

SUPERIOR COURT  
OF THE  
STATE OF DELAWARE

T. HENLEY GRAVES  
*RESIDENT JUDGE*

SUSSEX COUNTY COURTHOUSE  
1 THE CIRCLE, SUITE 2  
GEORGETOWN, DE 19947  
(302) 856-5257

March 4, 2013

Frederick E. Welk  
12945 Alex Avenue  
Laurel, Delaware 19956

Thomas H. Ellis, Esquire  
Deputy Attorney General  
Department of Justice  
820 North French Street  
Wilmington, Delaware 19801

**RE: *Welk v. Unemployment Insurance Appeal Board,***  
**C.A. No. S12A-09-003THG**

Submitted: February 1, 2013

Decided: March 4, 2013

On the Unemployment Insurance Appeal Board's Denial of Application  
for Further Review of Claimant's Exhaustion of Benefits: **AFFIRMED**

Dear Mr. Welk and Counsel:

Frederick Welk appeals the decision of the Unemployment Insurance Appeal Board ("the Board") that found Mr. Welk had exhausted his unemployment benefits. For the reasons set forth herein, the Court affirms.

**Procedural & Factual Background**

Mr. Welk was laid off from his place of employment on May 19, 2011. At that time, he was told by his employer's representative that he would be eligible for up to 99 weeks of unemployment benefits. Mr. Welk originally filed for unemployment benefits

effective May 22, 2011. He was paid for 26 weeks of unemployment, with the final payment made the week ending November 19, 2011. He also received an additional 34 weeks of benefits under Tier 1 and Tier 2 of the federally-funded Emergency Unemployment Compensation Benefits (“EUC”) extension program. On July 16, 2012, the Department of Labor (“DOL”) notified Mr. Welk he had exhausted his unemployment benefits. Mr. Welk appealed and a hearing was held before an Appeals Referee on August 16, 2012. The Appeals Referee, by way of decision mailed August 17, 2012, concluded Mr. Welk had exhausted his state and federal unemployment benefits. Mr. Welk appealed to the Board for further review. The Board denied Mr. Welk’s request and Mr. Welk now appeals that decision to this Court.

### Discussion

When reviewing the decisions of the Board, this Court must determine whether the Board’s findings and conclusions of law are free from legal error and are supported by substantial evidence in the record.<sup>1</sup> In this case, Mr. Welk acknowledges receipt of the 60 weeks of benefits that the DOL representative testified had been disbursed to Mr. Welk. However, Mr. Welk argues he is entitled to the 99 weeks his employer told him he would

---

<sup>1</sup> *Unemployment Ins. Appeal Bd. v. Martin*, 431 A.2d 1265 (Del. 1981); *Pochvatilla v. United States Postal Serv.*, 1997 WL 524062 (Del. Super.); 19 *Del. C.* § 3323(a) (“In any judicial proceeding under this section, the findings of the [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.”).

receive when he was let go.

Section 3313 of Title 19 provides, in relevant part:

Any eligible individual who files a claim for benefits for weeks of unemployment beginning July, 1975, and thereafter shall be entitled during any benefit year to a total amount of benefits equal to whichever is the lesser of (i) 26 times the individual's weekly benefit amount or (ii) 50 percent of the individual's wages for employment by employers paid during the individual's base period.<sup>2</sup>

Simply put, Delaware law provides for 26 weeks of unemployment benefits absent a federal or state extension. In its answering brief, the DOL elaborated on the mechanics of the distribution of additional unemployment benefits. The DOL's ability to pay benefits is linked by federal and state law to Delaware's unemployment rate. Unfortunately for Mr. Welk, at the time Mr. Welk's benefits ran out on July 14, 2012, the total unemployment rate in Delaware had fallen below the threshold rates set by Congress to trigger the payment of benefits under Tier 3 (maximum of 13 weeks) and Tier 4 (maximum of 6 weeks) of the EUC. Similarly, Delaware's total unemployment rate at the time disqualified Mr. Welk from receiving additional benefits under the state's extended benefit law (maximum of 20 weeks).

Mr. Welk's frustration is understandable: at the time he lost his job, he very well may have been eligible for up to 99 weeks of unemployment benefits. However, in the interim, Delaware's unemployment rate fluctuated in such a manner to prohibit the

---

<sup>2</sup> 19 *Del. C.* § 3313(o).

DOL's distribution of additional unemployment benefits to him in excess of the 60 weeks of benefits he did receive. As the Board correctly observed, the DOL is legally required to comply with federal law regulating the allocation of unemployment benefits.

The Court is satisfied that Mr. Welk received the state and federal unemployment benefits for which he was eligible. The Board's findings are supported by substantial evidence and the decision is free from legal error.

## Conclusion

For the reasons set forth herein, the Board's decision that Mr. Welk has exhausted his unemployment benefits is affirmed.

Very truly yours,

/s/ T. Henley Graves

cc: Prothonotary  
Unemployment Insurance Appeal Board