

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

JAMES W. TORBERT II,)
) C.A. No. K13A-11-001 JTV
 Appellant,)
)
 v.)
)
UNEMPLOYMENT INSURANCE)
APPEAL BOARD,)
)
 Appellee.)

Submitted: June 2, 2014
Decided: November 24, 2014

James W. Torbert, II, *Pro Se*.

James T. Wakley, 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, 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 James T. Torbert, II ("the claimant") from the Unemployment Insurance Appeal Board's (the "Board") decision finding that he was liable for an overpayment of unemployment benefits.

2. On July 10, 2012 the claimant lost his job and applied for unemployment benefits. He was awarded benefits in the amount of \$330 per week. In January of 2013 his regular benefits ran out and he then began to receive Emergency Unemployment Compensation ("EUC") payments in the same amount through the week ending March 30, 2013.

3. On May 31, 2013, the Department of Labor sent the claimant a notice informing him that it had determined that he was ineligible for benefits "effective with or for week ending 08/04/2012." The notification included a statement that "[t]his determination becomes final on June 10, 2013 unless a written appeal is filed. Your appeal must be received or postmarked on or before the date indicated." No appeal was filed.

4. On September 12, 2013, Mr. Torbert received two letters from the Department of Labor informing him that he was liable for overpayments of benefits paid in and after the week ending August 8, 2012. One notice assessed him \$7,920 for regular benefits paid from the week ending August 4, 2012 to the week ending January 12, 2013. The other assessed him for an overpayment in the amount of \$3,300 in EUC paid between the week ending January 19, 2013 and the week ending

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March 30, 2013.

5. The claimant then filed appeals from both the May 31, 2013 decision and the September 12, 2013 notifications. The appeals were docketed as two different appeals. The appeal for the overpayment on regular benefits was docketed as Case No. 60904114. The appeal for the overpayment on the ECU was docketed as 60918436.

6. The Board denied both appeals on the grounds that the claimant had failed to file a timely appeal of the May 31, 2013 determination that he was ineligible for benefits effective with or for the week ending August 4, 2012. The Board's decision was a consolidated decision on both case numbers.

7. The claimant appealed the Board's decision to this Court, and it was docketed here as two separate appeals. On May 28, 2014, the Court issued an order in the Board's Case No. 60904114 affirming the Board's decision on the grounds that there was no error in the Board's decision that the appeal of the May 31, 2013 determination was untimely and could not be considered.¹

8. Now before the Court is the appeal from the Board's decision as it related to the Board's Case No. 60818436.

9. This appeal, therefore, involves the same Board decision and the same issue that was considered and decided by this Court in its order issued May 28, 2014. I incorporate the Court's May 28, 2014 decision in this order by reference and adopt

¹ *Torbert v. Unemployment Insurance Appeal Board*, 2014 WL 2547067 (Del. Super. May 28, 2014).

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it as the decision in this case. For the reasons stated there, I again find that there is no error in the Board's decision that the claimant's failure to file a timely appeal from the May 31, 2013 determination is fatal to his appeal to the Board.

10. For the foregoing reasons, the decision of the Board is ***affirmed***.

IT IS SO ORDERED.

 /s/ James T. Vaughn, Jr.

cc: Prothonotary
cc: Order Distribution
File