SUPERIOR COURT OF THE STATE OF DELAWARE

RICHARD R. COOCH RESIDENT JUDGE NEW CASTLE COUNTY COURTHOUSE 500 North King Street, Suite 10400 Wilmington, Delaware 19801-3733 (302) 255-0664

Ms. Colene Lafferty-Eaton 314 Ashbourne Road Claymont, Delaware 19703 Appellant

T.D. Bank NA c/o TALX P.O. Box 283 Saint Louis, Missouri 63166 Appellee

Mr. James T. Wakley, Esquire
Deputy Attorney General
Delaware Department of Justice
820 N. French Street, 7th Floor
Wilmington, Delaware 19801
Attorney for Appellee Unemployment Insurance Appeal Board

Re: Colene P. Lafferty-Eaton v. T.D. Bank NA & The Unemployment Insurance Appeal Board C.A. No. N13A-03-011 RRC

Submitted: November 22, 2013 Decided: February 20, 2014

Upon the Unemployment Insurance Appeal Board's Motion to Alter or Amend Judgment.

GRANTED.

Dear Ms. Lafferty-Eaton, Mr. Wakley, and T.D. Bank NA:

INTRODUCTION

The Unemployment Insurance Appeal Board ("the Board") has moved to alter or amend this Court's decision on November 1, 2013 that reversed this case and remanded it to the Board. The Board's decision of March 4, 2013 had held that Appellant Colene Lafferty-Eaton ("Employee") had been discharged by her employer for just cause, and was thereby disqualified to receive unemployment benefits. Employee had been terminated in August 2012 for violation of company policy, after working as a teller for two years. She was initially granted unemployment benefits by a Department Claims Deputy; T.D. Bank NA ("Employer") appealed that decision to an Appeals Referee. Employer was represented by TALX, an Equifax subsidiary that handles unemployment cases on behalf of various employers. Following the decision of the Appeals Referee that Employee had been discharged for just cause, thus reversing the decision of the Department Claims Deputy, Employer failed to participate in any meaningful way in Employee's further appeals before the Board and before this Court. Employee appealed the decision of the Appeals Referee to the Board. The Board upheld the decision of the Appeals Referee, finding that Employee was disqualified from receipt of unemployment benefits.

Employer presumably received a copy of the Court's briefing schedule by letter of June 19, 2013, Employer failed to file an Answering Brief. On August 8, 2013, this Court issued a "Final Delinquent Brief Notice" but received no response from Employer. The Court then issued a decision on November 1, 2013, reversing the Board solely on the basis that Employer had failed to file an Answering Brief in accordance with Superior Court Civil Rule 107. The Court did not reach the merits of the Employee's original claims. The Board then filed the pending "Motion to Alter or Amend Judgment." Employee filed a Response in opposition to the Board's motion.

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¹ For additional facts not directly relevant to the Motion before this Court, *see Lafferty-Eaton v. T.D. Bank NA*, 2013 WL 5945054 (Del. Super. Nov. 1, 2013). Superior Court Civil Rule 107 (f) reads:

If any brief, memorandum, deposition, affidavit, or any other paper which is or should be a part of a case pending in this Court, is not served and filed within the time and in the manner required by these Rules or in accordance with any order of the Court or stipulation of counsel, the Court may, in its discretion ... consider the motion as abandoned, or summarily deny or grant the motion, such as the situation may present itself, or take such other action as it deems necessary to expedite the disposition of the case.

THE PARTIES' CONTENTIONS

1. The Board's Contentions

The Board maintains this Court's decision needs to be corrected to prevent "manifest injustice." Its arguments *in toto* are the following:

This Court subsequently reversed the judgment of the Board not on the merits of that determination, but rather upon a finding that T.D. Bank's inexplicable nonparticipation warranted a finding of default. The Court did not address the merits of the case itself. The Board believes that this Court's decision unfairly burdens the Delaware Unemployment Compensation Fund (hereinafter the "Fund") with paying benefits to a woman twice deemed ineligible pursuant to 19 *Del. C.* § 3314(2). That burden falls not solely upon T. D. Bank or TALX, but rather upon the whole of assessed employers in this State.

The Fund, authorized by 19 *Del. C.* § 3161, is funded by assessments levied against employers pursuant to the scheme provided for in chapter 33 of Title 19 and Department regulations. Under this statutory and regulatory scheme, a finding that a former employee is entitled to benefits affects an Employer's "state experience factor." That factor is but one data point in the calculation that ultimately determines an employer's assessment amount. And '[a]n employer does not reimburse the [F]und dollar for dollar in respect to benefits paid out of the fund to a particular employer's employees.' Rather, an employer may only pay into the Fund a small percentage of the amounts that may be eventually paid out.

The Board, in addition to acting as an arbiter of disputes brought before it pursuant to 19 *Del. C.* § 3320, acts as a trustee of the Unemployment Compensation Fund. In that capacity, the Board is charged with 'see[ing] to it that the monies in the fund are spent for the public purpose authorized by the unemployment insurance laws of this state.' Thus, the Board is not bound by the will of the parties who appear before it, but instead must independently assess whether an individual seeking unemployment benefits is actually entitled to those benefits.

In this instance, the Board properly performed its duty and evaluated the claim for benefits on the merits. That conclusion is entitled to a strong measure of deference. Indeed, review by this Court is 'limited to the determination of whether there was substantial evidence sufficient to support the [Board's] findings.' In light of its role as trustee of the Fund, the Board would ask that the

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² Appellee's Mot. to Alter or Amend Judgm. at 2.

Court afford that deference to the Board's decision and reconsider its decision here.

The Board shares the Court's displeasure with parties who fail to appear either before the Board or the Court. In fact, it is those employers 'represented' by TALX and other third-party consultants who most often fail to appear at hearings before the Board. Undersigned counsel has personally expressed those concerns to TALX and Equifax staff. But it does not appear that any change will be Unfortunately, reversing decisions reached by the Board for forthcoming. noncompliance of parties with the Court's orders punishes not that party, but the community of employers who pay into the Fund. The Board would ask that the Court reconsider its decision and decide this case on the merits.³

2. Employee's Contentions

Employee requests that this Court allow its previous decision to stand.⁴ She maintains that Employer's stated reason for discharge is untrue and unsupported by evidence. Employee's arguments on the merits of her unemployment appeals claim are as follows:

I was discharged by TD Bank because they wanted to be rid of me due to my age and medical issues. They took advantage of the fact of my being off and making it look as if I my drawer was out of balance. I know it wasn't and so do they.⁶

Employee contends she has "done everything right in the whole appeals process" while Employer failed in any way to defend its claims when she appealed. She refutes the Board's assertion that she was "twice deemed ineligible" saying that she was originally deemed eligible but then subsequently denied based on Employer's "blatant[] lie[s]."8 She takes the position that Employer is "in default" for their failure to respond to her appeal and she is therefore entitled to compensation.⁹

⁶ *Id.* at 3.

³ *Id.* at 3-4 (citations omitted) (emphasis added).

⁴ Employee's Response at 2.

⁷ *Id.* at 2-3.

⁸ *Id.* at 3.

STANDARD OF REVIEW

"Law courts in Delaware have long had the inherent power to vacate, modify or set aside their judgments or orders during the term in which they were rendered." "The disposition of a Superior Court Civil Rule 59(d) motion to alter or amend the judgment is within the sound discretion of the trial court." "A motion to alter or amend the judgment shall be served and filed not later than 10 days after entry of the judgment." "The Superior Court's power to entertain Rule 59(d) motions is jurisdictional."

The Delaware test to succeed on a Motion to Alter or Amend Judgment requires Plaintiff to establish one of the following: "(1) an intervening change in controlling law; (2) the availability of new evidence not previously available; or (3) the need to correct clear error of law or to prevent manifest injustice." ¹⁴

DISCUSSION

This Court was unaware of the policy considerations pointed out by the Board in its Motion to Alter or Amend Judgment that militate in favor of deciding this case on the merits, even when an Employer/Appellee does not participate. This Court now finds that there is a need in this case to prevent a "manifest injustice" by correcting its previous decision. While the Court remains frustrated with Employer and its representative's complete lack of participation in Employee's appeal, it does not seek to punish the employers of Delaware that pay into the Unemployment Compensation Fund. Therefore, this Court reverses its decision and will address Employee's appeal on the merits of her claim.

Turning to the Board's decision of this case on the merits, 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

¹⁰ Tyndall v. Tyndall, 214 A.2d 124, 125 (Del. 1965).

¹¹ Carriere v. Peninsula Indem. Co., 2000 WL 973134, at *2 (Del. Super. June 12, 2000) (citing Bennett v. Andree, 252 A.2d 100, 103 (Del. 1969)).

¹² Super. Ct. Civ. R. 59 (d).

¹³ Carriere, 2000 WL 973134, at *2 (citing Preform Bldg. Components, Inc. v. Edwards, 280 A .2d 697, 698 (Del. 1971)).

¹⁴ Kostyshyn v. Commissioners of Town of Bellefonte, 2007 WL 1241875, at *1 (Del. Super. Apr. 27, 2007).

substantial evidence sufficient to support the [Board's] findings." ¹⁵ Substantial evidence requires "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." This Court does not weigh evidence or make determinations based on credibility or facts. ¹⁷ When considering the facts, the Court defers to the Board's expertise and competence. 18 As such, the Court must uphold a Board's decision that is supported by substantial evidence even if, in the first instance, the reviewing judge might have decided the case differently. 19 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." 20

This Court finds no legal error and therefore upholds the Board's decision because substantial evidence exists to support the Board's conclusion that Employee was discharged for just cause and is therefore disqualified to receive unemployment benefits. Employee was aware of company policies and had been previously disciplined.²¹ The Board noted that Employee "does not dispute the fact that she failed to adhere to Employer's policy when she failed to count out her box at the end of her shift."²² That "Employer established that a policy existed, that [Employee] was aware of that policy, and that [Employee] violated that policy" is adequate substantial evidence to support the Board's decision.²³ This Court is not unsympathetic to Employee's situation; however, it cannot overturn the Board's decision in this case on the merits, where the decision is legally sound and otherwise supported by substantial evidence.

This Court has issued other decisions in line with the Rule 107 reasoning originally used in this case.²⁴ This Court in the future will decline to follow those cases.

¹⁵ Unemployment Ins. Appeals Bd. v. Duncan, 337 A.2d 308, 309 (Del. 1975).

¹⁶ 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).

¹⁷ Johnson v. Chrysler Corp., 213 A.2d 64, 66 (Del. 1965).

¹⁸ Histed v. E.I. DuPont de Nemours & Co., 621 A.2d 340, 342 (Del. 1993). See also 29 Del. C. § 10142(d).

¹⁹ Kreshtool v. Delmarva Power & Light Co., 310 A.2d 649, 652 (Del. Super. July 9, 1973).

²⁰ Straley v. Advanced Staffing, Inc., 2009 WL 1228572, at * 2 (Del. Super. Apr. 30, 2009) (citations omitted).

²¹ Decision of the Unemployment Insurance Appeal Board on Appeal from the Decision of Geoffrey D. Silverberg, Appeal Docket No. 10863449 at 3 (March 4, 2013). ²² *Id*.

²⁴ See Fuller-Hickman v. Comcast Cable, 2012 WL 1415708 (Del. Super. Feb. 21, 2012); Byrd v. Westaff USA, Inc., 2011 WL 3275156 (Del. Super. July 29, 2011); Elder v. Careers USA, 2011 WL 3081437 (Del. Super. July 21, 2011); Crews v. Sears Roebuck & Co., 2011 WL 2083880 (Del. Super. May 11, 2011). The Board did not file a Motion to Alter or Amend Judgment in any of these cases.

CONCLUSION

Accordingly, for all the reasons stated above, the Unemployme	nt Insurance
Appeal Board's Motion to Alter or Amend Judgment is GRANTED .	The March 4
2013 decision of the Board is AFFIRMED.	

Richard R. Cooch, R.J.

oc: Prothonotary

Unemployment Insurance Appeal Board