

INTRODUCTION

Appellant, Karl Owens, appeals the Unemployment Insurance Appeal Board's ("Board") dismissal of his case for failure to appear at the Board's hearing after he was duly noticed. Upon review of the record, the Court finds that Appellant failed to exhaust his administrative remedies, and therefore, the Board's dismissal is **AFFIRMED**.

FACTUAL BACKGROUND

Appellant filed for unemployment benefits on March 16, 2008,¹ and began receiving benefits on March 22, 2008.² Thereafter, Appellant began working for Carman Ford, however, he failed to properly report his wages to the Delaware Department of Labor ("Department").³

Eventually, the Department opened an investigation into Appellant's benefits claim. In order to determine whether Appellant was underreporting his earnings, the Department sent two letters to Appellant requesting an interview. Upon receiving no response to those notices, a Claims Deputy ruled that Appellant was disqualified from receiving unemployment benefits for a period of one year, and required Appellant to return all overpayment of benefits he received.

Appellant appealed the Claims Deputy's decision on June 8, 2009. An Appeals Referee was scheduled to hear Appellant's case on July 7, 2009, however, Appellant failed to appear and the claim was dismissed. Appellant challenged the Referee's dismissal, and sought a rehearing, which the Department granted. However, the Referee affirmed the Claims Deputy's decision.

Appellant appealed again, and a hearing before the Board was scheduled for January 6, 2010. Again, Appellant failed to appear, and the Board dismissed the case.

¹ Record at 31.

² *Id.* at 31.

³ *Id.* at 29.

On January 13, 2011, Appellant filed an appeal with this Court. The Board filed an Answering Brief, and Appellant thereafter filed a Reply.

PARTIES' CONTENTIONS

Appellant alleges that he did not appear before the Board because his supervisor at Carman Ford told him not to attend the Board hearing, and to expect a \$6.00 decrease in hourly wages.

In response, the Board contends that this Court is without jurisdiction to review the merits of Appellant's appeal because he failed to exhaust all of his administrative remedies by failing to appear before the Board despite being duly noticed of the hearing. The Board also claims Appellant has forfeited his right to an appeal because he has not offered the Board an explanation for his absence or requested a rehearing.

DISCUSSION

This Court may review the merits of the Board's decision only after all administrative remedies have been exhausted by an appealing party, which includes appearing at a duly noticed Board hearing.⁴ In this case, Appellant received proper and timely notice of the Board hearing scheduled for January 6, 2010, yet he made a conscious decision to not appear. While he may regret that decision, Appellant failed to exhaust his administrative remedies before initiating the instant appeal. He failed to provide the Board an explanation for his absence, and did not request a rehearing. This Court does not have jurisdiction to hear Appellant's case.⁵

⁴ 19 Del. C. § 3322(a); See also *Tesla Industries, Inc. v. Bhatt*, 2007 WL 2028460, at *2 (Del. Super. Jun. 28, 2007).

⁵ 19 Del. C. § 3322 (a); See also *Griffin v. Daimler Chrysler*, 2000 WL 33309877, at *2 (Del. Super. Apr. 27, 2001).

CONCLUSION

Appellant was required to exhaust all available administrative remedies before this Court could hear his case. As a result, the Board's dismissal is **AFFIRMED**.

IT IS SO ORDERED.

/s/

M. Jane Brady
Superior Court Judge