

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

<b>PHYLLIS WILLERTON,</b>	)	
	)	
<b>Appellant,</b>	)	
	)	
<b>v.</b>	)	<b>C.A. No. N14A-03-003 FWW</b>
	)	
	)	
<b>UNEMPLOYMENT INSURANCE</b>	)	
<b>APPEAL BOARD</b>	)	
	)	
<b>Appellee.</b>	)	

Upon Appellant’s Appeal of The Unemployment Insurance Appeal Board’s  
Decision:  
**AFFIRMED.**

**OPINION AND ORDER**

Submitted: October 14, 2014  
Decided: January 8, 2015

Phyllis Willerton, *pro se*, 429 Ryan Drive, Rising Sun, Maryland 21911;  
Appellant.

Paige J. Schmittinger, Esquire, Delaware Department of Justice, 820 North French  
Street, Wilmington, Delaware 19801; Attorney for Appellee.

**WHARTON, J.**

## **I. INTRODUCTION**

Phyllis A. Willerton (“Appellant”) filed a Notice of Appeal on February 14, 2014 requesting judicial review of the Unemployment Insurance Appeal Board’s (“Board”) February 4, 2014 decision affirming the Appeals Referee’s decision to deny her unemployment insurance benefits for the week ending October 19, 2013. Appellant contends that the Board’s decision was unjustified because she made a clerical error on her application and did not receive notice to correct the error which ultimately resulted in the Appeals Referee and the Board concluding that Appellant did not search for work during the week in question and, therefore, was ineligible to receive benefits.

In considering the appeal, the Court must determine whether the Board’s decision is supported by substantial evidence and free of legal error. Upon consideration of the pleadings before the Court and the record below, the Court finds that there is substantial evidence to support the Board’s ruling and the Board did not err in reaching its decision. Accordingly, the Board’s decision is

**AFFIRMED.**

## **II. FACTUAL AND PROCEDURAL CONTEXT**

Appellant submitted an application to the Department of Labor Division of Unemployment Insurance (“Department”) for unemployment insurance benefits for the week ending October 19, 2013. On November 4, 2013, the Department

mailed a letter to Appellant's home address that stated that Appellant "did not report a work search date or reported a date that does not apply to this week" and, therefore, the application was deficient ("Deficiency Letter").<sup>1</sup> The Deficiency Letter warned Appellant that failure to contact the Department by November 14, 2013 regarding the application could result in denial of benefits.<sup>2</sup>

On November 21, 2013, via a Notice of Determination mailed to Appellant's home address, the Department notified Appellant that she was ineligible to receive benefits for the week ending October 19, 2013 because the work search date provided on the application was not for the week claimed and Appellant failed to contact the Department to rectify the deficiency.<sup>3</sup> Appellant appealed to a Department Appeals Referee alleging that she did not receive the Deficiency Letter in the mail.<sup>4</sup> Appellant also asserted that she did, in fact, seek employment during the week in question.<sup>5</sup>

The Appeals Referee held a hearing on December 23, 2013. At the hearing, a representative of the Department testified that Appellant's application for unemployment insurance benefits for the week ending October 19, 2013 was denied because Appellant provided a work search date of October 12, 2013 which

---

<sup>1</sup> R. at 25.

<sup>2</sup> *Id.*

<sup>3</sup> R. at 2.

<sup>4</sup> R. at 5-6.

<sup>5</sup> *Id.*

was one day prior to the timeframe to receive benefits for that week.<sup>6</sup> Appellant claimed that, according to her personal records, she searched for work on October 15, 2013 and that she must have inadvertently written the wrong work search date on the application.<sup>7</sup> Appellant testified that she did not receive the Deficiency Letter in the mail and only became aware of the letter when it was referenced in the Notice of Determination denying her benefits.<sup>8</sup>

In the Appeals Referee's written decision, issued on December 24, 2013, the Referee determined that Appellant was ineligible to receive benefits for the compensable week in question pursuant to 19 *Del. C.* §3315(2)<sup>9</sup> because Appellant did not meet all of the requirements set forth by the Department. Specifically, the Referee found that the Department provided evidence that Appellant was required to provide additional information for the week in question and that Appellant had failed to do so.<sup>10</sup> With respect to Appellant's claim that she did not receive the

---

<sup>6</sup> R. at 13:14-20.

<sup>7</sup> R. at 18:15-18.

<sup>8</sup> R. at 17:24-25.

<sup>9</sup> 19 *Del. C.* §3315 provides, in relevant part:

An 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;

<sup>10</sup> R. at 22.

Deficiency Letter in the mail, the Referee found that there was no evidence that the Department was responsible for the error.<sup>11</sup>

On January 2, 2014, Appellant appealed the Referee's decision to the Board on the basis that her clerical error made in the application was not grounds to deny benefits.<sup>12</sup> The Board considered the evidence available to the Appeals Referee, the Referee's decision and the Appellant's argument and affirmed the Referee's decision to deny benefits.<sup>13</sup> In its written decision, the Board found that Appellant failed to comply with Department regulations.<sup>14</sup>

### III. PARTIES' CONTENTIONS

Appellant appealed the Board's decision on February 14, 2014 and asserted the following:

- (1) I wrong [sic] wrong date down on paperwork – is my 12 possibly a 15
- (2) I did not receive original paperwork to correct
- (3) Made appeal on time and should have been concluded I don't understand negative outcome.<sup>15</sup>

Counsel for the Board advised the Court that the Board did not intend to participate in the appeal unless directed to do so by the Court because the underlying case was

---

<sup>11</sup> *Id.*

<sup>12</sup> R. at 26.

<sup>13</sup> R. at 27.

<sup>14</sup> R. at 28.

<sup>15</sup> R. at 34.

decided on the merits and the Board has no interest in having its decision affirmed.<sup>16</sup>

#### IV. STANDARD OF REVIEW

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.” Therefore, on appeal the Court cannot weigh the evidence, make factual findings or assess witness credibility.<sup>17</sup> Instead, the Court’s function at this stage is to “determine whether or not there was substantial competent evidence to support the finding of the Board, and, if so, to affirm the findings of the Board.”<sup>18</sup> Substantial evidence is that which a reasonable mind might accept as adequate to support a conclusion.<sup>19</sup>

#### V. DISCUSSION

Affording Appellant leeway in communicating her arguments as a *pro se* litigant,<sup>20</sup> the Court can discern two independent but related arguments. First, Appellant disagrees with the Board’s decision because she does not agree that a

---

<sup>16</sup> Board Resp., D.I. 7 (citing *Wilmington Trust Co. v. Barron*, 470 A.2d 257, 261 (Del. 1983)).

<sup>17</sup> *Johnson v. Chrysler Corp.*, 213 A.2d 64, 66 (Del. 1965).

<sup>18</sup> *Unemployment Ins. Appeal Bd. v. Div. of Unemployment Ins.*, 803 A.2d 931, 936 (Del. 2002)(internal citation omitted).

<sup>19</sup> *Oceanport Indus., Inc. v. Wilmington Stevedores, Inc.*, 636 A.2d 892, 899 (Del. 1994).

<sup>20</sup> See *Buck v. Cassidy Painting, Inc.*, 2011 WL 1226403, at \*2 (Del. Super. Mar. 28, 2011)(“When appropriate, this Court will provide pro se litigants some degree of latitude in preparing and presenting their cases.”)

clerical error should result in denial of benefits. Appellant's second argument is that because she lacked notice of the deficiency she was deprived the opportunity to correct the clerical error which resulted in a denial of due process.

**A. The Board's Denial of Unemployment Insurance Benefits Based Upon Appellant's Error Contained in Her Application Is Supported by Substantial Evidence and Free of Legal Error.**

A person is eligible to collect unemployment insurance benefits with respect to a given week only if the individual "has made a claim for benefits with respect to such week in accordance with such regulations as the Department prescribes."<sup>21</sup> To qualify for benefits, the Department requires, *inter alia*, that a claimant certifies that she is actively seeking employment on a weekly basis.<sup>22</sup> If the claimant fails to provide evidence that she is actively seeking employment on a weekly basis, the claimant will be ineligible for the receipt of unemployment benefits for that week.<sup>23</sup>

Appellant's first and third assertions, that she wrote the wrong work search date on the application and that she disagrees with the Board's outcome, involve questions of fact that are not properly before the Court on appeal. The Board affirmed the Referee's decision to deny payment for the week ending October 19, 2013 because the record indicated that Appellant failed to show proof that she

---

<sup>21</sup> 19 Del. C. § 3315(2).

<sup>22</sup> 19 Del. Admin. C. § 1000-1202.6.2.3.

<sup>23</sup> *Id.* at § 1000-1202.6.3.

searched for work during the relevant time period and failed to respond to the Department's Deficiency Letter. Based upon the Referee's factual findings, the Board had substantial evidence to conclude that Appellant did not comply with Department regulations that required her to submit proof of an active work search on a weekly basis. Therefore, the Board's decision to deny unemployment insurance benefits for that week was not legal error.

**B. The Board Did Not Deny Appellant Due Process When It Concluded that Appellant Presumptively Received the Deficiency Letter.**

Procedural due process requires that parties must be adequately notified of agency actions that will impact their rights, privileges and immunities.<sup>24</sup> Due process is satisfied when notice is sent in a manner reasonably calculated to apprise a person of her opportunity to be heard.<sup>25</sup> Generally, for notice to be effective, it must be received; however, in Delaware, the law presumes that mailed material that is correctly stamped and addressed was received by the party to whom it was addressed.<sup>26</sup> The presumption of receipt may be bolstered by other facts including that the party claiming lack of receipt actually received subsequent mailed material at the same address.<sup>27</sup> The presumption of receipt may be rebutted where the party

---

<sup>24</sup> See *Fuentes v. Shevin*, 407 U.S. 67, 80 (1972).

<sup>25</sup> *Id.* at 81.

<sup>26</sup> *Windom v. Ungerer*, 903 A.2d 276, 282 (Del. 2006).

<sup>27</sup> *Straley v. Advance Staffing, Inc.*, 2009 WL 3451913, at \*2 (Del. 2009)(TABLE).



asserting lack of receipt shows that the mail was never in fact received<sup>28</sup> but “mere denial of receipt is insufficient to rebut the presumption.”<sup>29</sup>

Appellant asserts that she did not actually receive the Deficiency Letter at her home address but Appellant does not claim that the Deficiency Letter was improperly addressed or lacked postage. She concedes that she received the Notice of Determination three weeks later at the same address. Therefore, the Board’s presumption that Appellant received notice of the deficiency in the mail is supported by substantial evidence and the Board did not commit legal error.

## **VI. CONCLUSION**

The Court finds that the Board’s decision to deny unemployment insurance benefits for the week ending October 19, 2013 is supported by substantial evidence and is free from legal error. Therefore, the decision of the Board is hereby **AFFIRMED.**

**IT IS SO ORDERED.**

---

/s/ Ferris W. Wharton, Judge

---

<sup>28</sup> *Hall v. Camper*, 347 A.2d 137, 139 (Del. Super. 1975).

<sup>29</sup> *Straley*, 2009 WL 3451913, at \*2.