

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

THEODORE ISABELLA,

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:

C.A. No: K13A-10-005 (RBY)

_____ **Appellant,**

:

:

v.

:

:

**UNEMPLOYMENT INSURANCE
APPEAL BOARD,**

:

:

:

Appellee.

:

Submitted: May 8, 2014

Decided: June 16, 2014

*Upon Consideration of Appellant's Appeal from
the Unemployment Insurance Appeal Board*

AFFIRMED

ORDER

Theodore Isabella, *Pro se.*

Catherine Damavandi, Esquire, Deputy Attorney General, Department of Justice,
Wilmington, Delaware for Unemployment Insurance Appeal Board.

Young, J.

SUMMARY

Theodore A. Isabella (“Claimant”) has filed an appeal challenging a decision by the Unemployment Insurance Appeal Board (“the Board”). In its decision, the Board found that Claimant defrauded the Department of Labor, Division of Unemployment Insurance (“the Division”), in order to receive benefits to which he was not entitled. On appeal, the issue before the Court is whether the Board correctly determined that Claimant committed fraud by failing to disclose his weekly earnings to the Division.

Claimant was required to report any and all earnings while collecting unemployment benefits. That requirement was incumbent upon Claimant, pursuant to the Division’s Unemployment Handbook, which was provided to Claimant. By his own admission, Claimant failed to report his earnings for three weeks, though he was prompted to do so when filing his weekly claims. Therefore, Claimant is charged with knowingly failing to disclose a material fact with the intent to obtain benefits to which he was not lawfully entitled. Accordingly, Appellant is disqualified from receiving unemployment benefits. The Board's decision is supported by substantial evidence, and is free from legal error. The Decision of the Board is **AFFIRMED**.

FACTS AND PROCEDURAL POSTURE

Claimant filed a claim for unemployment insurance benefits effective March 11, 2012. Pursuant to this claim, he collected a weekly benefit amount of \$330.00. Claimant was employed as Adjunct Faculty by Wilmington University (“Employer”) from September 4, 2012 through the present. Claimant was

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employed part-time, and was compensated by each course taught. In a letter dated September 19, 2012, the Division informed Claimant that his unemployment insurance benefits had been suspended, because Employer indicated that he had returned to work. The letter instructed Claimant to contact the Division no later than September 26, 2012. According to Claimant, in the Board's Transcript of the Administrative Hearing held on September 4, 2013, he contacted the Division on September 25, 2012.

Claimant taught two, seven week block courses starting on January 7, 2013. He earned a total amount of \$4,130.00, which was divided into seven weekly gross payments of \$590.00 during the weeks of the course. A quarterly cross-match audit of Employer determined that Claimant earned wages which he did not fully report to the Division while he continued to claim and collect unemployment benefits. As weekly pay authorization records from the Telebenefits System evidenced, Claimant did not report any earnings from compensable weeks ending in January 12, January 19, or January 26, 2013. For the compensable week ending February 2, 2013, Claimant reported \$256.00 in earnings. For the compensable week ending February 9, 2013, Claimant reported \$148 in earnings. For the compensable week ending February 16, 2013, he reported \$256 in earnings. For the three weeks Claimant actually did report his earnings, the amount reported was less than the amount he reported by Employer.

On March 3, 2013, the Division Claims Deputy ("the Claims Deputy") found that Claimant was disqualified for receipt of benefits, pursuant to Title 19, Section 3314(6), and fraud, effective for the week ending in January 12, 2013 until

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the week ending in January 11, 2014. Furthermore, the Claims Deputy noted that Claimant would also be responsible for any overpayment of benefits received.

On August 14, 2013, Claimant sent a letter and Notice of Appeal to the Division. Claimant sent another letter to the Division on September 3, 2013. On September 4, 2013, an Administrative Hearing was held before the Division Referee (“the Referee”), which was recorded in a transcript (“the Hearing Transcript”). On September 6, 2013, Claimant sent an Addendum Letter to the Division to supplement his testimony from the Administrative Hearing.

On September 10, 2013, the Referee issued a decision affirming the Claims Deputy’s decision. On September 24, 2013, Claimant filed an Appeal Request Notification to appeal the Referee’s decision. On October 2, 2013, the Board conducted a Review Hearing. On October 10, 2013, the Board rendered an opinion affirming the Referee’s decision below. On November 20, 2013, Claimant filed an appeal to this Court. On March 14, 2014, Claimant filed an Opening Brief. The Board has not filed an Answering Brief in this matter.

STANDARD OF REVIEW

For administrative board appeals, this Court is limited to reviewing whether the Board’s decision is supported by substantial evidence and free from legal errors.¹ Substantial evidence is that which “a reasonable mind might accept as adequate to support a conclusion.”² It is “more than a scintilla, but less than

¹ 29 Del C. §10142(d); *Avon Prods. v. Lamparski*, 203 A.2d 559, 560 (Del. 1972).

² *Olney v. Cooch*, 425 A.2d 610, 614 (Del. Super. 1981) (citing *Consolo v. Fed. Mar. Comm’n*, 383 U.S. 607, 620 (1966)).

preponderance of the evidence.”³ An abuse of discretion will be found if the Board “acts arbitrarily or capriciously...exceeds the bounds of reason in view of the circumstances and has ignored recognized rules of law or practice so as to produce injustice.”⁴ Where an agency has interpreted and applied a statute, the court’s review is *de novo*.⁵ In the absence of an error of law, lack of substantial evidence or abuse of discretion, the Court will not disturb the decision of the board.⁶

DISCUSSION

It is Claimant’s position that he had no intent to defraud the Division. Claimant argues that he returned every form he received from the Division that he was required to complete. According to Claimant’s Appeal Letter, he also contacted the Division’s Office on September 25, 2012 by letter, asking a representative how he should calculate and report wages he anticipated receiving from Employer over the course of seven weeks. Claimant claims that he relied on this representative’s guidance, and filed his claims accordingly.

However, on appeal, Claimant does not refute the fact that he failed to notify the Division of the wages he received during the first three weeks of receiving unemployment benefits. The Hearing Transcript indicates that, when

³ *Id.* (quoting *Cross v. Calfano*, 475 F.Supp. 896, 898 (D. Fla. 1979)).

⁴ *Delaware Transit Corp. v. Roane*, 2011 WL 3793450, at *5 (Del. Super. Aug. 24, 2011) (quoting *Straley v. Advanced Staffing, Inc.*, 2009 WL 1228572, at *2 (Del. Super. April 30, 2009)).

⁵ *Lehman Brothers Bank v. State Bank Commissioner*, 937 A.2d 95, 102 (Del. 2007).

⁶ *Anchor Motor Freight v. Ciabattoni*, 716 A.2d 154, 156 (Del. 1998).

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Claimant answered the Telebenefits question sent by the Division, asking him to report his earnings for the week, Claimant put “zero” as the amount. In defense of his failure to notify the Division of the wages he earned from Employer, Claimant asserts that he misunderstood the Division’s definition of an “earned” wage.

According to Claimant’s testimony from the Hearing Transcript before the Division on September 4, 2013, Claimant interpreted an “earned” wage to mean a wage that he received.

However, regardless of Claimant’s alleged lack of intent to defraud the Division, Claimant had received the Division’s Unemployment Handbook (“the Unemployment Handbook”), which clearly states that earnings are to be reported when they are *earned*, not when they are received. According to the Hearing Transcript, Claimant stated that he “probably did not read” the Unemployment Handbook. The Division provided Claimant with the tools to understand how to report his wages correctly. Claimant was required to report any and all earnings while collecting unemployment benefits. He would have known that had he read the Unemployment Handbook.

By his own admission, Claimant failed to report his earnings for three weeks (as he was prompted to do, when filing his weekly claims). Therefore, Claimant knowingly failed to disclose a material fact with the intent to obtain benefits to which he was not lawfully entitled.⁷ The Board's decision is supported by

⁷ Fraud is defined as an intentional misrepresentation of material existing fact made by one person to another with knowledge of its falsity, and for the purpose of inducing the other person to act, and upon which the other person relies with resulting injury or damage. Division of Unemployment Insurance Appeals Referee’s Decision, September 10, 2013. *Black’s Law Dictionary*, P. 548, 2005.

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substantial evidence, and is free from legal error.

CONCLUSION

For the foregoing reasons, the decision of the Board is **AFFIRMED**.

IT IS SO ORDERED.

/s/ Robert B. Young

J.

RBY/lmc

oc: Prothonotary

cc: Mr. Isabella, *Pro se*
Catherine Damavandi, Esq.
Opinion Distribution
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