

**SUPERIOR COURT
OF THE
STATE OF DELAWARE**

T. HENLEY GRAVES
RESIDENT JUDGE

**SUSSEX COUNTY COURTHOUSE
ONE THE CIRCLE, SUITE 2
GEORGETOWN, DE 19947**

March 24, 2008

Richard Higgins
23330 Timothy Lane
Lewes, DE 19958

Thomas Ellis, Esquire
Department of Justice
Carvel State Office Building
820 North French Street
Wilmington, DE 19801

**RE: Richard Higgins v. Division of Unemployment,
Delaware Department of Labor
Civil Action No. 07A-01-001**

Dear Mr. Higgins and Mr. Ellis:

This is the Court's decision affirming the decision of the Unemployment Insurance Board.

FACTUAL HISTORY

A question of fact existed as to whether you were laid off, and therefore entitled to unemployment benefits or whether you voluntarily resigned your position. You argue that you were informed that you were laid off and subject to recall for work, but that you informed your employer you were seeking work elsewhere. You argue you later rescinded your decision to quit.

A decision denying your benefits was entered on March 27, 2006 and mailed to you. The decision included April 6, 2006 as the date for filing any appeal. Your appeal came after April 6th in an envelope postmarked April 10, 2006.

Thereafter, you appealed notices requiring that you repay the overpayments you received. Numerous hearings took place as you appealed up the appellate ladder of the Department of Labor. Some you did not attend and some you attended. Those subsequent hearings and decisions focused on the overpayment arising from the March 27, 2006 decision. The final decision from the Board notes you continually make the same factual arguments, i.e., I rescinded my voluntary termination.

APPLICABLE LAW

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. *Unemployment Ins. Appeal Bd. v. Martin*, 431 A.2d 1265 (Del. 1981); *Pochvatilla v. U.S. Postal Serv.*, 1997 WL 524062 (Del. Super. Jun. 9, 1997); 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.”). “Substantial evidence” is “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion”. *Gorrell v. Div. of Vocational Rehab.*, 1996 WL 453356, at *2 (Del. Super. July 31, 1996). 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.” *McManus v. Christiana Serv. Co.*, 1197 WL 127953, at *1 (Del. Super. Jan. 31, 1997).

DECISION

The decision of the Board is affirmed. It is clear that despite your numerous internal appeals within the Department of Labor that you missed the first and most critical appeal, thereby not exhausting your administrative remedies.

Your failure to file an appeal at the initial stage was the reason you subsequently lost the remaining appeals.

The Board did not commit legal error as appeal deadlines are critical dates. Therefore, the finding that you were not entitled to unemployment benefits and the triggering an overpayment obligation (refund) is affirmed.

IT IS SO ORDERED.

Yours very truly,

T. Henley Graves

THG:baj

cc: Prothonotary