

The Facts

Defendant Below/Appellant Gary R. Cardwell (“Cardwell”) appeals a judgment in Justice of the Peace Court No. 13 in favor of Plaintiff Below/Appellee State of Delaware Division of Unemployment Insurance (“the Division”). The matter below was a debt collection action to enforce a ruling entered by the Unemployment Insurance Appeal Board (“the Board”).

Cardwell admits that he fraudulently collected four weeks of unemployment insurance in February and March 2004 after failing to report that he was employed during that time. In September 2004, Cardwell re-opened his claim for unemployment insurance compensation and received \$330 per week from October 2, 2004 through January 22, 2005. After an investigation, the Division determined that Cardwell had committed fraud and had therefore been overpaid. On May 24, 2005, the Division issued two separate notices to Cardwell. The first notice, for case number 536941, stated that Cardwell had been overpaid by \$5,280 during the period from October 2, 2004 to January 22, 2005. The second notice, for case number 536942, stated that Cardwell had been overpaid by \$2,970 during the period from February 14, 2004 to April 17, 2004.

On May 27, 2005, the Division sent a second set of notices to Cardwell. The first notice, for case number 536967, stated that Cardwell had been overpaid by \$5,610 during the period from October 2, 2004 to January 22, 2005. The second notice, for case number 536968, stated that Cardwell had been overpaid by \$3,300 during the period from February 14, 2004 to April 17, 2004. The Division then sent Cardwell a notice, dated

June 17, 2005, stating that the original two overpayment determinations (case numbers 536967 and 536968) had been cancelled.

On June 20, 2005, the Division sent a third set of notices to Cardwell. The first notice, for case number 536941, stated that Cardwell had been overpaid by \$5,610 during the period from October 2, 2004 to January 22, 2005. The second notice, for case number 536942, stated that Cardwell had been overpaid by \$3,300 during the period from February 14, 2004 to April 17, 2004.

On August 9, 2005, Cardwell sent a letter to the Division explaining his confusion regarding the duplicate overpayment notifications. On August 25, 2005, Cardwell mailed an appeal request to the Division. A claims deputy subsequently found that the last day to file an appeal was June 30, 2005, and therefore the appeal was filed untimely. On October 27, 2005, the Chief Appeals Referee of the Division reviewed the factual record and found that the appeal was untimely, despite the duplicate overpayment determinations. On December 29, 2005, The Board reviewed that decision and also found that the appeal was untimely and denied further review. That decision included a "Notice of Right Of Appeal," which clearly stated that Cardwell had ten days to appeal the decision of the Board to the Superior Court. Cardwell failed to appeal the Board's decision.

The Division later filed a debt action in Justice of the Peace Court No. 13 to collect on the overpayment determination. On February 6, 2008, the Court entered default judgment against Cardwell for failure to timely file an answer or appear for a scheduled trial. The judgment entered was for \$8,910 plus \$35 court cost plus \$4,143.15 in pre-judgment interest with 18% post judgment interest. Cardwell now appeals that decision.

Order and Opinion

This is an appeal of the debt action filed in the Justice of the Peace Court, rather than an appeal of the Board's decision itself. The sole remedy to review the Board's action is to appeal to Superior Court within ten days after the decision of the Board becomes final.¹ The validity of the Board's action is not reviewable in the Court of Common Pleas.²

Although this is a separate debt action, Cardwell is still barred from raising the issue of the duplicate notifications under the doctrines of *res judicata* and collateral estoppel. As the Supreme Court of Delaware stated,

Under the doctrine of *res judicata*, a party is foreclosed from bringing a second suit based on the same cause of action after a judgment has entered in a prior suit involving the same parties. Similarly, where a court or administrative agency has decided an issue of fact necessary to its decision, the doctrine of collateral estoppel precludes relitigation of that issue in a subsequent suit or hearing concerning a different claim or cause of action involving a party to the first case. Essentially, *res judicata* bars a court or administrative agency from reconsidering conclusions of law previously adjudicated while collateral estoppel bars relitigation of issues of fact previously adjudicated.³

The only issues raised by Cardwell in opposition to this motion dealt with the duplicate notifications sent by the Division and Cardwell's resulting confusion. These issues were argued and considered in the matter before the Board. Accordingly, Cardwell is foreclosed from raising these issues before this Court. Because Cardwell has raised no

¹ 19 Del. C. §3322 and §3323

² See *Power v. Hanley, Eliason and Morgan*, 1997 WL 1737096, 1 (Del. Com. Pl.)

³ *Betts v. Townsends, Inc.*, 765 A.2d 531, 534 (Del. 2000)

other issues, it is clear that there is no genuine issue as to any material fact and therefore summary judgment is appropriate under Court of Common Pleas Civil Rule 56.

Plaintiff Below/Appellee's motion for summary judgment is GRANTED.

IT IS SO ORDERED this 6th day of February 2009

Joseph F. Flickinger III
Judge