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

ANDY DELGADO,)
Appellant,	
V.) C.A. No.: N13A-02-005 RRC
)
UNEMPLOYMENT INSURANCE	
APPEAL BOARD,	
Appellee.)

Submitted: November 15, 2013 Decided: February 4, 2014

Upon Appeal from the Unemployment Insurance Appeal Board. **AFFIRMED.**

<u>ORDER</u>

Andy L. Delgado, Appellant, Tamarac, Florida, pro se.

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

COOCH, R.J.

This 4th day of February 2014, upon consideration of Appellant's Appeal from the Unemployment Insurance Appeal Board (the "Board"), it appears to the Court that:

1. Appellant Andy Delgado ("Appellant") began collecting unemployment benefits starting November 2008 after being laid off. In June 2009 Appellant moved from Felton, Delaware to Florida to seek work. ²

¹ Appellant's Br. of October 2, 2013 at 1.

² Ltr. dated Apr. 30, 2013 from Andy L. Delgado, pro se, to the Court at 1 (hereinafter the "Delgado Ltr.").

Appellant understood that he was put in an unemployment benefits program for people who reside out of state.³

2. On October 13, 2011, Appellant was mailed five overpayment determinations.⁴ Each determination contained the following language:

"This determination becomes final on 10/23/11 unless a written appeal is filed. Your appeal must be received or postmarked on or before the date indicated. If the last date to file an appeal falls on a Saturday, Sunday or Legal Holiday, the appeal will be acceptable the next business day." 5

3. Following the receipt of the determinations, Appellant asserts that he spoke with a member of the Dover Division of Unemployment office who informed him they had "made a mistake and put [him] in the wrong program." He was told he needed to pay the office before he could be placed in the proper program. Appellant describes the conversation with the Division of Unemployment as follows:

She explained to me if [I] wanted to appeal or not. I asked what the difference is. She would reply if [I] appealed it would be a long process If I didn't it would take less time to fix the error since they made the mistake on their part and non mine. So I didn't appeal since knowing she said the situation was going to be resolved.⁸

Appellant did not feel at the time that he should have to pay any money, but claims that he was given the impression during the conversation that the amount of money the Division would want him to repay would be low.⁹

4. Appellant claims he received another letter from the Division of Unemployment at some point after October 2011 informing him that he was eligible again for unemployment benefits. ¹⁰ Appellant received

³ *Id*.

⁴ Division of Unemployment Appeals Referee's Decision (Jan. 3, 2013) at 2. The decisions are noted by case numbers 60807901, 60807921, 60807926, 60807933, and 60807935. The Board issued a decision on all five claims at once and this Court will do the same.

⁵ Division of Unemployment Notices of Determination (Oct. 13, 2011), claims 60807901, 60807921, 60807926, 60807933, and 60807935.

⁶ Appellant's Br. at 1.

⁷ *Id*.

⁸ Delgado Ltr. at 1.

⁹ *Delgado v. None Involved*, Appeal Nos. 50877425, 50877434, 50877439, 50877442, 50877446 at 10 (Del. U.I.A.B. January 2, 2013) (TRANSCRIPT).

¹⁰ Appellant's Br. at 2.

additional payments at half the rate he normally received. Appellant asserts that he assumed this was paying his debt to the Division of Unemployment.

5. Appellant says he was surprised and dismayed to find that his debt to the State of Delaware was over \$20,000.00. 11 He maintains he is not in a position to be able to pay this amount and that it is unfair because it "wasn't [his] fault." Appellant states, "I admit to getting those 10 extra payments of \$165 each [after he was informed of the issues with his payments I will own up to those 10 payments and be glad to pay that back. But the rest I was entitled to that cause I qualified for it."¹³ In his decision not to appeal, Appellant argues that he feels the Division of Unemployment representative "manipulated my decision by not telling me the whole information that I needed at the time we had our conversation. I would of appealed at that very moment if I knew the truth of what the entire process would be."14

Appellant appealed the five overpayment determinations in a letter dated November 16, 2012, and received on November 26, 2012. 15

- 6. On December 6, 2012, a claims deputy addressed Appellant's appeal on each of the five overpayment determinations. ¹⁶ Noting there was nothing in the file to indicate that Appellant did not receive the notices, the claims deputy determined that the prior determinations sent October 13, 2011 were "final and binding due to the claimants failure to file a timely appeal." ¹⁷ A hearing was ordered to address only the issue of timeliness. 18
- 7. An Appeals Referee Hearing was held to consider the five overpayment determinations on January 2, 2013. 19 Following the hearing, the Referee

¹¹ Delgado Ltr. at 1.

¹³ Appellant's Br. at 2.

¹⁵ Ltr. dated Nov. 16, 2012 from Andy L. Delgado, pro se, to the Board.

¹⁶ Division of Unemployment Claims Deputy's Decisions (Dec. 6, 2012) at 1. At this point in the proceedings the claims deputy addressed each determination in a separate, identical decision. For the purposes of this opinion they will be discussed collectively.

¹⁷ *Id*. ¹⁸ *Id*.

¹⁹ Division of Unemployment Notice of Hearings (Dec. 7, 2012). The hearing was actually five hearings, one for each determination, held five minutes apart.

issued a decision on each determination on January 3, 2013.²⁰ The Referee affirmed the decision, holding "[a]s the claimant filed his appeal on November 26, 2012 and there is no evidence in the record to show that the tardiness of the claimant's appeal was due to Division error, the claimant's appeal must be deemed late as it was filed after the requisite period."²¹ As to Appellant's argument that he did not appeal based on his discussion with the Division of Unemployment representative, the Referee notes:

"However, the claimant also testified that he did not agree that he was overpaid and that the Division representative told him that he would have an overpayment whether he appealed or not. Under these circumstances, it appears that the claimant had good reason to immediately appeal the matter. The delay in his appeal was the result of his own choice."²²

Appellant timely appealed this decision to the Board.

- 8. The Board affirmed the Referee's decision in each of the five overpayment determinations on January 16, 2013.²³ The Board noted that although "the explanation of the appeal rights contained on the determinations is unambiguous," Appellant's appeal was received "over thirteen months after the final date to appeal."²⁴ It held "[c]laimant's appeal to the Board raises no new issues. Based on its review of the record, the Board finds no new legal or factual issues for it to consider regarding the issue of timeliness."²⁵ Appellant timely appealed to this Court.
- 9. This Court's review of an Unemployment Insurance Appeal Board decision is defined by statute. Pursuant to 19 *Del. C.* § 3323(a), "the findings of the Unemployment Insurance Appeal Board as to the facts, if supported by evidence and in the absence of fraud, shall be conclusive, and the jurisdiction of the Court shall be confined to questions of law." Superior Court review, "is limited to a determination of whether there was substantial evidence sufficient to support the [Board's] findings." Substantial evidence requires "such relevant evidence as a reasonable mind

²⁰ Division of Unemployment Appeals Referee's Decision (Jan. 3, 2013) at 1.

²¹ *Id.* at 3.

²² *Id*.

²³ Decision of the Unemployment Insurance Appeal Board on Appeal from the Decision of Jacqueline R. Richmond, Appeal Docket Nos. 50877425, 50877434, 50877439, 50877442, 50877446 (Jan. 16, 2013) at 1. ²⁴ *Id.* at 2.

²⁵ *Id.* at 3.

²⁶ Unemployment Ins. Appeal Bd. v. Duncan, 337 A.2d 308, 309 (Del 1975).

might accept as adequate to support a conclusion."²⁷ This Court does not weigh evidence or make determinations based on credibility or facts. ²⁸ An abuse of discretion will be found only if "the Board 'acts arbitrarily or capriciously' or 'exceeds the bounds of reason in view of the circumstances and has ignored recognized rules of law or practice so as to produce injustice."²⁹

- 10. This Court finds no legal error and therefore upholds the Board's decision because substantial evidence exists to support the Board's conclusion that Appellant's appeal was untimely. Appellant waited to file his claim over a year after the date to appeal expired. The language on the overpayment determinations clearly stated that they would become final after October 24, 2011. A thirteen-month delay, despite Appellant's arguments that he relied on a Division of Unemployment representative, is substantial evidence that the appeal was not timely. This Court is not unsympathetic to Appellant's situation; however, it cannot overturn the Board's decision in this case, where the decision is legally sound and otherwise supported by substantial evidence.
- 11. Appellant's appeal was rightfully denied as untimely. The decision of the Board is otherwise supported by substantial evidence and free from legal error. Therefore, the Board's decision is **AFFIRMED.**

IT IS SO ORDERED.

cc: Prothonotary
Unemployment Insurance Accident Board

²⁷ Oceanport Industries, Inc. v. Wilmington Stevedores, Inc., 636 A.2d 892, 899 (Del. 1994) (citing Olney v. Cooch, 425 A.2d 610, 614 (Del. 1981).

²⁸ Johnson v. Chrysler Corp., 213 A.2d 64, 66 (Del 1965).

²⁹ Straley v. Advanced Staffing, Inc., 2009 WL 1228572, at * 2 (Del. Super. Apr. 30, 2009) (citations omitted).

³⁰ October 23, 2011 was a Sunday. Pursuant to the instructions on the overpayment determination, Appellant would have until the next business day, Monday, October 24, 2011, to appeal.