

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE**  
**IN AND FOR NEW CASTLE COUNTY**

JANET L. GREENE,	)	
	)	
Appellant,	)	C.A. No. N11A-11-004 RRC
v.	)	
	)	
CONTEMPORARY STAFFING	)	
	)	
and	)	
	)	
UNEMPLOYMENT INSURANCE	)	
APPEAL BOARD,	)	
	)	
Appellees.	)	

Submitted: April 5, 2012  
Decided: June 27, 2012

On Appeal from the Unemployment Insurance Appeal Board.  
**AFFIRMED.**

**ORDER**

Janet L. Greene, Dover, Delaware, *pro se*

Caroline Lee Cross, Esquire, Deputy Attorney General, State of Delaware  
Department of Justice, Wilmington, Delaware, Attorney for Unemployment  
Insurance Appeal Board

Jennifer M. Becnel-Guzzo, Esquire, Saul Ewing LLP, Wilmington, Delaware,  
Attorney for Contemporary Staffing Solutions, Inc.

COOCH, R.J.

This 27th day of June, 2012, on Appeal from an Unemployment Insurance  
Appeal Board decision, it appears to the Court that:

1. *Pro Se* Appellant appeals from the Board's decision refusing to hear Appellant's prior untimely administrative appeal for lack of jurisdiction. Specifically, the Board determined it only retains discretion to hear late appeals when the surrounding circumstances are "severe." Prior to the Board's decision, an Appeals Referee had concluded the circumstances did not require the Appeals Referee to hear the case. Appellant claimed that because she had begun a new job training program, she was unable to appeal to the Appeals Referee within the ten day period after the claims deputy had ruled. This Court finds that Appellant's unemployment disqualification is supported by substantial evidence and is free from legal error. The court also finds that the Board acted well within its discretion in concluding that the Appellant's appeal to the Appeals Referee was properly refused. Therefore, the Unemployment Insurance Appeal Board's decision is **AFFIRMED**.
  
2. Appellant was employed by Contemporary Staffing Solutions, Inc. ("Contemporary Staffing") over two years ago before leaving her position and collecting unemployment benefits.<sup>1</sup> Initially, Appellant received notice that her benefits would "exhaust" in May 2011. However, Appellant later received a second notice that she may have been eligible for more benefits and should open a new claim. In preparing this new claim, Contemporary Staffing failed to timely submit an earnings report to the unemployment office. As a result, Appellant's earnings were incorrectly matched to the proper pay code by unemployment. Eventually, Contemporary Staffing submitted an earnings report and assured Appellant there was no penalty for the late submission.
  
3. Appellant received unemployment benefits from her continued eligibility and eventually received an overpayment resulting from the incorrectly matched pay code. This overpayment resulted in Appellant's disqualification from benefits, even though the overpayment was not caused by her misconduct. Appellant claims, (and Appellees do not dispute) that while collecting benefits she received two additional overpayments as well as two underpayments.

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<sup>1</sup> The record is unclear regarding Appellant's employment details as well as regarding her separation from employment.

4. On June 3, 2011, a Claims Deputy mailed an overpayment notice to Appellant. The notice stated Appellant had ten days to appeal.<sup>2</sup> Appellant appealed on August 18, 2011, over two months after the deadline. Appellant claims she began a new job training program and did not have the time to appeal. In September 2011, an Appeals Referee heard Appellant's reasoning for the late appeal, and determined that neither the Referee nor the Board had jurisdiction to hear Appellant's untimely appeal. The Referee also found the Board was barred from hearing the late appeal because Appellant's reason was insufficiently "severe" to prevent her timely appeal. Appellant timely appealed the Appeals Referee's decision to the Board. In October 2011, the Unemployment Insurance Appeal Board ("UIAB" or "the Board") affirmed the Appeals Referee and found Appellant remained liable for the \$3,604 overpayment. This appeal followed.
5. Appellant contends she should not owe the \$3,604 because paying back such a large sum is unfairly "severe." Appellant also contends that the overpayment occurred without her fault and therefore, she should not be liable for recoupment. Appellant asserts that Contemporary Staffing claimed the overpayment resulted from her inability to meet Contemporary Staffing's client's performance expectations. Finally, Appellant contends her Superior Court Appeal is merited because her starting a new occupation prevented her timely administrative appeal.
6. The UIAB contends it lacked jurisdiction to hear the late administrative appeal.<sup>3</sup> Therefore, the Board was required to affirm the determination that Appellant is liable for the \$3,604 recoupment. Appellees also contend that even though the Board retains discretion to hear late appeals, discretion only applies under severe circumstances, which are not present in this case.<sup>4</sup>

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<sup>2</sup> 19 *Del. C.* § 3318(b) ("Unless a claimant ... filed an appeal within 10 calendar days after such Claims Deputy's determination was mailed ... the Claims Deputy's determination shall be final and benefits shall be paid or denied in accordance therewith.").

<sup>3</sup> Contemporary Staffing Solutions, Inc. joins the UIAB in its contentions and position.

<sup>4</sup> 19 *Del. C.* § 3320 ("The Unemployment Insurance Appeal Board may on its own motion, affirm, modify or set aside any decision of an appeal Tribunal on the basis of the evidence previously submitted in such case or direct the taking of additional evidence or may permit any of the parties to such decision to initiate further appeal before it.").

7. This Court must determine whether the Board's decision is supported by substantial evidence and is free from legal error. This Court must also determine whether the Board abused its discretion by refusing to hear the late appeal. An administrative agency decision constitutes an abuse of discretion when "it is based on clearly unreasonable or capricious grounds" or "the Board exceeds the bounds of reason in view of the circumstances and has ignored recognized rules of law or practice so as to produce injustice."<sup>5</sup>
8. This Court finds no abuse of discretion and therefore upholds the Board's decision because the administrative appeal was untimely. The Board may hear appeals on its own motion; however it does so "in those cases where the interests of justice would not be served by inaction. Such cases have been few and far between and involved circumstance much more severe than those in this case."<sup>6</sup> The Appeals Referee reviewed Appellant's reasoning for her late appeal, and found the circumstances preventing timely appeal were non-severe. For this reason, the Board was without discretion to hear the case and affirmed the Referee's decision. There is no indication the Board abused its discretion or erred legally, and the Board's decision is based upon substantial evidence.
9. Even if Appellant timely appealed below, she would remain liable for the \$3,604 recoupment.<sup>7</sup> The Superior Court has held that an appellant is not released from recoupment liability even if the overpayment resulted from non-fraudulent acts.<sup>8</sup> Therefore, even assuming her administrative appeal had been timely, Appellant would remain liable for the overpayment. Although it is reasonable that the prior overpayments and underpayments might have confused Appellant, her confusion by the inconsistent payments (even if reasonable) does not change the Court's ruling.
10. This Court understands the apparent economic hardship faced by Appellant and is not insensitive to her situation. However, the Court cannot overturn the Board where the Board's decision is legally sound.

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<sup>5</sup> *K-Mart, Inc. v. Bowles*, 1995 WL 269872 \*2 (Del. Super. Mar. 23, 1995) (Internal citations omitted).

<sup>6</sup> *Funk v. Unemployment Ins. Appeal Bd.*, 591 A.2d 222, 225 (Del. 1991).

<sup>7</sup> *Duncan v. Del. Dept. of Labor*, 2002 WL 31160324 \*2 (Del. Super. Sept. 10, 2002).

<sup>8</sup> *Id.*

11. Appellant's administrative appeal was untimely. The decision of the Claims Deputy is otherwise supported by substantial evidence. Therefore, the decision of the Board is **AFFIRMED**.

**IT IS SO ORDERED.**

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Richard R. Cooch, R.J.

cc: Prothonotary