

SUPERIOR COURT  
OF THE  
STATE OF DELAWARE

T. HENLEY GRAVES  
*RESIDENT JUDGE*

SUSSEX COUNTY COURTHOUSE  
1 THE CIRCLE, SUITE 2  
GEORGETOWN, DE 19947  
(302) 856-5257

March 25, 2011

Michael L. Thompson  
317-A East Patrick Street  
Frederick, Maryland 21701

Thomas H. Ellis, Esquire  
Deputy Attorney General  
Department of Justice  
820 North French Street  
Wilmington, Delaware 19801

**Re: *Michael L. Thompson v. UIAB;*  
C.A. No. S10A-01-006 THG**

On Appeal from the Unemployment Insurance Appeal Board:  
AFFIRMED

Date Submitted: December 16, 2010  
Date Decided: March 25, 2011

Dear Mr. Thompson:

Michael L. Thompson (“Mr. Thompson”) appeals the decision of the Unemployment Insurance Appeal Board (“the Board”) that held Mr. Thompson is liable to the Department of Labor for the overpayment of unemployment benefits in the amount of \$3,630.00. That decision is affirmed for the reasons stated below.

***Procedural & Factual Background***

On July 6, 2008, Mr. Thompson filed a claim for unemployment benefits. He was awarded benefits and collected those benefits at a rate of \$330.00/week, from the week ending July 12, 2008, until the week ending September 20, 2008 (11 weeks). On July 16, 2008, Mr. Thompson signed a document entitled “Claimant Notice of Receipt of Benefit Rights and Responsibilities” (“Notice”).

The Notice includes a portion of the language of 19 *Del. C.* § 3325 that governs any overpayment of benefits, specifically:

Recoupment of Overpayment of Benefits:

Any person who has received any sum as benefits under this chapter to which it is finally determined that the person was not entitled shall be liable to repay in cash said overpayment, to the Department for the Unemployment Compensation Fund, or to have such sum deducted from future benefits payable to the person under this chapter.

Benefit overpayments paid to a claimant as the result of fraud shall be repaid with interest at the same rate as provided from past due assessments and reimbursement payments in lieu of assessments in Section 3357 of this title and Department of Labor Regulation No. 45.

By way of a decision dated July 9, 2009,<sup>1</sup> a Claims Deputy found that Mr. Thompson had been employed by Convergence Marketing, Inc. until March 13, 2008, when he voluntarily left his position for another job. Mr. Thompson did not appeal this determination.

On July 30, 2009, the Department of Labor issued a decision that determined the amount of Mr. Thompson's overpayment owed was \$3,630.00. Mr. Thompson filed a timely appeal to this determination.

On October 5, 2009, a hearing was held before an Appeals Referee. The Appeals Referee mailed a decision the same day whereby she concluded that the Claims Deputy's determination was final and binding because it was not appealed by July 19, 2009. The Appeals Referee also found that Mr. Thompson knew he would be obligated to repay the benefits received during the disqualification period as evidenced by his signature on the Notice. The Appeals Referee upheld the Claims

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<sup>1</sup> The Appeals Referee mistakenly cited this determination as dated July 9, 2008. However, it is clear from the record that the determination was actually made on July 9, 2009.

Deputy's decision that Mr. Thompson was overpaid benefits in the amount of \$3,600.00 and is now liable to repay this sum to the Department of Labor.

Mr. Thompson filed a timely appeal to the Board. A hearing took place before the Board on December 23, 2009. At that hearing, Mr. Thompson testified that he received the Claims Deputy's determination that he was ineligible for unemployment benefits the day prior to the deadline for filing an appeal. Mr. Thompson admitted he never appealed this determination. There is no evidence from the record that Mr. Thompson challenged the amount of overpayment. By way of written decision mailed January 11, 2010, the Board affirmed the Appeals Referee's decision.

Mr. Thompson filed a timely appeal with this Court.

### *Discussion*

When reviewing the decisions of the Board, this Court must determine whether the Board's findings and conclusions of law are free from legal error and are supported by substantial evidence in the record.<sup>2</sup> "Substantial evidence" is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion."<sup>3</sup> The Court's review is limited: "It is not the appellate court's role to weigh the evidence, determine credibility questions or make its own factual findings, but merely to decide if the evidence is legally adequate to support the agency's factual findings."<sup>4</sup>

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<sup>2</sup> *Unemployment Ins. Appeal Bd. v. Martin*, 431 A.2d 1265 (Del. 1981); *Pochvatilla v. U.S. Postal Serv.*, 1997 WL 524062 (Del. Super.); 19 *Del. C.* § 3323(a) ("In any judicial proceeding under this section, the findings of the [Board] as to the facts, if supported by evidence and in the absence of fraud, shall be conclusive, and the jurisdiction of the Court shall be confined to questions of law.").

<sup>3</sup> *Gorrell v. Div. of Vocational Rehab.*, 1996 WL 453356, at \*2 (Del. Super.).

<sup>4</sup> *McManus v. Christiana Serv. Co.*, 1197 WL 127953, at \*1 (Del. Super.).

In this case, the findings of the Board are supported by substantial evidence in the record. In his filings with the Court, Mr. Thompson alleges that he would have filed an appeal to the original determination if he had known about it. However, he testified before the Board that he had received the determination and did not appeal it.<sup>5</sup> This Court reviews the case on the record and does not hear new evidence. The record below supports the legal conclusion that the Claims Deputy's determination that Mr. Thompson was disqualified from unemployment benefits is final and binding because no appeal of the matter was ever filed.<sup>6</sup> The record is devoid of any challenge made by Mr. Thompson to the *amount* of the overpayment of benefits, the only issue that was properly appealed. Therefore, the Board's conclusion that the amount of overpayment is \$3,630.00<sup>7</sup> is also supported by substantial evidence and free from legal error.

### ***Conclusion***

For the reasons set forth herein, the Board's decision holding Mr. Thompson liable to the Department of Labor for the overpayment of unemployment benefits in the amount of \$3,630.00 is AFFIRMED.

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<sup>5</sup> The decision was originally mailed to an incorrect address and then resent to Mr. Thompson's correct address. Nevertheless, Mr. Thompson still received the determination prior to the expiration of the deadline for filing an appeal.

<sup>6</sup> 19 *Del. C.* § 3318(b) ("Unless a claimant ... files an appeal within 10 calendar days after such Claims Deputy's determination was mailed to the last known address of the claimant ..., the Claims Deputy's determination shall be final and benefits shall be paid or denied in accordance therewith.")

<sup>7</sup> \$330.00 (the amount of benefits received by Mr. Thompson) X 11 (the number of weeks Mr. Thompson received benefits) = \$3630.00.

IT IS SO ORDERED.

Very truly yours,

T. Henley Graves

oc: Prothonotary  
cc: Unemployment Insurance Appeal Board