

and subsequent decision upholding the Deputy's determination (the "Disqualification Decision"), Ms. Starcks' failure to appeal the Disqualification Decision, the transcript of a hearing before the Referee relating to the overpayment of benefits, and the Referee's decision regarding the overpayment of benefits (the "Overpayment Decision").¹

On appeal to this Court, Ms. Starcks contends that she never received notice of the Disqualification Decision disqualifying her from receiving unemployment benefits, and that she would have appealed that disqualification had she received notice. Ms. Starcks also contends that the calculation of overpayment that she owes is incorrect.

For the reasons set forth below, the Board's decision is **AFFIRMED**, as the record on appeal contains substantial evidence to support the Board's determination and is otherwise free from legal error.

PROCEDURAL POSTURE AND RELEVANT FACTUAL BACKGROUND

Ms. Starcks filed a claim for unemployment benefits with the Delaware Department of Labor Division of Unemployment Insurance on July 10, 2011. The Department of Labor initially decided that Ms. Starcks was eligible to receive benefits in the amount of \$330.00 per week.² Ms. Starcks collected benefits from November 2011 through May 2012.

On June 28, 2012, the Deputy determined that Ms. Starcks committed fraud and disqualified her from the receipt of benefits for a period of one year beginning the week ending February 4, 2012 through the week ending February 2, 2013.³ The Deputy disqualified Ms. Starcks after conducting an investigation which revealed that Ms. Starcks began working for Baron HR Healthcare as a substitute teacher at Family Foundation Academy on November 17,

¹ Record [hereinafter "R."] at 30.

² *Id.* at 22.

³ *Id.* at 1.

2011 and subsequently failed to report income that would have, if reported, reduced her weekly benefit amounts.⁴

Ms. Starcks appealed the Deputy's determination to the Referee. The Referee held a hearing on August 10, 2012. At that hearing, Ms. Starcks contended she did not intend to commit fraud. Instead, Ms. Starcks claimed to have spoken with a clerk at her local unemployment office who told Ms. Starcks that only wages on employment over 32 hours a week had to be reported.⁵ After the hearing, the Referee issued the Disqualification Decision. In the Disqualification Decision, the Referee affirmed the Deputy's disqualification determination, concluding Ms. Starcks failed to disclose a material fact with the intent to obtain benefits and, thus, committed fraud. The Division mailed the Disqualification Decision on August 23, 2012.

Ms. Starcks has never filed an appeal, timely or untimely, from the Disqualification Decision.

After the Disqualification Decision, on September 14, 2012, the Deputy further determined that there was an overpayment of benefits in the amount of \$5,610.00. The Deputy came to this number by determining the amount of benefits Ms. Starcks received for the weeks ending February 4, 2012 through May 26, 2012 when she had been disqualified to do so. The Deputy then found that Ms. Starcks was liable for the repayment of that amount to the Department of Labor.⁶ The Deputy's overpayment determination was mailed to Ms. Starcks on September 14, 2012.⁷ Ms. Starcks timely appealed the Deputy's overpayment determination on

⁴ *Id.* Ms. Starcks' wages between February 2012 and May 2012 ranged from \$134.51 to \$356.14. Appellant's Opening Br.

⁵ R. at 27.

⁶ *Id.* at 18-19.

⁷ *Id.* at 1.

September 21, 2012.⁸ A hearing was held with the Referee on October 26, 2012.⁹ On the day of the hearing, the Referee affirmed the overpayment determination – the Overpayment Decision – by the Deputy and mailed a copy of that decision to Ms. Starcks.¹⁰

Ms. Starcks filed an appeal with the Board on November 2, 2012 challenging the Overpayment Decision and the underlying disqualification (*i.e.*, the “Disqualification Decision”).¹¹ The Board held a hearing on November 14, 2012, during which it considered evidence presented to the Referee, the Overpayment Decision and Ms. Starcks’ notice of appeal.¹² The Board determined that the only issue before it was whether Ms. Starcks received any sum of benefits to which she was not entitled.¹³ The Board affirmed the Overpayment Decision, concluding that there was credible evidence presented to the Referee that Ms. Starcks was disqualified for the receipt of all benefits for one year effective the week ending February 4, 2012, and that Ms. Starcks received benefits during the weeks in question in the amount of \$5,610.00.¹⁴

More specifically, the Board found and concluded as follows:

The sole issue before the Board is whether [Ms. Starcks] is liable for the overpayment of benefits during the period in question. Based on the record before it, the Board finds that [Ms. Starcks] received benefits during the time period in which she was disqualified; therefore, she is liable to repay the overpayment of benefits. This basis for the disqualification is not before the Board at this time. There are no new factual or legal issues for the Board to consider. The Board may affirm “any decision of an appeal tribunal on the basis of the evidence previously submitted in such case...”¹⁵

This Board’s decision was mailed to Ms. Starcks on November 27, 2012.

⁸ *Id.* at 3.

⁹ *Id.* at 17.

¹⁰ *Id.*

¹¹ *Id.* at 31.

¹² *Id.* at 30.

¹³ *Id.* at 31.

¹⁴ *Id.*

¹⁵ *Id.* (citing 19 *Del. C.* § 3320).

Ms. Starcks filed her Petition for Appeal with this Court on December 18, 2012.¹⁶ The Court issued a briefing schedule on February 26, 2013. Ms. Starcks filed her opening brief on March 18, 2013.¹⁷ The Division filed a letter in lieu of a brief with the court on April 19, 2013.¹⁸

On May 6, 2013, this matter was referred to this Judge for decision.

PARTIES' CONTENTIONS

Ms. Starcks raises two main contentions in this appeal. Ms. Starcks claims to not have received notice of the Referee's decision affirming the Deputy's determination to disqualify her based on fraud and that because of this she was not given the opportunity to appeal her disqualification.¹⁹ In essence, Ms. Starcks contends that the Overpayment Decision should be overturned as she never was given the opportunity to appeal the Disqualification Decision.

Alternatively, Ms. Starcks argues that the overpayment amount of \$5,610.00 is incorrectly calculated because the payment history submitted by the Department of Labor is inaccurate and misleading.²⁰ She states that, "individuals are allowed to earn 50% of their weekly benefit amount without any deduction...and the earnings [Ms. Starcks] received only affected seven weeks of [her] unemployment benefits."²¹ She further asserted that, "the D.O.L's 'payment history' record doesn't include the 'Earning Allowance' which changes the overpayment amount."²² Ms. Starcks claims that the correct overpayment amount is \$1,561.31.²³

¹⁶ *Id.* at 38.

¹⁷ Appellant's Opening Br.

¹⁸ Appellee's Answering Br.

¹⁹ Appellant's Opening Br.

²⁰ Appellant's Answering Br.

²¹ *Id.*

²² *Id.*; R. at 25.

²³ Appellant's Answering Br.

The Board claims that the only reviewable issue is the Overpayment Decision, and that any argument made by Ms. Starcks regarding her disqualification should not be considered.²⁴ The Board further asserts that the Division presented credible evidence to the Referee that Ms. Starcks was disqualified for the receipt of benefits for a period of one year to begin the week ending February 4, 2012.²⁵ The Board then argues that because there is credible evidence that Ms. Starcks received benefits between the weeks ending February 4, 2012 to May 26, 2012, she received benefits she was not entitled to in the amount of \$5,610.00 and is liable to repay that amount to the Unemployment Compensation Fund.²⁶

STANDARD OF REVIEW

On review, pursuant to 19 *Del. C.* § 3323, “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.”²⁷ Therefore, this Court’s role upon appeal is to determine whether the Board’s findings are “supported by substantial evidence and free from legal error.”²⁸ Substantial evidence is “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.”²⁹ Moreover, the Court may only consider the record before it.³⁰ In reviewing the record for substantial evidence, the Court considers the record in “the light most favorable to the party prevailing below.”³¹

²⁴ R. at 31.

²⁵ *Id.*

²⁶ *Id.*

²⁷ 19 *Del. C.* § 3323 (2012); *Coleman v. Dep’t of Labor*, 288 A.2d 285, 287 (Del. Super. 1972) (“[T]he credibility of the witnesses, the weight of their testimony, and the reasonable inferences to be drawn therefrom are for the Board to determine.”).

²⁸ *Ridings v. Unemployment Ins. Appeal Bd.*, 407 A.2d 238, 239 (Del. Super. 1979); *Crews v. Sears Roebuck & Co.*, N10A-08-011, 2011 WL 2083880, at *2 (Del. Super. May 11, 2011).

²⁹ *Oceanport Indus. V. Wilmington Stevedores*, 636 A.2d 892, 899 (Del. 1994).

³⁰ *Hubbard v. Unemployment Ins. Appeal Bd.*, 352 A.2d 761, 763 (Del. 1976).

³¹ *Steppi v. Conti Elec.*, 2010 WL 718012, at *3, 991 A.2d 19 (table) (Del. Mar. 16, 2010); *Gen. Motors Corp. v. Guy*, 90A-JL-5, 1991 WL 190491, at *3 (Del. Super. Aug. 16, 1991).

The Court will not disturb the Board's determination absent an abuse of discretion by the Board.³² The Court will find an abuse of discretion 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.'"³³

DISCUSSION

A. The Court cannot consider Ms. Starcks' arguments regarding disqualification or the Disqualification Decision.

A court cannot invoke its appellate jurisdiction unless an appeal is submitted within the time frame required by law.³⁴ The Court concludes that the record demonstrates that Ms. Starcks was disqualified from the receipt of unemployment benefits. First, the Deputy determined that Ms. Starcks was disqualified due to fraud. Next, Ms. Starcks appealed the Deputy's disqualification determination to the Referee. The Referee held a hearing, heard from the parties and issued the Disqualification Decision. Finally, Ms. Starcks has never appealed the Disqualification Decision and it is now a final non-appealable decision.

A decision of an appeals tribunal (the Referee) becomes final unless within 10 days after the date of notification or mailing of that decision further appeal is initiated under 19 Del. C. §3320.³⁵ The record here is that Ms. Starcks failed to appeal the Disqualification Decision. Ms. Starcks has argued that she would have appealed the Disqualification Decision if she had know about it but, clearly, she has never formally appealed the Disqualification Decision – either a timely appeal or an untimely appeal supported by an argument of excusable neglect. Therefore, the Disqualification Decision became final and binding.

³² *Crews*, 2011 WL 2083880, at *2; *see also Funk v. Unemployment Ins. Appeal Bd.*, 591 A.2d 222, 225 (Del. 1991) ("The scope of review for any court considering an action of the Board is whether the Board abused its discretion.").

³³ *Straley v. Advanced Staffing, Inc.*, 2009 WL 1228572, at *2 (Del. Super. 2009) (citations omitted).

³⁴ *Duncan v. Delaware Department of Labor*, 2002 WL 31160324 (Del. Super. Ct. Sept. 10, 2002).

³⁵ 19 Del. C. § 3318(c).

On appeal, the Court reviews the case on the record and does not hear new evidence.³⁶

Where a claimant has received adequate notice of the effect of a disqualification decision and of the right to appeal it, the claimant cannot appeal the basis, or merits, of the disqualification through a subsequent appeal of an overpayment determination.³⁷ As such, the Court will not overturn the Overpayment Decision based on arguments that Ms. Starcks may have been improperly disqualified or that she would have, upon notice, appealed the Disqualification Decision.

B. The Board’s decision to affirm the Overpayment Decision is supported by substantial evidence and free from legal error.

The recoupment of overpaid benefits is governed by 19 *Del. C.* § 3325. This statute states that any person who receives benefits of which they are deemed not to be entitled shall be required to repay the amount of overpayment in cash, “regardless of whether such sum was received through fraud or mistake, or whether he was legally awarded the payments of benefits at the time but on appeal was subsequently found not to be entitled thereto.”³⁸ Before initiating the collection of the overpayment amount, the Department of Labor must issue a notice of overpayment and an order for recoupment to defendant.³⁹ “Unless the person files an appeal to an Unemployment Insurance Appeals referee within 10 days after such order was mailed to the person at their last known address, the order shall be final and recoupment shall be made in accordance with the order.”⁴⁰

³⁶ *Thompson v. UIAB*, 2011 WL 1225587 (Del. Super. Ct. Mar. 25, 2011).

³⁷ *Murray v. Unemployment Ins. Appeal Bd., Dep't of Labor*, 1994 WL 637088 (Del. Super. Apr. 22, 1994) (citing *Sandefur v. Unemployment Ins. Appeals Bd. of State*, 1993 WL 389217 (Del. Super. Aug. 27, 1993)).

³⁸ 19 *Del. C.* § 3325.

³⁹ *Id.*

⁴⁰ *Id.*

This Court has recently held, in *Smith v. Unemployment Ins. Appeal Bd.*, that an individual who fails to report wages, and subsequently is disqualified from receiving benefits, is required to repay all of the benefits that were received while being ineligible to receive them.⁴¹ The court stated that, “it was [Smith’s] failure to report [his] earnings that disqualified [him] from receiving unemployment benefits; thus the issue before the court is whether [he] received an overpayment of benefits, not whether he was eligible for unemployment benefits.”⁴² The decision in *Smith* is not controversial as it tracks the plain language of the statute which provides that

*Any person who has received any sum of benefits under [Chapter 33] to which it is finally determined that the person was not entitled shall be liable to repay in cash said overpayment, to the Department for the Unemployment Compensation Fund, or to have such sum deducted from future benefits payable to the person under [Chapter 33]. The person shall be so liable regardless of whether such sum was received through fraud or mistake, or whether that person was legally awarded the payment of benefits at the time but on appeal was subsequently found not to be entitled thereto.*⁴³

Therefore, the *Smith* decision makes it clear that once the disqualification decision is final then the only matter before the Court is whether any benefits were received during the disqualification period.

Here, Ms. Starcks argues that the overpayment amount is incorrect because the Department of Labor has failed to take into account that there may have been weeks in which the amount of wages she was paid still would allow her to receive benefits because it was “within the earning allowance.”⁴⁴ Even if Ms. Starcks is correct, this argument is without merit on this appeal. The Court has made it clear in *Smith* that the issue is not whether Ms. Starcks was entitled to unemployment benefits; instead, it is whether she received the payment of benefits at

⁴¹ *Smith v. Unemployment Ins. Appeal Bd.*, 2013 WL 1718059, at *1 (Del. Super. Apr. 22, 2013).

⁴² *Id.*

⁴³ 19 *Del. C.* §3325 (emphasis added).

⁴⁴ Appellant’s Answering Br.

a time when Ms. Starcks was not so entitled. Due to Ms. Starcks' failure to report her income as required, the Deputy determined that Ms. Starcks was ineligible to receive benefits from the week ending February 4, 2012 through May 26, 2012. The Referee upheld, in the Disqualification Decision, the Deputy's eligibility determination. The Disqualification Decision became final when Ms. Starcks failed to appeal – whether timely or untimely – that decision. Subsequently, the Deputy determined that Ms. Starcks received benefits in the amount of \$5,610.00 during the period of ineligibility. The only issues on appeal then become whether the amount of overpayment (\$5,610.00) is accurate and whether the overpayment is directed toward the proper individual (Ms. Starcks).⁴⁵

The Board's decision is supported by substantial evidence in the record and free from legal error. The Board may affirm a decision “on the basis of the evidence previously submitted to the appeal tribunal.”⁴⁶ The Board considered evidence from the hearing that was held before the Referee on October 26, 2012. The Board heard testimony from a representative from the overpayment unit of the Department of Labor. This representative testified that Ms. Starcks had been disqualified from the receipt of benefits for one year, effective the week ending February 4, 2012, and that she was in receipt of benefits, subsequent to this disqualification for 17 weeks until the week ending May 26, 2012.⁴⁷ The Department of Labor submitted evidence, including a payment history, which showed that Ms. Starcks was overpaid benefits, of which she was not entitled, in the amount of \$5,610.00 during those 17 weeks of ineligibility.⁴⁸ The payment history shows that Ms. Starcks received \$330.00 a week for the 17 weeks in question which

⁴⁵ *Murray v. Unemployment Ins. Appeal Bd., Dep't of Labor*, 1994 WL 637088 at *2 (Del. Super. Apr. 22, 1994).

⁴⁶ 19 *Del. C.* § 3320(a).

⁴⁷ *R.* at 30.

⁴⁸ *Id.* at 31.

brings the total amount of overpaid benefits to \$5,610.00.⁴⁹ Therefore, the overpayment amount is accurate. The Board correctly affirmed the Referee's decision to uphold the Deputy's determination that Ms. Starcks is liable for an overpayment of benefits in the aforementioned amount.

CONCLUSION

For the reasons stated above, the Board's finding that Ms. Starcks received an overpayment of unemployment benefits in the amount of \$5,610.00 is supported by substantial evidence and is free from legal error. Therefore, the Board's decision is **AFFIRMED**.

IT IS SO ORDERED.

Eric M. Davis
Judge

⁴⁹ *Id.* at 25.