

SUPERIOR COURT
OF THE
STATE OF DELAWARE

E. SCOTT BRADLEY
JUDGE

SUSSEX COUNTY COURTHOUSE
1 The Circle, Suite 2
GEORGETOWN, DE 19947

January 31, 2011

Andrew S. Rowe
26130 Granville Drive, Route 30
Millsboro, DE 19966

**RE: Andrew S. Rowe v. Unemployment Insurance Appeal Board
C.A. No. S10A-01-010-ESB
Letter Opinion**

Date Submitted: October 14, 2010

Dear Mr. Rowe:

This is my decision on your appeal of the Unemployment Insurance Appeal Board's decision to not consider your appeal to it because you had failed to appear for the two hearings before the Appeals Referee and the one hearing before the Board. You were employed by the First State Chevrolet car dealership and Irish Eyes restaurant. You were laid off by First State Chevrolet. You applied for and received unemployment benefits for 27 weeks. You then voluntarily stopped working at Irish Eyes at the same time. The Department of Labor terminated your unemployment benefits because you had voluntarily stopped working at Irish Eyes. The Department of Labor then determined that you had improperly received unemployment benefits for 27 weeks totaling \$6,291.00. You filed an appeal of this determination with the Claims Deputy. The Claims Deputy denied your appeal. You then filed an appeal with the Appeals Referee. The Appeals Referee dismissed your appeal because you did not appear at the hearing. You then filed an

appeal with the Board. The Board remanded the case back to the Appeals Referee for another hearing. The Appeals Referee again dismissed your appeal because you did not appear at the second hearing. You then filed a second appeal with the Board, but did not appear before it. The Board affirmed the Appeals Referee's dismissal, finding that you had multiple opportunities to pursue your appeal of the Department of Labor's determination that you had improperly received unemployment benefits on merits, but had not done so. You then filed an appeal with this Court.

STANDARD OF REVIEW

The Supreme Court and this Court repeatedly have emphasized the limited appellate review of the factual findings of an administrative agency. The function of the Superior Court on appeal from a decision of an administrative agency is to determine whether the agency's decision is supported by substantial evidence and whether the agency made any errors of law.¹ Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.² The appellate court does not weigh the evidence, determine questions of credibility, or make its own factual findings.³ It merely determines if the evidence is legally adequate to support the agency's factual findings.⁴ Absent an error of law, the agency's decision will not be disturbed where

¹ *General Motors v. McNemar*, 202 A.2d 803, 805 (Del. 1964); *General Motors v. Freeman*, 164 A.2d 686 (Del. 1960).

² *Oceanport Ind. v. Wilmington Stevedores*, 636 A.2d 892, 899 (Del. 1994); *Battista v. Chrysler Corp.*, 517 A.2d 295, 297 (Del.1986), *app. disp.*, 515 A.2d 397 (Del. 1986)(TABLE).

³ *Johnson v. Chrysler Corp.*, 213 A.2d 64, 66 (Del. 1965).

⁴ 29 *Del.C.* § 10142(d).

there is substantial evidence to support its conclusions.⁵

DISCUSSION

You did not exhaust your administrative remedies within the Department of Labor. The Department of Labor provides that a party aggrieved by a decision of the Department of Labor may file an appeal with the Claims Deputy, then the Appeals Referee, and finally with the Board. 19 *Del.C.* § 3322(a) provides that judicial review of a Board finding “shall be permitted only after any party claiming to be aggrieved thereby has exhausted all administrative remedies.” When an appellant fails to appear before the Board, “the Court lacks the jurisdiction to review the merits of the case because the Appellant did not exhaust all administrative remedies by not presenting his case to the Board.”⁶ You did not attend the Board hearing or the two hearings before the Appeals Referee. Therefore, you did not exhaust your administrative remedies prior to filing an appeal with this Court. Thus, this Court is limited to determining whether the Board’s decision to dismiss your appeal for failure to pursue it was an abuse of discretion.⁷ Failure to prosecute, as evidenced by a claimant’s unexcused absence at the Board hearing, provides the Board with reasonable grounds for dismissal.⁸ You did not attend the two hearings before the Appeals Referee and the hearing before the Board. Thus, you did not take advantage of the multiple administrative opportunities to address your claim. Therefore, I have concluded that the

⁵ *Dallachiesa v. General Motors Corp.*, 140 A.2d 137 (Del. Super. 1958).

⁶ *Griffin v. Daimler Chrysler*, 2000 WL 33309877 (Del. Super. April 27, 2001).

⁷ *Mintz v. Wilmington Trust*, 1995 WL 862116 (Del. Super. Nov 15, 1995).

⁸ *Id.* at * 3.

Board did not abuse its discretion by dismissing your appeal for lack of prosecution. Furthermore, your failure to appear before the Appeals Referee and the Board denied them the opportunity to determine whether there was any merit to your allegation that you had not improperly obtained unemployment benefits. The Board's decision to dismiss your appeal for failure to prosecute was not an abuse of discretion. The Unemployment Insurance Appeal Board's decision is affirmed.

IT IS SO ORDERED.

Very truly yours,

/s/ E. Scott Bradley

E. Scott Bradley

cc: Unemployment Insurance Appeal Board