

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

HAYWOOD JOHNSON,)
)
 Appellant,)
)
 v.)
)
 HARMONY CONSTRUCTION)
 and UNEMPLOYMENT)
 INSURANCE APPEAL)
 BOARD,)
)
 Appellees.)

C.A. No. N10A-03-006 PLA

ON APPEAL FROM THE
UNEMPLOYMENT INSURANCE APPEAL BOARD
AFFIRMED

Submitted: February 14, 2011
Decided: February 23, 2011

This 22nd day of February, 2011, upon consideration of the appeal of Haywood Johnson, Jr. (“Johnson”) from the decision of the Unemployment Insurance Appeal Board (“the UIAB”), it appears to the Court that:

1. Johnson filed an extended claim for unemployment insurance benefits on May 24, 2009. Thereafter, he began collecting \$330.00 per week, beginning with the week ending June 6, 2009, through and including the week of October 10, 2009.

2. Without advising the Department of Labor (“the Department”), Johnson became employed as a truck driver for Harmony Construction from July 20, 2009, until September 12, 2009, during the same period that he was collecting unemployment benefits. Johnson’s earnings from his Harmony Construction Company employment during that time period were as follows:

Compensable week ending 7/25/09	\$861.57
Compensable week ending 8/1/09	\$891.42
Compensable week ending 8/8/09	\$865.98

Johnson acknowledged receiving the foregoing amounts while simultaneously receiving unemployment benefits.

3. After the Department conducted a monthly match with new hire information, it became aware that Johnson had been employed by Harmony and learned that he had received the wages those periods of time. The Department mailed a notice to Johnson on September 18, 2009, requesting an interview with him to determine if an overpayment of benefits had occurred. Johnson acknowledged that he had in fact been employed while receiving benefits, but claimed that he was working only part-time.

4. Based upon the amount of wages that Johnson earned, it was determined that he would not have been entitled to collect any unemployment benefits for the weeks ending July 25, 2009, August 1, 2009 and August 8, 2009. Because of his failure to report his earnings to the Department, he was disqualified

on the ground of fraud for a period of one year, beginning the week ending July 25, 2009. The Claims Deputy's Notice of Determination was dated and mailed to Johnson on October 8, 2009. The notice also advised Johnson of his appeal rights.

5. On October 13, 2009, Johnson filed an appeal, and a hearing was scheduled before the Appeals Referee for November 10, 2009. The notice of the hearing was mailed to Johnson on October 10, 2009.

6. During the Referee's hearing, at which Johnson appeared and participated, he claimed that he had not received the hearing notice because it was mailed to the wrong address. Nevertheless, he learned of the date and time for the hearing because he had telephoned the Department. When questioned about why he did not report his first three weeks of full-time employment, Johnson stated that "I didn't know pretty much what I was getting into," and that he did not bother to report it because he thought he would only be employed part-time. At the hearing, Johnson further pleaded, "I just ask for a request, you know, to try to be fair. I know that I should have reported it, but I didn't really learn until I called you."

7. Following the hearing, the Appeals Referee affirmed the decision of the Claims Deputy. In so doing, the Appeals Referee found that Johnson, by his own admission, knowingly failed to report his earnings to the Department in order to collect unemployment benefits which he was not entitled to receive. The Referee determined that 19 *Del. C.* § 3314(6) explicitly mandates that an

individual who “made a false statement or representation knowing it to be false or knowingly has failed to disclose a material fact to obtain benefits to which the individual was not lawfully entitled” shall be disqualified from receiving benefits for a period of one year from the date of the first false statement. Accordingly, the Referee found that the Claims Deputy had correctly deemed Johnson disqualified.

8. Johnson appealed the Referee’s decision to the Unemployment Insurance Appeal Board, which again affirmed. The UIAB disqualified Johnson from receipt of unemployment benefits for one year, pursuant to 19 *Del. C.* § 3314(6), because he “knowingly failed to disclose a material fact to obtain benefits to which he was not lawfully entitled.” Johnson admitted again at the UIAB hearing that he knew that he was required to report his earnings but chose not to do so.

9. Johnson filed this *pro se* appeal from the UIAB’s decision on March 15, 2010. While the grounds for the appeal are somewhat incomprehensible, Johnson appears to be objecting to the fact that the Board failed to notify him by mail of his rights because his benefits were stopped “with no notification by mail or call.”

10. This Court’s appellate review of decisions of the UIAB is limited. The Court’s function is to determine whether the UIAB’s findings and conclusions

are supported by substantial evidence and free from legal error.¹ The substantial evidence standard is satisfied if the UIAB's ruling is supported by "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion."² Where the UIAB has made a discretionary decision, the scope of the Court's inquiry includes examining the UIAB's action for abuse of discretion.³ A discretionary decision will be upheld absent an abuse of discretion⁴ in which the UIAB "exceeds the bounds of reason in view of the circumstances and has ignored recognized rules of law or practice so as to produce injustice."⁵

11. Under 19 *Del. C.* § 3314(6), an individual is disqualified from receiving unemployment benefits for a period of one year if he or she "knowingly failed to disclose a material fact to obtain benefits to which he was not lawfully entitled." This statutory mandate is absolute upon a finding of fraud and does not allow for leniency or a discretionary exemption by the Board, even in cases of extreme hardship.

¹ *Stoltz Mgmt. Co. v. Consumer Affairs Bd.*, 616 A.2d 1205, 1208 (Del. 1992); *see also Lively v. Dover Wipes Co.*, 2003 WL 21213415, at *1 (Del. Super. May 16, 2003).

² *Anchor Motor Freight v. Ciabottoni*, 716 A.2d 154, 156 (Del. 1998) (citation omitted).

³ *See, e.g., Funk v. Unemployment Ins. Appeal Bd.*, 591 A.2d 222, 225 (Del. 1991); *Meacham v. Del. Dep't of Labor*, 2002 WL 442168, at * 1 (Del. Super. Mar. 21, 2002).

⁴ *Funk*, 591 A.2d at 225.

⁵ *Nardi v. Lewis*, 2000 WL 303147, at *2 (Del. Super. Jan. 26, 2000) (citation omitted).

12. In this case, substantial evidence supports the UIAB's conclusion that Johnson should have been disqualified from the receipt of unemployment benefits for one year. Johnson himself admitted that he knew that he was supposed to report his wages and that he deliberately did not do so because he did not know how long his employment would last. Although he seems to suggest that he did not receive notice of the hearing, the record reflects that he appeared at all three DOL proceedings before the Claims Deputy, the Appeals Referee, and the Board, and conceded at each hearing that he had knowingly failed to report his earnings from his employment with Harmony Construction. Thus, even assuming the DOL misaddressed one of the notices, the record does not support that Johnson was denied his due process rights.

13. The UIAB's decision to terminate Johnson's benefits for a one-year period was not an abuse of discretion. The UIAB lacks authority to alter the statutory penalty. Johnson admitted under oath that he was aware of his reporting responsibility and nonetheless failed to report his wages. Although Johnson sincerely believes the decision of the UIAB was unfair to him and it obviously resulted in financial hardship, the penalty is mandated by the statute and must be imposed when fraud is found in order to deter abuse of public benefits.

14. For the foregoing reasons, the decision of the UIAB is hereby

AFFIRMED.

IT IS SO ORDERED.

PEGGY L. ABLEMAN, JUDGE

Original to Prothonotary

cc: Philip Johnson, Esquire, DAG
Haywood Johnson, Jr.
Harmony Construction