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

BRITTANY SAPP,)	
) C.A. No.	K12A-05-001 JTV
Appellant,)	
)	
v.)	
)	
UNEMPLOYMENT INSURANCE)	
APPEAL BOARD,)	
)	
Appellee.)	
- -		

Submitted: November 9, 2012 Decided: March 1, 2012

Brittany Sapp, Pro Se.

Caroline Lee Cross, 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

ORDER

Upon consideration of the appellant's briefs and the record of the case, it appears that:

- 1. This is an appeal from a proceeding before the Unemployment Insurance Appeals Board. It appears, from the record below, that the claimant, Brittany Sapp, was entitled to unemployment benefits because she was terminated from employment without just cause. However, the claimant was denied benefits for certain weeks due to her failure to follow a procedural step which is discussed hereinafter. After the claimant followed the correct procedure, she began receiving her benefits. A finding that the claimant was disqualified from receiving unemployment benefits for the weeks in question was made by an Appeals Referee. The claimant appealed to the Board. The Board, consisting of four members, split two to two, with two members voting to affirm the Appeals Referee and two members voting to reverse. When the Board is evenly divided, the decision of the Appeals Referee stands as a final decision.¹
- 2. The claimant initially filed a claim for unemployment benefits with an effective date of June 12, 2011. The claimant and her mother read the Claimant Handbook and online instructions regarding the procedures for applying for weekly benefits. After reviewing the instructions, the claimant and her mother were under the mistaken belief that the correct procedure was to file for unemployment benefits,

¹ See Pulli v. Intervet, Inc., 2006 WL 1173901, at *4 (Del. Super. Apr. 24, 2006) ("When there is a tie [at the Board level], the immediately preceding administrative decision controls.").

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and then wait to hear back from the Department of Labor to determine if the claimant was eligible to receive unemployment benefits before calling the Department through its "TeleBenefits" system each week to claim her weekly benefits. After three weeks of waiting without hearing from the Department or receiving unemployment benefits, the claimant called the Department. The representative from the Department informed the claimant that because she failed to submit any pay orders, her case was returned to a regular day claim, rather than a weekly claim, and that she needed to reopen the weekly claim. The claimant was also informed that in order to receive weekly benefits, she was required to call in each week to claim them, beginning immediately after filing her initial claim for unemployment benefits. After her weekly claim was reopened on July 10, 2011, the claimant began to call in each week using the Department's TeleBenefits system, and she began to receive unemployment benefits immediately thereafter. The claimant also requested that her claim be backdated to June 12, 2011, and that she be given the unemployment benefits for the first five weeks that she did not receive them. The Department denied that request. Benefits for those five weeks are the issue before the Court.

3. The claimant sought review of the Department's denial of the backdated benefits by a Claims Deputy. The Claims Deputy determined that the claimant was not eligible for the benefits, because she did not follow the proper procedures for filing for weekly benefits. The claimant timely appealed that decision to the Appeals Referee. At the hearing before the Referee, the claimant testified that she and her mother read the instructions for filing for weekly benefits online, but that the instructions were difficult to understand and they thought she had to wait to hear from

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the Department before calling in to claim her benefits each week. The Department of Labor representative, Christina Sluder, testified that in order to receive unemployment benefits each week, claimants are required to call in on a weekly basis, which the claimant initially failed to do. The representative also provided a copy of the online instructions for filing, which advises claimants of the requirement that "you must call in each week as indicated in 'Your Guide to Unemployment Insurance Benefits." The claimant did not print out what she viewed online or submit the section in the Claimant Handbook that she thought was unclear or confusing.

4. The Appeals Referee determined that there were no grounds to permit the claimant's request for backdated benefits. In her written decision, the referee cited 19 Del. C. § 3315, which provides that "[a]n unemployed individual shall be eligible to receive benefits with respect to any week only if the Department finds that the individual: . . . (2) Has made a claim for benefits with respect to such week in accordance with such regulations as the Department prescribes." In addition, the Referee cited Regulation 9 of the Division of Unemployment Insurance Regulations, which states that claims for benefits are "effective as of the Sunday immediately preceding the date of filing." Because the claimant did not call in each week to file for weekly benefits for the weeks ending on June 18 through July 9, the Appeals Referee held, the claimant was not eligible for those backdated benefits. The Referee concluded by stating that although it is unfortunate that the claimant did not understand the correct procedures for claiming weekly benefits, "the requirements are outlined in the online material," and "[i]f the claimant was unclear as to what she needed to do, it would have behooved her to contact the local office with any

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questions."2

- 5. The claimant appealed the Referee's decision to the Board. At the hearing before the Board, the claimant again testified that she did not understand the procedures for filing for weekly benefits, and stated that she believed that it was unfair to be denied benefits that she was eligible for when the procedures were unclear to her. She also testified that she read all of the online instructions and that she finally called the Department with questions after she did not hear back from them for a few weeks. As mentioned, the Board was unable to reach a majority decision, and this appeal followed.³
- 6. The claimant contends that she is entitled to the backdated benefits because the instructions for filing for weekly benefits were unclear. Additionally, she contends that she should be granted the backdated benefits because the Board failed to timely send a certified copy of the Board record to this Court pursuant to Superior Court Civil Rule 72, and it failed to timely file its answering brief pursuant to Rule 107.
- 7. I will first address the claimant's contention that she should be entitled to the backdated benefits for the Board's failure to timely send a certified copy of the record of this case to this Court under Rule 72(e). The record reflects that the claimant appealed the Board's decision to this Court on May 8, 2012, and the

² Sapp, Del. Div. of Unemployment Ins. Appeals Referee, Appeal Docket No. 40810553, at 3 (Jan. 4, 2012).

³ See Sapp, Del. UIAB, Appeal Docket No. 40810553, at 2 (Apr. 29, 2012).

Prothonotary issued a case citation to the Board, which was served on May 17, requesting that the record in this matter be sent to this Court. After the Board failed to send the record, the Prothonotary sent a letter to the Board on July 10 indicating that it had ten days to send a copy of the record or the Court would issue a Rule to Show Cause. The Board eventually sent the record to the Superior Court on August 1 before a Rule to Show Cause was issued.

- 8. Superior Court Civil Rule 72(e) requires that the Board send a certified copy of the record to the Superior Court within 20 days of service of the case citation. The claimant contends that the Court should "rule in [her] favor," because the Board failed to comply with Rule 72(e). It appears that the claimant is asking this Court to grant her a default judgment. But the entry of default judgment by this Court is not appropriate on an appeal from an Administrative Board.⁴ Although it is unclear why the Board did not timely send a certified copy of the record to this Court, it did send the record before the Court issued a Rule to Show Cause.
- 9. The claimant next contends that she is entitled to relief because the Board filed its answering brief late. On August 3, 2012, this Court issued a brief scheduling order, stating that the opening brief was due by August 27, the answering brief was due by September19, and the reply brief was due by October 5. The claimant failed to file her opening brief by August 27, and the Court sent her a delinquent notice letter on September 10, 2012 informing her that she must file her

⁴ Gorrell v. Div. of Vocational Rehab. & Unemployment Ins. Appeal Bd., 1996 WL 453356, at *2 (Del. Super. July 31, 1996).

brief within ten days or the Court would dismiss the appeal pursuant to Superior Court Civil Rule 107(f). On September 17, 2012, the claimant filed her opening brief. The Board, represented by the Attorney General's Office, sent a letter to the Court on November 8, 2012, informing the Court that the Board did not intend to file an answering brief, because it is a quasi-judicial entity and it "has no cognizable interest in seeking to have its ruling sustained." On November 19, 2012, the claimant filed a reply brief stating that she should be entitled to relief for the reasons stated in her opening brief, and also because the Board sent the record of this case to the Superior Court late, and filed its answering brief late. However, the decision of the Department of Justice not to file a brief is not grounds for relief in favor of the claimant, and I will proceed to decide the case on its merits.

10. The function of the reviewing court is to determine whether substantial evidence supports the Board's findings, and whether they are free from legal error.⁶ Substantial evidence is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." "The appellate court does not weigh the evidence, determine questions of credibility, or make its own factual findings." It is within the exclusive purview of the Board to judge witness credibility and resolve

⁵ Ans. Letter from Deputy Attorney General, Caroline Cross, dated Nov. 8, 2012 (citing *Wilmington Trust Co. v. Barron*, 470 A.2d 257, 261 (Del. 1983)).

⁶ Thompson v. Christiana Care Health Sys., 25 A.3d 778, 781-82 (Del. 2011).

⁷ Jones v. Unemployment Ins. Appeals Bd., 2001 WL 755379, at *1 (Del. Super. June 11, 2001) (citing Oceanport Ind. v. Wilmington Stevedores, 636 A.2d 892, 889 (Del. 1994)).

⁸ Id. (citing Johnson v. Chrysler Corp., 213 A.2d 64, 66 (Del. 1965)).

conflicts in testimony.⁹ If there is substantial evidence and no mistake of law, the Board's decision must be affirmed.¹⁰ In this case, where the Board was unable to reach a majority decision, this standard is applied to the Appeals Referee's decision.¹¹

- 11. As mentioned, at the Appeals Referee hearing, the claimant testified that she and her mother read the online instructions and the Claimant Handbook, but did not understand that she was required to call the Department's TeleBenefits system each week immediately after filing her claim for unemployment benefits. The Department representative testified that claimants are required to call in on a weekly basis, and that the instructions for doing so are online and in the handbook. She also provided the Referee with a copy of the online instructions for filing, which advises the claimant of the requirement that "you must call in each week as indicated in 'Your Guide to Unemployment Insurance Benefits." In its decision, the Appeals Referee noted that "the requirements are outlined in the online material," and, as mentioned, to the extent that the claimant was confused as to the proper procedures for filing, "it would have behooved her to contact the local office with any questions." 12
 - 12. Given the testimony and evidence presented by the Department's

⁹ *Thompson*, 25 A.3d at 782.

¹⁰ City of Newark v. Unemployment Ins. Appeals Bd., 802 A.2d 318, 323 (Del. Super. 2002).

¹¹ See Gorrell v. Div. of Vocational Rehab. & Unemployment Ins. Appeal Bd., 1996 WL 453356, at *2 (Del. Super. July 31, 1996) (affirming the decision of the Appeals Referee when the Board adopted the Referee's decision without permitting the claimant to initiate a further appeal).

¹² Sapp, Del. Div. of Unemployment Ins. Appeals Referee, Appeal Docket No. 40810553, at 3 (Jan. 4, 2012).

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representative, the Referee's finding that the instructions for filing for weekly benefits were online is supported by substantial evidence. The Referee's determination that under 19 *Del .C.* § 3315 and Regulation 9 of the Division of Unemployment Insurance Regulations the claimant was eligible for the benefits only if she called in to claim them each week is correct. I also conclude that the claimant's misunderstanding of the procedure does not make the Referee's decision legally incorrect. Accordingly, given the standard of review involved, and because I find that the Appeals Referee's decision is supported by substantial evidence and is free from legal error, there are no grounds for this Court to grant the claimant her requested relief.

13. Therefore, the decision below is *affirmed*.

IT IS SO ORDERED.

/s/ James T. Vaughn, Jr.

oc: Prothonotary

cc: Order Distribution

File