

SUPERIOR COURT  
OF THE  
STATE OF DELAWARE

E. SCOTT BRADLEY  
*JUDGE*

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

August 3, 2011

Jamie L. Arcos  
23371 Springfield Road  
Georgetown, DE 19947

**RE: Jamie L. Arcos v. Unemployment Insurance Appeal Board  
C.A. No. S10A-10-003 - ESB  
Letter Opinion**

Date Submitted: May 26, 2011

Dear Ms. Arcos:

This is my decision on your appeal of the Unemployment Insurance Appeal Board's denial of your claim for an extension of unemployment benefits. You were employed by a lawyer from August of 2008 until you lost your job in October of 2008. You filed a claim for unemployment benefits and started receiving them on October 12, 2008. You also obtained three extensions of your unemployment benefits. You filed a claim for another extension of unemployment benefits on December 6, 2009. The Board found that you were ineligible for unemployment benefits because you were not employed during the applicable base period used for determining eligibility for unemployment benefits. I have reversed the Board's decision because it used the wrong base period to determine your eligibility for unemployment benefits.

**STANDARD OF REVIEW**

The Supreme Court and this Court repeatedly have emphasized the limited

appellate review of the factual findings of an administrative agency. On appeal from a decision of the Board, this Court is limited to a determination of whether there is substantial evidence in the record sufficient to support the Board's findings, and that such findings are free from legal error.<sup>1</sup> Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.<sup>2</sup> The Board's findings are conclusive and will be affirmed if supported by "competent evidence having probative value."<sup>3</sup> The appellate court does not weigh the evidence, determine questions of credibility, or make its own factual findings.<sup>4</sup> It merely determines if the evidence is legally adequate to support the agency's factual findings.<sup>5</sup> Absent an error of law, the Board's decision will not be disturbed where there is substantial evidence to support its conclusions.<sup>6</sup>

## DISCUSSION

You argue that the Board erred when it determined that you were ineligible for unemployment benefits because you had not been employed during the applicable base period. In order to be eligible for unemployment benefits an employee had to have been

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<sup>1</sup> *Unemployment Ins. Appeals Board of the Dept. of Labor v. Duncan*, 337 A.2d 308, 309 (Del. 1975).

<sup>2</sup> *Oceanport Ind. v. Wilmington Stevedores*, 636 A.2d 892, 899 (Del. 1994); *Battista v. Chrysler Corp.*, 517 A.2d 295, 297 (Del. Super. 1986), *app. dismiss.*, 515 A.2d 397 (Del. 1986).

<sup>3</sup> *Geegan v. Unemployment Compensation Commission*, 76 A.2d 116, 117 (Del. Super. 1950).

<sup>4</sup> *Johnson v. Chrysler Corp.*, 213 A.2d 64, 66 (Del. 1965).

<sup>5</sup> 29 Del.C. § 10142(d).

<sup>6</sup> *Dallachiesa v. General Motors Corp.*, 140 A.2d 137 (Del. Super. 1958).

employed during the base period preceding the employee's claim. The "base period" is defined as "the first 4 of the last 5 completed calendar quarters immediately preceding the first day of the individual's benefit year."<sup>7</sup> "Benefit year" means "the 1-year period beginning with the first day of the first week with respect to which the individual first files a valid claim for benefits."<sup>8</sup> The Board found that the first day of your benefit year was December 6, 2009, the day you filed for an extension of unemployment benefits. Using December 6, 2009 as the start of your benefit year, the Board found that your base period was from December of 2008 to December of 2009. Since you were not employed during this period of time, the Board found that you were ineligible for unemployment benefits. However, the Board incorrectly calculated your base period. The Board's base period actually represents the last 4 quarters, not the first 4 of the last 5 completed quarters immediately preceding your benefit year. According to the Division of Unemployment Insurance's website, the graphic they have displayed would calculate your base period as July 1, 2008 through June 30, 2009, not December of 2008 through December of 2009 (see attachment). If the Board had used this base period, then you arguably would have been eligible for unemployment benefits because you were employed during this period of time. Since the Board did not calculate the base period in accordance with the applicable law, its decision must be reversed.

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<sup>7</sup> 19 *Del.C.* § 3302(2).

<sup>8</sup> Cite

## CONCLUSION

The Board's decision denying your claim for an extension of unemployment benefits is reversed<sup>9</sup> and the matter is remanded to the Board for a hearing consistent with this opinion to determine if you are entitled to unemployment benefits using the correct base period.

**IT IS SO ORDERED.**

Very truly yours,

/S/ E. Scott Bradley

E. Scott Bradley

oc: Prothonotary's Office  
cc: Unemployment Insurance Appeal Board

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<sup>9</sup> The Board also found that you were not self-employed. Since this finding was not challenged on appeal, I have not reversed it.

## THE UNEMPLOYMENT INSURANCE FAQS

[Claimant FAQ's](#) [Employer FAQ's](#)

### Claimant FAQ's

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### How do I know if I'm eligible?

There are certain wage requirements based on the amount of money that you were paid while you were employed. The amount of money you were paid during your base period (the first four of last five completed calendar quarters) determines your "weekly benefit amount (WBA)". In addition, you must be unemployed through no fault of your own, able to work, available for work, looking for work and willing to accept a job for which you are qualified.

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### How much can I receive in benefits?

The booklet *Your Guide to Unemployment Insurance Benefits* that you will receive when you file your new claim includes a "Weekly Benefit Amount Chart" that indicates the range of minimum to maximum benefits for which you may be eligible. The amount is known as the "weekly benefit amount (WBA)". The current range provided by the Delaware Unemployment Insurance Law is \$20 to \$330.

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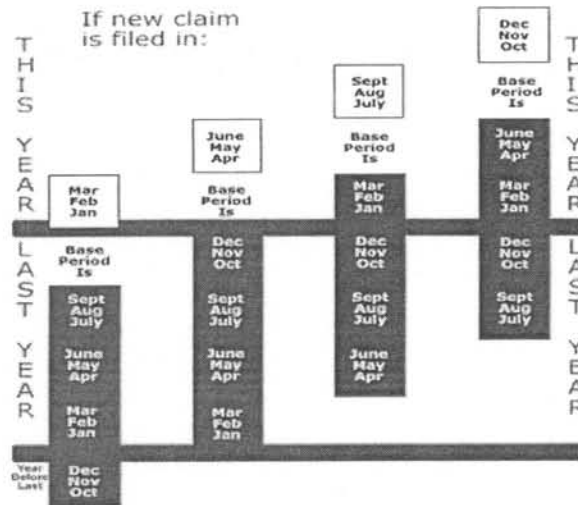
### How is my weekly benefit amount (WBA) determined?

The weekly benefit amount (WBA) is based on the amount that you were paid during the base period. The base period is the first four of the last five calendar quarters completed as of the Sunday before you file your first claim for benefits. Your weekly benefit amount will be 1/46<sup>th</sup> of your two highest calendar quarters in the base period. If you worked full-time during the four quarters, your WBA will be a little more than half your gross weekly wage up to the maximum weekly benefit amount in effect at the time.

#### **Example:**

If you file your claim in March, your base period will be the 12-month period from October 1st through September 30th before you filed your claim. The table shows the base period for a new claim filed in any month of the year:

(Base-year months are shown in shaded blocks)



If you have worked outside of Delaware or for the federal government or served in the Armed Services during your base period, you must report this information when you file your claim. Under certain circumstances, these wages can be combined with your Delaware wages to give you a higher weekly benefit amount. If you have no Delaware wages during the base period, you may be required to file a federal claim or an interstate claim.

#### Alternate Base Period

When you receive your "Determination of Monetary Eligibility" if it indicates you have insufficient wages during the above base period, you may be eligible to receive benefits using an alternate base period. Report to the local unemployment office where you filed your original claim and speak to a claim representative. We'll need your Social Security card, check stubs, W-2 forms and any other proof of wages that you have.

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#### How do I know if I am monetarily eligible and how much money I will actually get?

You will receive a form called a "Determination of Monetary Eligibility." It will show your base period wages and your weekly benefit amount if you are monetarily eligible. The "Monetary Determination," is mailed to you within 3 days after you file your claim. This is for your records and it contains a completed copy of your base period earnings. It lists all the employers who are covered by the Delaware Unemployment Insurance Law and all wages these employers reported under your Social Security number and your name during the base period. It also shows your "Weekly Benefit Amount" and the maximum amount of benefits you could be eligible to receive.

Check this form carefully. See if it:

1. Lists any employers for whom you did not work;
2. Lists only those employers for whom you worked during your base period; and,
3. Lists all of your wages during the base period.

If you think a correction should be made, report to the local unemployment insurance office where you filed your claim within 10 days and ask for a correction. We'll need your Social Security card, check stubs, W-2 forms and any other proof of wages that you have.

Remember, you must report in person to the local office within 10 days for your protest to be accepted. Bring the determination of monetary eligibility with you when you report. You must continue to file weekly claims while you await the result of the protest.

In addition to being monetarily eligible, you must be unemployed through no fault of your own, able to work, available for work, looking for full-time work, and willing to accept a job for which you are qualified in order to collect benefits.

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#### How long can I continue to collect benefits?

If you remain totally unemployed and otherwise remain eligible, you can normally receive 26 times your weekly benefit amount. Once you qualify for benefits, you establish what we call a "benefit year." Your benefit year is the one-year period beginning with the Sunday of the first week in which you file your new claim. For example, if you filed your new claim on Thursday, June 9, 2010, your benefit year would start with the preceding Sunday, June 6, 2010, this would be your "effective claim date." Your benefit year would last until June 5, 2011. Under normal circumstances, you may not start another benefit year until the first one is completed. However, if you have also worked in another state during your benefit year and have received all your Delaware benefits in your benefit year, you may file against the other state in which you worked and you may be eligible for additional benefits from that state. (Your local unemployment insurance office can give you details.)

The maximum amount of unemployment insurance benefits payable in Delaware under normal circumstances in any benefit year may not exceed 26 times your weekly benefit amount. Since Delaware has a weekly claim processing system, you will receive a check for every weekly claim you make. You may file claims for more than 26 weeks if you work part-time and partial benefits are paid. If you have received all the benefits to which you are entitled (normally 26 weeks), then you may receive no more until the benefit year is over, even if you work again and become unemployed. However, during periods of high unemployment, a special program is placed in effect, which provides additional weeks of benefits.

At the end of your benefit year, you may be eligible to establish a new benefit year. If you have been employed during the current benefit year and earned at least 10 times the weekly benefit amount for which you would be eligible during the new benefit year. An employee at your local unemployment insurance office can provide you with further information on establishing a new benefit year.

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#### What are my responsibilities as a claimant?

If you are receiving unemployment insurance benefits, you must be able to work and available for work. In addition, you must make an active search for work, register for work with the Division of Employment and Training when required to do so, accept suitable work as defined by law, file a weekly claim for benefits properly and on time (see the question, How often do I file claims and when must I file claims?, for more information), and report to the local unemployment insurance office when directed to do so. You must report all wages, including self-employment and odd jobs, pensions, annuities, holiday pay, vacation pay, severance pay, and bonuses and special payments.

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#### **How often do I file claims and when must I file claims?**

You must file a Weekly Pay Authorization or call "TeleBenefits" every week. Be sure to keep your records for unemployment insurance eligibility requirements on a weekly basis since the Weekly Pay Authorization or "TeleBenefits" will require you to answer specific questions about each compensable week that you claim benefits. A "compensable week" for unemployment benefits runs from Sunday through Saturday. It is your responsibility to return your Weekly Pay Authorization or to call "TeleBenefits" each week. Failure to return your Weekly Pay Authorization or to call "TeleBenefits" timely will cause a delay in benefits and may result in denial of benefits. If you have selected to claim benefits by using the Weekly Pay Authorization option and do not get a new Weekly Pay Authorization covering the weekly claim period (compensable week) in the mail within one week of the Sunday date you mailed your last Weekly Pay Authorization, it is your responsibility to report to or call your local unemployment insurance office on the next working day in order for your Weekly Pay Authorization to be received on time. Backdated claims may not be accepted.

#### **Here's an example:**

You have a Weekly Pay Authorization that covers the week ending June 19, 2010. This Weekly Pay Authorization should be completed by you and mailed on Sunday, June 20, 2010. You should get a new Weekly Pay Authorization in the mail that covers the week ending June 26, 2010 with your check for June 19, 2010 by Saturday, June 26, 2010. If you don't get the new Weekly Pay Authorization on or before that day, you should call the UI information hotline (761-6576 in New Castle County and 1-800-794-3032 in Kent and Sussex counties) to see if one has been mailed to you. If one has not been mailed, you should report to your local office immediately. **Don't wait.** It is very important that you fill out your Weekly Pay Authorizations completely, correctly and honestly, and that you return them by mail on time.

If you have selected to claim benefits using "TeleBenefits", please follow the instructions in the "TeleBenefits" brochure, [Filing for Weekly Unemployment Insurance Benefits by Telephone.](#)

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#### **When should I report to my local office?**

You should report to your local office when:

1. You earn wages equal to 1 and 1/2 times or more of your weekly benefit amount during any week and you wish to reopen your unemployment insurance claim when you become totally or partially unemployed;
2. You are requested to do so by telephone or by receipt of an appointment notice; or,
3. You have any questions about your claim or unemployment insurance in general that cannot be answered by the UI telephone Information Hotline.

You may also occasionally receive a notice asking you to report to the local office for some specific reason. The notice will tell you when and where to report. You must report on the date and at the time shown on the notice. Bring the notice with you.

If you are unable to report as asked, contact your local office immediately. You should send the notice back to the local office, explaining why you cannot report. Also, provide any information about the reason you were called in. Be sure to include your name, address and Social Security number. Failure to report to the local office when called in may delay payment of your check and may result in denial of your benefits.

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#### **What type of notices will I receive?**

There are many types of notices that will be sent to you while you are filing for unemployment insurance. Read all notices you receive carefully. If you have any questions, call the UI office immediately. Occasionally, you will receive a notice asking that you report to the local office or to be available by telephone at a specific date and time if we need additional information from you. If you have filed any type of appeal, you will get a notice telling you the time, date and place of your appeal hearing. You may be called in periodically for an Eligibility Review Interview. You will be given an "Eligibility Review Questionnaire" when you file your claim. Also, you may periodically be sent an "Eligibility Review Questionnaire" to complete and return to us. The questionnaire helps us offer you assistance in searching for work, and enables us to make sure you are still available for full-time work and that you are actively seeking work. It tells us whether you are also meeting the other eligibility requirements of the law. Therefore, it is important that you carefully and thoughtfully complete the form and that you appear on time on the correct date when scheduled for an "Eligibility Review Interview." Failure to do so may result in your benefits being denied or delayed.

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#### **What happens if I am disqualified?**

If you are disqualified you will not receive any further benefits unless you file an appeal and the disqualification is reversed. It is also possible that you will be denied benefits for weeks you have already received and will be required to repay these benefits to the Department. The issues to be resolved that will be printed on your appointment notice, the reasons you may be disqualified and the penalties for each are:

- Meeting Reporting Requirements
- Filing Proper Claims
- Not being Able and Available for Work
- Not Making an Active Search for Work
- Second Benefit Year Eligibility
- If You Voluntarily Quit Employment
- If You Were Discharged for Just Cause From Employment
- Refused Job or Job Referral
- Are Unemployed Due To A Labor Dispute
- If You Are Entitled to Benefits Under Either The Railroad Retirement Act, Federal Employment or Other State Eligibility
- If You Have Received An Overpayment of Benefits

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### What are some other issues that I might be called into the local office for?

There are a few less common issues that might arise on your claim and may result in you being disqualified from receiving unemployment insurance benefits. Some of them are covered in more detail in the booklet entitled, *Your Guide To Unemployment Insurance Benefits* (you will receive this booklet when you file your new claim for benefits). If you have any questions about these issues after you review the list, contact your unemployment insurance local office for more information. Following is a list of those issues and what might have caused the issue to develop:

- Issue: Monetary Eligibility Payments  
*Cause: You worked full or part-time during a week and you earned more than you reported, or you received holiday pay, vacation pay, special payment, bonus or severance pay, OR there is a question concerning your monetary eligibility for benefits.*
- Issue: Not Unemployed  
*Cause: You worked full or part-time during a week and you earned more than you reported, or you are self-employed.*
- Issue: Insufficient Base Period Wages  
*Cause: There is a question concerning your monetary eligibility for benefits.*
- Issue: School Employment  
*Cause: You are employed by a school and are out of work between school terms or during a school vacation period, and you will return to work when school reopens.*
- Issue: Employment in Athletics  
*Cause: You are employed in a sports-related job and are out of work between seasons, and you will return to work when the next season starts.*
- Issue: Alien Status  
*Cause: You are not a citizen of the United States and your alien status must be determined as required by the U.S. Immigration and Naturalization Service.*
- Issue: Support Obligations  
*Cause: You are required by court order to pay child support that may be deducted from your weekly unemployment insurance benefit amount.*
- Issue: Military Benefit Entitlement  
*Cause: You are recently separated from the military and it must be determined if you are eligible for unemployment insurance benefits under the Federal Law.*
- Issue: Late Appeal of Eligibility  
*Cause: You did not file your appeal within the required time period.*
- Issue: Option to File in Other State  
*Cause: You may be eligible for benefits in another state that you worked in during the base period.*
- Issue: Leave of Absence  
*Cause: You are unemployed because you are on a leave of absence and may be unavailable for work.*
- Issue: Pension  
*Cause: You are receiving, have received or will receive a lump sum pension or monthly pension.*
- Issue: Severance Pay  
*Cause: You are receiving, have received or will receive severance pay, dismissal pay or wages in lieu of notice or wage continuation.*
- Issue: Quit to Attend Trade Adjustment Assistance (TRA) Training  
*Cause: You quit your job to attend a training class approved under the Federal TAA law.*

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### What can I do if I am denied benefits?

You may appeal within 10 calendar days and request a hearing on the facts. The appeal must be filed in writing or in person at your local unemployment insurance office and it must be filed within 10 calendar days. Your signature must be included on the request for appeal.

1. You **must** file an appeal with the local unemployment insurance office within 10 days.
2. You **must** appeal in writing or in person. Appeal requests filed by e-mail are not acceptable because the person filing the appeal must sign appeal requests.
3. You **must** continue to file claims weekly.

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### What if I have moved to Delaware from an area outside of the state?

Your claim is governed by the laws of the State against which you file. This is called an "Interstate" claim. The Delaware office will take your claim and forward all the information to the State where you worked. Any benefits you receive will be paid by the State against which you filed and will be mailed directly to your home. You must meet all the requirements of that state's laws in order to be eligible. Also, you must be registered for work with the Delaware Job Service when required to do so and must be actively looking for work in the area where you now live. Since the laws of each State are different, it is possible that your base period, benefit year and check amount will be different from that of a Delaware worker. Your claim is governed by the laws of the State against which you file (the State that pays your benefits). You may file in Delaware against any of the United States, Canada Puerto Rico or the Virgin Islands. **Note:** Different States may also have different penalties, rules for dependents' allowances and sick claims. Also, other deductions may be required.

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### What do I do if I don't receive a check or weekly pay authorization in the mail?

You have a Weekly Pay Authorization covering the week ending June 18, 2005. This Weekly Pay Authorization is mailed in by you on June 19, 2005. If you don't get a check and/or a new Weekly Pay Authorization for the next weekly period by June 25, 2005, you should report to or call your local unemployment insurance office immediately to find out why you didn't get a check, or Weekly Pay Authorization. If you fail to report to or call your local unemployment insurance office, your benefits will be delayed and may be denied. If no check or Weekly Pay Authorization has been mailed to you, report to your local office immediately. **DON'T WAIT.**

If you are eligible to receive benefits, your first check will normally be mailed within three weeks after filing your claim, and a check should arrive every week after that if you continue to mail your Weekly Pay Authorizations weekly. However, the checks will not always arrive on the same day of the week. For your convenience, a check stub is provided with pertinent information needed for your records. Be sure to keep your check stubs to refer to if you think you are missing a check or have been paid improperly. Each time you receive an unemployment insurance check the Weekly Pay Authorization (for the following week will be received with the check. Remember, if you make false statements or fail to give required information in connection with your claim, you may be subject to prosecution for fraud, which could result in disqualification for one year and an overpayment on benefits received after the date of the false statement or both, plus interest on the fraudulently collected benefits.

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### Can I get information about unemployment insurance over the telephone?

The Office of Unemployment Insurance has an automated telephone information system that is available 24 hours a day, seven days a week. This the UI hot line The telephone number is,



- New Castle County 761-6576
- Kent & Sussex Counties 1-800-794-3032

The telephone information service will be able to tell you:

- The closest unemployment insurance office to your home in Delaware
- How to file a claim for benefits
- The date and amount of the last check issued to you
- How a new employer registers with the Division of Unemployment Insurance
- How to claim your weekly unemployment insurance check using TeleBenefits.

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#### **Can I have my unemployment check deposited directly into my checking/savings account?**

The Delaware Division of Unemployment Insurance is pleased to offer Direct Deposit of unemployment insurance benefits to new and existing claimants. With Direct Deposit your weekly unemployment insurance benefits payment is electronically deposited into your checking or savings account as long as your financial institution participates in the Direct Deposit program.

It is your responsibility to verify that your financial institution will accept Direct Deposit to your account. Some banks and credit unions will not accept Direct Deposit or they require that a special account number be used for Direct Deposit. Many brokerage accounts will not accept electronic transactions of any type.

Apply online at [www.delawareworks.com/unemployment](http://www.delawareworks.com/unemployment)

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#### **Can I file for unemployment benefits online via the internet?**

You can file your claim for unemployment benefits online via the internet.

This site permits an unemployed Delaware worker to file an initial claim for unemployment insurance benefits via the Internet.

File online at [www.delawareworks.com/unemployment](http://www.delawareworks.com/unemployment)

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