claimant filed

⁴ *Wyatt v. Rescare Home Care*, 81 A.3d 1253, 1258-59 (Del. 2013) (internal citations omitted).

⁵ *Person-Gaines v. Pepco Holdings, Inc.*, 981 A.2d 1159, 1161 (Del. 2009).

⁶ *Arrants*, 65 A.3d at 604.

⁷ *Id.*

⁸ *McIntyre v. Unemployment Ins. Appeal Bd.*, 2008 WL 1886342, at *1 (Del. Super. Apr. 29, 2008) *aff’d*, 962 A.2d 917 (Del. 2008).

⁹ *See* 19 Del. C. § 3318(c); *see also Funk v. Unemployment Ins. Appeal Bd.*, 591 A.2d 222, 224 (Del. 1991).

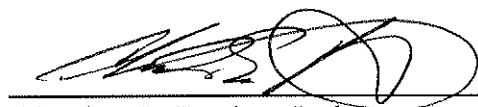
¹⁰ *Funk*, 591 A.2d at 224.

her appeal on April 20, 2015, 15 days after the 10-day period expired. Accordingly, the Board properly denied Claimant's appeal as untimely.¹¹

7. Moreover, Claimant's only argument on appeal is that she did not receive the overpayments as a result of fraud. Claimant has already exhausted her appellate rights as to that issue and is therefore precluded from raising the argument in this appeal.

8. 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 is **AFFIRMED**.

IT IS SO ORDERED.


Charles E. Butler, Judge

¹¹ The Board may exercise its discretion under 19 *Del.C.* § 3320 to accept an untimely appeal *sua sponte*, “[w]here there has been some administrative error on the Department of Labor which deprived the claimant of the opportunity to file a timely appeal, or in those cases where the interest of justice would not be served by inaction.” *Funk*, 519 A.2d at 225. Claimant makes no argument, nor does a review of the record lead the Court to conclude, that the Board should have accepted the appeal *sua sponte*. At the March 24, 2015 hearing, the Appeals Referee confirmed that Claimant's address was up-to-date and reminded the parties that there was a 10-day time limit for filing an appeal.