

**SUPERIOR COURT  
OF THE  
STATE OF DELAWARE**

RICHARD R. COOCH  
RESIDENT JUDGE

NEW CASTLE COUNTY COURTHOUSE  
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Wilmington, Delaware 19801-3733  
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***Re: Renee W. Byrd v. Westaff USA, INC.***  
**C.A. No. N10A-09-008 RRC**

Submitted: June 20, 2011<sup>1</sup>  
Decided: July 29, 2011

On Appeal from a Decision of the Unemployment Insurance Appeal Board.  
**REVERSED and REMANDED.**

Dear Mr. Martin and Westaff USA:

**INTRODUCTION**

Appellant Renee Byrd (“Employee”) filed Notice of Appeal from the September 9, 2010 decision of the Unemployment Insurance Appeal Board (the “Board”) holding that Employee was fraudulently underreporting her

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<sup>1</sup> This is the date by which Employer was to respond to the “Final Delinquent Brief Notice.”

wages while collecting unemployment benefits, and was disqualified from receipt of unemployment benefits for one year.<sup>2</sup>

The initial brief schedule issued by this Court directed Employer to file an Answering Brief by May 2, 2011. However, Employer inexplicably failed to file its Answering Brief, despite this Court's subsequent issuance of a "Final Delinquent Brief Notice" on June 10, 2011. Accordingly, this Court will reverse the determination of the Board due to Employer's failure to respond, in violation of Superior Court Civil Rule 107.

## **FACTS AND PROCEDURAL HISTORY**

This case arises from Employee's disqualification from receipt of unemployment benefits starting January 2, 2010.<sup>3</sup> Employee had been earning wages for several weeks during January, February, and March of 2010, and failed to report or incorrectly reported her earnings.<sup>4</sup> Employee does not dispute that she failed to accurately report wages.<sup>5</sup> At the hearing before the Board, Employee testified that she made a mistake in reporting her wages by reporting net income instead of gross income, and by reporting a week late.<sup>6</sup> She explained that had never worked while still receiving unemployment benefits, and had not intended to defraud the system.<sup>7</sup>

The Appeals Referee determined that Employee did incorrectly report her income.<sup>8</sup> The Appeals Referee explained that Employee "knew or should have known she was getting benefits that she was not entitled to."<sup>9</sup> As a

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<sup>2</sup> This decision arose from Employee's appeal from the Delaware Department of Labor Appeals Referee's decision of May 17, 2010 affirming the Claims Deputy's determination that Employee knew or should have known that she was receiving benefits to which she was not entitled, and therefore disqualified from the receipt of benefits for a period of one year. Decision of the Unemployment Insurance Appeal Board on Appeal from the Decision of Charles Herak, Appeal Docket No. 5013681 (July 21, 2010).

<sup>3</sup> Division of Unemployment Appeals Referee's Decision at 2.

<sup>4</sup> *Id.*

<sup>5</sup> *Id at 3*

<sup>6</sup> Transcript of Administrative Hearing of May 14, 2010 at 18.

<sup>7</sup> *Id.* at 18.

<sup>8</sup> Division of Unemployment Appeals Referee's Decision at 3.

<sup>9</sup> *Id at 2*

result, the Appeals Referee disqualified Employee from receiving benefits for one year.<sup>10</sup>

The Board affirmed the Appeals Referee's decision. The Board noted that Employee's testimony was not credible because she had received the employment handbook and had collected past benefits.<sup>11</sup> The Board further stated that because of her prior experience with the Department of Labor, she did knowingly provide false information and received benefits to which she was not entitled.<sup>12</sup>

On appeal to this Court, Employee filed a brief alleging she made minor mistakes in her attempt to comply with the system requirements.<sup>13</sup> Employee contends that she attempted to accurately report wages, and did not intend to do anything fraudulent.<sup>14</sup>

## **STANDARD OF REVIEW**

This Court's review of an Unemployment Insurance Appeal Board decision is defined by statute. Pursuant to 19 Del. C. § 3323(a), "the findings of the Unemployment Insurance Appeal 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." The scope of this Court's review "is limited to a determination of whether there was substantial evidence sufficient to support the findings" of the Board;<sup>15</sup> substantial evidence is defined as "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion."<sup>16</sup> This Court does not weigh the evidence or make determinations based on credibility or facts.<sup>17</sup> An abuse of discretion will be found only if "the Board 'acts arbitrarily or capriciously' or 'exceeds the

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<sup>10</sup> *See id.* at 3 (disqualifying Employee from receiving benefits from January 2, 2010 until January 1, 2011).

<sup>11</sup> Decision of the Unemployment Insurance Appeal Board on Appeal from the Decision of Charles Herak, Appeal Docket No. 5013681 (July 21, 2010).

<sup>12</sup> *Id.*

<sup>13</sup> *See* Employee's Br. of April 11, 2011 at 16. Although Employee apparently proceeded *pro se* before the Board, she is represented by counsel on her appeal to this Court.

<sup>14</sup> *Id.*

<sup>15</sup> *Unemployment Ins. Appeals Bd. v. Duncan*, 337 A.2d 308, 309 (Del 1975).

<sup>16</sup> *Oceanport Indus., Inc. v. Wilmington Stevedores, Inc.*, 636 A.2d 892, 899 (Del. 1994) (citing *Olney v. Cooch*, 425 A.2d 610, 614 (Del. 1981)).

<sup>17</sup> *Johnson v. Chrysler Corp.*, 213 A.2d 64, 66 (Del 1965).

bounds of reason in view of the circumstances and has ignored recognized rules of law or practice so as to produce injustice.”<sup>18</sup>

In the case of fraud, the court must look to 19 Del. C. 3314(6), which indicates that if an Employee fails to, or incorrectly reports wages and as a result receives benefits to which he or she is not entitled, Employee will be disqualified from benefits for a year as a result of fraud.<sup>19</sup> Though the standard for unemployment benefits is ordinarily based on a preponderance of the evidence, in the case of alleged fraud, the burden of proof rises to a clear and convincing standard.<sup>20</sup> This clear and convincing standard of proof is “more stringent than a mere ‘more likely than not’ burden, yet less than ‘beyond a reasonable doubt.’”<sup>21</sup>

## **DISCUSSION**

In this case, the Appeals Referee reviewed the record and determined that Employees incorrect reporting of her wages was fraudulent behavior, which resulted in her receiving benefits to which she was not entitled.<sup>22</sup> This determination was affirmed by the Board.<sup>23</sup> This Court’s review would ordinarily be limited to a determination of whether the allegations of fraud against Employee were supported by clear and convincing evidence, thereby resulting in a decision affirming the Board’s determination, in light of the evidence of fraud herein.<sup>24</sup> However, Employer’s unexplained and unexcused failure to comply with this Court’s scheduling order must yield the contrary

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<sup>18</sup> *Straley v. Advanced Staffing, Inc.*, 2009 WL 1228572, \* 2 (Del. Super. Ct. 2009) (citations omitted).

<sup>19</sup> 19 Del. C. § 3314(6) (“If the Department determines such individual has 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, and such disqualification shall be for a period of 1 year beginning with the date on which the first false statement, false representation or failure to disclose a material fact occurred. A disqualification issued pursuant to this subsection shall be considered a disqualification due to fraud.”).

<sup>20</sup> *Johnson v. TMSI*, 2008 WL 3271162, \*2 (Del. Super. Ct. 2008) (“[B]ecause the present matter is based on fraud, the burden of proof rises to a ‘clear and convincing’ standard. . . .”) (citation omitted).

<sup>21</sup> *Id.* at \*2 (citations omitted).

<sup>22</sup> Division of Unemployment Appeals Referee’s Decision at 3.

<sup>23</sup> Decision of the Unemployment Insurance Appeal Board on Appeal from the Decision of Charles Herak, Appeal Docket No. 5013681 (July 21, 2010).

<sup>24</sup> *See supra* text accompanying notes 9-12.

result. Despite being issued a “Final Delinquent Brief Notice,” Employer made no efforts comply with this Court’s requirements, nor did Employer proffer any explanation for its procedural default. As provided in Superior Court Civil Rule 107(e):

If any brief, memorandum, deposition, affidavit, or any other paper which is or should be a part of a case pending in this Court, is not served and filed within the time and in the manner required by these Rules or in accordance with any order of the Court or stipulation of counsel, the Court may, in its discretion. . . consider the motion as abandoned, or summarily deny or grant the motion, such as the situation may present itself, or take such other action as it deems necessary to expedite the disposition of the case.

In *Sprung v. Selbyville Cleaners*,<sup>25</sup> this Court held that, when an employer “has been afforded every opportunity to respond to this claim and has failed to do so,” this Court is “left with no other alternative but to reverse the Board’s decision.”<sup>26</sup> In reaching this conclusion, this Court noted:

The efficiency and effectiveness of our judicial system relies heavily on the diligent actions of those involved in legal disputes. Filing deadlines are in place to promote such judicial efficiency. Because of this, the inexcusable failure of a party to respond when required to do so cannot be treated lightly by this Court.<sup>27</sup>

It is true that “[u]pon the showing of good cause in writing, the Court may permit late filing of any of the aforesaid papers and pursuant to a written rule or order.”<sup>28</sup> However, Employer has made no efforts to properly appear before the Board or file any of the required submissions with this Court, despite being afforded notice of the relevant proceedings.<sup>29</sup> Thus, this Court finds that Employer failed to respond this claim, without good cause, despite being “afforded every opportunity” to respond to Employee’s claim. Although reversal of the Board’s decision no doubt affects Employer’s rights, Employer’s due process rights were fully respected at every stage of this

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<sup>25</sup> 2007 WL 1218683 (Del. Super. Ct. 2007).

<sup>26</sup> *Id.* at 1.

<sup>27</sup> *Id.*

<sup>28</sup> Super. Ct. Civ. Rule 107(e).

<sup>29</sup> This Court notes that Employer’s handling of the instant claim was so derelict that the available record is devoid of the identity of any administrative or legal personnel assigned to this case. As a result, this Court has addressed this opinion to “Weststaff USA, Inc.” generally.

claim.<sup>30</sup> Put simply, Employer’s inexcusable failure to properly defend its interests in this case “is one of those rare instances when a party’s unexplained inaction proves both disadvantageous to its cause, and results in a windfall for its adversary.”<sup>31</sup>

## CONCLUSION

Accordingly, for all the reasons stated above, the decision of the Unemployment Insurance Appeal Board is **REVERSED**. This case is **REMANDED** to the Unemployment Insurance Appeal Board, and, under the circumstances of this case, Employer is henceforth estopped from disputing Employee’s assertion that her behavior was not fraudulent.<sup>32</sup>

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Richard R. Cooch, R.J.

RRC/kas

oc: Prothonotary  
Unemployment Insurance Appeal Board

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<sup>30</sup> *Hunter*, 2004 WL at \*6 (“Due process requirements mandate that in any appeal from an administrative agency, the Court must make certain that the agency action satisfies the constitutional requirements of due process. . . . The Court, and the Prothonotary’s Office, have made considerable efforts to provide notice to the Appellee. Additionally, it is an undeniable fact that Appellee’s representative did receive amended notice of the appeal. Thus, procedural due process has been aptly served.”).

<sup>31</sup> *Id.*; see also *Cohen v. Allied Barton Security Servs.*, 2007 WL 2430062, \*1 (Del. Super. Ct. 2007) (“This Court has held that ‘Rule 107(e) inextricably vests in the Court the power to reverse the Board’s decision for failure of the Appellee to file its answering brief.’ Despite adequate notice, Appellee has not filed an answering brief, nor has it provided any explanation for its inaction. Therefore, due to ‘Appellee’s failure to diligently prosecute and file its brief pursuant to Rule 107(e)’ the April 5, 2006 decision of the Board is reversed.”) (quoting *Hunter*, 2004 WL at \*4); *Crews v. Sears Roebuck & Co.*, 2011 WL 2083880 (Del. Super. Ct. 2011) (Accord); *Elder v. Careers USA*, Del. Super., N10A-08-011, Cooch, R.J. (July 22, 2011) (Letter Op.) (Accord).

<sup>32</sup> 19 Del. C. § 3314(6).