

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

PATRICIA BRYANT-HARRIS,	)	
	)	
Appellant,	)	
	)	
v.	)	
	)	C.A. No. N11A-10-008-JRS
DELAWARE DEPARTMENT OF	)	
INSURANCE,	)	
	)	
Appellee.	)	

Date Submitted: April 24, 2012  
Date Decided: June 6, 2012

*Upon Consideration of An  
Appeal From the Insurance Department of the State of Delaware.*  
**AFFIRMED.**

**ORDER**

This 6th day of June, 2012, upon consideration of the *pro se* appeal of Reverend Patricia Bryant-Harris (“Harris”) from the September 16, 2011 Final Order and Decision (“the Order”) of the Insurance Department of the State of Delaware (“the Department”) finding her in violation of 18 *Del. C.* § 2407(a)(2), it appears to the Court that:

1. As an employee of Bell Atlantic, Harris purchased a disability benefits plan that paid 70% of her basic pay,<sup>1</sup> administered through Mutual of Omaha.<sup>2</sup> The plan provided that Harris would continue to receive her disability pay so long as any subsequent job she might secure “pays less than half the amount” of her earnings at the time disability started.<sup>3</sup> It is undisputed that Harris’s income at the time her disability started was \$58,000.<sup>4</sup>

2. During her time as a regional manager with Bell Atlantic in Philadelphia in the early 1990s, Harris’s health began to interfere with her work.<sup>5</sup> After consultations with numerous doctors, Harris was placed on short-term disability leave for narcolepsy and a connective tissue disease. In April of 1992, the medical evidence became sufficient to place Harris on long term disability.<sup>6</sup> During the 1990s, the administration of Harris’s plan was transferred to The Hartford, followed by Aetna.<sup>7</sup>

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<sup>1</sup> *Dep’t of Ins. v. Harris*, No. 455-2007, Hearing Transcript (“Tr.”) at 314:2-6 (June 2, 2010).

<sup>2</sup> Tr. at 316:1-2.

<sup>3</sup> *See Dep’t of Ins. v. Harris*, No. 455-2007, Proposed Findings of Fact, Conclusions, of Law, and Recommendation (“Proposed Findings”) at 4 (March 3, 2011) (as incorporated in the Final Order and Decision).

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

<sup>5</sup> Tr. at 313:2-8.

<sup>6</sup> Tr. at 313:11-315:18.

<sup>7</sup> Tr. at 316:11-14.

During this time, Harris was working in ministry, first for the Haven United Method Church from 1995 to 1999, then for the Peninsula Delaware Conference of the United Methodist Church (“the Conference”) as a District Superintendent until 2005.<sup>8</sup> There were brief interruptions in the distribution of Harris’s disability pay, but these appeared to be largely due to clerical errors that occurred during the transfers between administrators and the terminations were reversed.<sup>9</sup>

3. In April of 2003, Unum Provident (“Unum”) became the administrator of Harris’s long-term disability plan.<sup>10</sup> At the end of that year, Unum requested medical and income updates.<sup>11</sup> Based on a fax Harris sent on January 6, 2004,<sup>12</sup> Unum determined her to be in excess of the \$29,000 income threshold and terminated her benefits.<sup>13</sup>

4. In 2005, Harris became aware of a class action settlement against Unum, the result of which provided her the opportunity to have her disability termination

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<sup>8</sup> Hearing Exhibit (“Ex.”) 12.

<sup>9</sup> Tr. at 317:8-318:22.

<sup>10</sup> Tr. at 319:9-12.

<sup>11</sup> Tr. at 319:15-23.

<sup>12</sup> Ex. 8. In the fax, Harris stated that she did not have her W-2 forms at that time but “received an income of \$4,473.08 per month before taxes.” This, of course, placed her well above the \$29,000 maximum detailed in the plan.

<sup>13</sup> Ex. 9.

reassessed. Unum received Harris's Reassessment Information Form ("RIF") in July of 2007.<sup>14</sup> Kevin Hight ("Hight"), a Unum employee assigned to review RIF submissions, completed an evaluation of the RIF and denied Harris's claim based on the W-2 forms he obtained from Harris's former employer.<sup>15</sup> The RIF was then transferred to Douglas Cole ("Cole"), a senior investigative consultant at Unum, for investigation of fraud in September of 2007 arising from alleged misrepresentations Harris made on her RIF concerning her employment with the Conference.<sup>16</sup>

5. Cole identified four areas of inconsistencies within the information Harris had provided to Unum during the reassessment process that caused him to form a reasonable belief that fraud had been committed.<sup>17</sup> First, Cole believed that Harris had misrepresented the amount of time she worked in her position as a District Superintendent for the Conference. In a conversation she had with a representative of Unum in 2003, Harris stated that she was working part time. When Hight contacted the Conference directly, he learned that the Conference expected the

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<sup>14</sup> Ex. 12.

<sup>15</sup> Ex. 15. The class action required that Unum revisit certain termination decisions made in prior years. Hight was required, therefore, to review the "record" retained by Unum concerning the prior termination of benefits to reassess the determination. This required, *inter alia*, Hight to verify information related to Harris's employer at the time of Unum's original termination.

<sup>16</sup> Tr. at 94:10-11.

<sup>17</sup> Tr. at 94:10-96:9.

position Harris held to require 60-70 hours of work per week.<sup>18</sup> Cole determined the information provided by Harris to be in conflict with the statements made by her employer. Second, Cole reviewed a letter sent by Harris to Unum during the reassessment process claiming that she was virtually incapacitated and, at times, could not work. Cole found this to be inconsistent with the information provided by Harris's employer that Harris was expected to be working more than full time during her employment with the Conference. Third, Cole believed that Harris submitted Schedule SE forms that were inconsistent with the information provided by her employer in her W-2 forms.<sup>19</sup> Finally, Cole believed that the information Harris provided in the reassessment form regarding her income during her years at the Conference was inconsistent with the W-2 forms. After forming this reasonable belief that insurance fraud had been committed, Cole, as he was obligated to do, reported the matter to the Department of Insurance in March of 2008.<sup>20</sup>

6. The Department assigned Lawrence Thornton ("Thornton") to

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<sup>18</sup> Tr. at 63:8-10.

<sup>19</sup> The Schedule SE is a form within the W-2 form that reflects an individual's self-employment income for various tax purposes. The Schedule SE takes the income listed on the W-2 and removes any deductions that are listed on the 2106 form. That net figure is deemed the individual's self-employment income. Clergy use this for self-employment and Social Security taxation purposes.

<sup>20</sup> Tr. at 82:21-24. *See also* 18 *Del. C.* § 2408 (requiring that insurers report suspected fraudulent activity that is based on a reasonable belief to the Department's Insurance Fraud Prevention Bureau).

investigate the matter. Thornton confirmed Cole's identification of misleading and conflicting information regarding Harris's workload.<sup>21</sup> Thornton also confirmed that Harris had misstated the name of a previous employer,<sup>22</sup> provided an incorrect address and phone number for that employer,<sup>23</sup> and provided an incorrect official job title.<sup>24</sup> Further, he determined that the income Harris listed on her RIF was inaccurate based on the W-2 forms he received from the Conference.<sup>25</sup> On December 10, 2009, the Department of Insurance issued a complaint<sup>26</sup> against Harris alleging a violation of

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<sup>21</sup> Thornton was not able to say that the statement "Monday through Friday, hours vary" Harris made on the RIF regarding the hours she worked was false. He did indicate that the various statements made about Harris's workload, including apparent self-contradictions made by Harris, were in conflict with one another. Tr. at 176:12-21.

<sup>22</sup> On the RIF, Harris listed her employer from 1999-2005 as "Salisbury-United Methodist Church," not the Conference. Tr. at 175:6-14.

<sup>23</sup> In describing her employer from 1999-2005, Harris provided an address and phone number for the St. James Methodist Church in Westover, Maryland. Tr. at 175:15-23, 176:1-10.

<sup>24</sup> Harris listed her title as "District Clergy Leader" on the RIF when it was officially "District Superintendent." Tr. at 177:16-19.

<sup>25</sup> Tr. at 176:22-177:2. Thornton went on to note that the Schedule SE was prepared by Harris's accountant. The filings, however, were made in reliance on a worksheet Harris had prepared. That worksheet did not claim Harris's parsonage or claim any reimbursed utilities for the purposes of taxation. Thornton found that to be inaccurate. Tr. at 180:2-181:10. Much ado was made of Harris reporting her housing allowances and expenses that were not reimbursed by the Conference. *See, e.g.*, Tr. at 124:10-125-16, 247-248, 454. These were ultimately issues of taxation, not insurance fraud.

<sup>26</sup> Ex. 2

18 *Del. C.* § 2407(a)(2).<sup>27</sup>

7. In the complaint, the Department reiterated the inconsistent information identified by Cole and confirmed by Thornton. The complaint alleged that the various statements Harris made regarding her income and her workload were made in violation of § 2407(a)(2). An administrative hearing took place between June 2010 and December 2010. Neither party contests the fact that Harris knowingly provided false contact information for the Conference and misstated her official job title.<sup>28</sup> At the hearing, Harris argued that she provided the false information with the intent that she would be assured to receive any communications from Unum in an expedited manner, placing her outside the specific intent defined in § 2407(a)(2).<sup>29</sup> Harris claimed that, despite updating her address, Unum had sent sensitive information to her former residence where it was left unattended on the porch of that residence for weeks. The Department argued that Harris provided incorrect contact information to prevent Unum from contacting her employer to verify information that she had

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<sup>27</sup> The statute provides: “It shall be a fraudulent insurance act for a person to knowingly, by act or omission, with intent to injure, defraud or deceive...prepare, present or cause to be presented to any insurer, any oral or written statement including computer-generated documents as part of, or in support of, a claim for payment or other benefit pursuant to an insurance policy, containing false, incomplete or misleading information concerning any fact material to such claims.” 18 *Del. C.* § 2407(a)(2).

<sup>28</sup> Tr. at 335:4-18, 342:6-15.

<sup>29</sup> Tr. at 337:14-340:9.

supplied to Unum in support of her claim.<sup>30</sup>

8. The testimony at the hearing centered mainly around what was to be considered as Harris's "new job pay" for the purposes of the RIF and her disability plan.<sup>31</sup> Unum had inherited a disability plan with an unclear definition of "new job pay."<sup>32</sup> Unum took the position that "new job pay" referred to gross earnings and repeatedly asked Harris for her W-2 forms.<sup>33</sup> Harris, under the belief "new job pay" referred to net income, insisted that her Schedule SE forms best reflected her "new job pay" and did not produce her W-2 forms to Unum.<sup>34</sup> The parties explored, at great length, the proper tax treatment of clergy income and whether Harris's tax filings were accurate.<sup>35</sup> This led to a focus on the truthfulness of the "new job pay" figure Harris had supplied to Unum on the RIF. The balance of the testimony focused on Harris's health as it related to her ability to work and the duties and time

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<sup>30</sup> Ex. 47 at 6-7. Harris repeatedly refused to produce any W-2 forms but did sign a waiver that allowed Unum to contact her employer directly to obtain the W-2 forms. It was only after Hight contacted the Conference that Unum obtained Harris's W-2 forms. *See* Tr. 55:2-56:8.

<sup>31</sup> The ambiguity of "new job pay," as Harris argued in the administrative proceedings, influenced her behavior and mental state in providing her Schedule SE as a statement of her income for purposes of the RIF and withholding her W-2 forms.

<sup>32</sup> Proposed Findings at 5.

<sup>33</sup> *See* Tr. 47:18-48:2.

<sup>34</sup> *See* Tr. 330:8-15.

<sup>35</sup> *See, e.g.,* Tr. at 203-277.



commitments her positions required.<sup>36</sup>

9. On March 3, 2011, the Hearing Officer submitted his Proposed Findings of Fact, Conclusions of Law, and Recommendation to the Department of Insurance, which was adopted by the Department in the Order.<sup>37</sup> After weighing the credibility of the witness testimony, the Hearing Officer identified a series of events as false, misleading or incomplete, all of which, in combination, established Harris's intent to defraud Unum. Specifically, the Hearing Officer pointed to the inconsistencies in the amount of time Harris worked, the false information within the RIF concerning her job title and the contact information for Harris's employer, and the alleged misrepresentation Harris made regarding her income and expenses as reflected in her tax filings. Based on the combination of these factors, the Department found, by a preponderance of evidence, that Harris had violated § 2407(a)(2).<sup>38</sup>

10. In seeking relief from this Court, Harris presents three arguments. First, she contends that the Order was not free from legal error based on the Department's misunderstanding of the tax laws that apply to clergy. Second, she argues that the Department's Order is not supported by substantial evidence. Third, she argues that

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<sup>36</sup> See, e.g., Tr. at 278-309.

<sup>37</sup> Ex. 49.

<sup>38</sup> Proposed Findings at 34.

her Due Process rights were violated by the Department's procedures. In this regard, she argues that the Department's failure to disclose the initial report Unum filled out to report suspected insurance fraud (the "Unum report") constituted a violation of Due Process. She also argues that her Due Process rights were violated by the length of time it took for the Department to reach its final decision regarding the administrative complaint.

11. In response, the Department argues that the Order was both free from legal error and supported by substantial evidence. The Department contends that this Court may not consider Harris's constitutional claims as they fall beyond the record. Should this Court entertain Harris's constitutional claims, the Department argues that both are without merit.

12. On appeal from the decision of an administrative agency, this Court's scope of review is limited to determining whether the Department's decision was supported by substantial evidence and free from legal error.<sup>39</sup> Substantial evidence is defined as "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion."<sup>40</sup> The Court considers the record in the light most favorable

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<sup>39</sup> *Stoltz Mgmt. Co., Inc. v. Consumer Affairs Bd.*, 616 A.2d 1205, 1208 (Del. 1992).

<sup>40</sup> *Histed v. E.I. duPont Nemours & Co.*, 621 A.2d 340, 342 (Del. 1993) (citing *Olney v. Cooch*, 425 A.2d 610, 614 (Del. 1981)).

to the prevailing party before the administrative agency.<sup>41</sup> The Court does not weigh evidence, assess credibility, or make independent factual findings.<sup>42</sup> On appeal, legal determinations, including “statutory construction and application of the law to undisputed facts,” require plenary review.<sup>43</sup>

13. The Court finds no legal error in the Order. The relevant legal question before the Court is whether the Department’s interpretation and application of § 2407(a)(2) was correct. In this regard, the Department correctly stated that it must show that Harris “acted knowingly,” “acted with intent to injure, defraud, or deceive,” “prepared, presented or caused to be presented to any insurer any oral or written statement as part of, or in support of, a claim for payment or other benefit pursuant to an insurance policy,” and “that the statement contained false, incomplete or misleading information about any fact material to such claim.”<sup>44</sup> The Court is satisfied that the definitions of “knowledge,” “intent,” “injure,” “defraud,” and

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<sup>41</sup> See *Thompson v. Unemployment Ins. Appeal Bd.*, 25 A.3d 778, 782 (Del. 2011) (citing *Pochvatilla v. United States Postal Serv.*, 1997 WL 524062, at \*2 (Del. Supr. June 9, 1997)).

<sup>42</sup> *Thompson*, 25 A.3d at 782 (quoting *Falconi v. Coombs & Coombs, Inc.*, 902 A.2d 1094, 1098 (Del. 2006)).

<sup>43</sup> *Del. Dep’t of Health and Soc. Serv. v. Jain*, 29 A.3d 207, 211 (Del. 2011); *Jordan v. Bd. of Pension Trs.*, 2004 WL 2240598, at \*2 (Del. Supr. Sep. 21, 2004) (quoting *Dep’t of Servs. for Children, Youth and Their Families v. Cedars Acad.*, 1991 WL 260775 (Del. Ch. Dec. 5, 1991)) (internal quotations omitted).

<sup>44</sup> Proposed Findings at 22.

“deceive” applied by the Department are correct and based on sound legal analysis.<sup>45</sup> Moreover, the Department correctly concluded, based on § 2407(a)(2),<sup>46</sup> that a person commits the act of insurance fraud when she presents to her insurer a claim that she knows contains incorrect, incomplete, or misleading material information for the purpose of deceiving her insurer.<sup>47</sup>

14. Harris’s argument on appeal that the Department committed legal error in its application of ecclesiastic tax law is misplaced and outside the scope of this appeal. While the tax treatment of clergy income may have factual relevance in an insurance fraud case dealing strictly with an alleged misrepresentation of “income,” it has no legal relevance in the determination of whether the Department employed the correct definition of fraud as set forth in § 2407(a)(2). The Court is satisfied that the Department properly applied § 2407(a)(2) to Harris’s case. Therefore, the Department’s Order is free from legal error.

15. After careful consideration of the voluminous record, the Court finds that

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<sup>45</sup> *Id.* at 23-25.

<sup>46</sup> Proposed Findings at 24 (citing *People v. Reynolds*, 2010 WL 1727393, at \*3 (Mich. Ct. App. Apr. 29, 2010) for an interpretation of a similar insurance fraud statute).

<sup>47</sup> The Department announced a narrow construction of § 2407(a)(2), omitting “incomplete, or misleading” after “incorrect” from its definition of insurance fraud. *See id.* This harmless error did not prejudice Harris as the Department was still able to find fraud under a less flexible standard.

the Department's decision is supported by substantial evidence. The Hearing Officer was free to weigh the credibility of the witnesses.<sup>48</sup> Specifically, the Hearing Officer's decision to discredit Harris's testimony as it related to her intent with respect to the production of the various misleading or incomplete statements was an appropriate exercise of his discretion as fact-finder.<sup>49</sup> Furthermore, the Court finds that the series of false, misleading, or incomplete statements Harris made during the reassessment process, including the false employer contact information, the false job title, the apparent evasive behavior in providing Unum with W-2 forms, and the inconsistencies in the amount of hours worked per week, provide the necessary substantial evidence to affirm the Department's findings.

16. The Court notes that perhaps too much attention was placed on the accuracy of Harris's tax filings at the hearing. Indeed, issues of federal taxation of clergy income were outside the competency of the Department in the hearing and beyond the issues to be decided at the hearing. The question before the Department was whether Harris had violated § 2407(a)(2). Even if the Court was to accept Harris's reported figures from her Schedule SE as an accurate reflection of her net

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<sup>48</sup> It is not for this Court to weigh evidence or assess issues of credibility on appeal. *See Thompson*, 25 A.3d at 782 (quoting *Falconi v. Coombs & Coombs, Inc.*, 902 A.2d 1094, 1098 (Del. 2006)).

<sup>49</sup> Proposed Findings at 21.

income,<sup>50</sup> this does not change the fact that the Schedule SE is incomplete and misleading as it relates to her claim for disability benefits, the RIF, and Unum's ability to assess Harris's qualifications for either. Furthermore, the Department had other factual support unrelated to the taxation issues to bolster its findings. For example, the false information regarding her employer's contact information and her job title as well as the inconsistencies in the amount of hours she worked all are independent of the issue of Harris's tax filings and each support the Department's findings. Harris's arguments on appeal present an explanation of her behavior which, in a criminal setting, may have provided a jury with reasonable doubt to withhold a conviction. But the Department needed to prove a violation of § 2407(a)(2) by only a preponderance of evidence.<sup>51</sup> Based on the Hearing Officer's assessment of the testimony before him, the Court finds that the Order was supported by substantial evidence and sufficient to meet the preponderance of the evidence threshold.

17. Finally, the Court is satisfied that the failure to provide Harris with a

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<sup>50</sup> This assumption goes to set aside only the arguments surrounding Harris's compliance with the tax code and what is considered clergy's "net income." This assumption does not, however, validate Harris's belief that "net income" was the correct figure to be used on the RIF, nor does it purport to be a resolution of the ambiguity of term "new job pay" in the disability plan.

<sup>51</sup> 18 *Del. C.* § 2411.

copy of the Unum report does not constitute a violation of her constitutional rights.<sup>52</sup>

The Court looks at three factors to determine whether there has been a violation of Due Process in an administrative proceeding: (1) the private interest affected by the agency's action; (2) the risk of erroneous deprivation of that interest and the probable value of any procedural safeguards; and (3) the government's interest.<sup>53</sup> These factors essentially amount to a social cost-benefit analysis.<sup>54</sup>

18. Harris has provided no evidence or argument that the production of Unum's report would have had any impact on her presentation at the hearing or the legitimacy of the Department's decision. Harris's contention that the Department prejudged her case is without merit, especially given the voluminous record before the Department and the careful consideration the Hearing Officer gave it. In addition, Harris was afforded every opportunity to present evidence to the Department for consideration in making its decision. All of these safeguards are well in excess of the

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<sup>52</sup> It is well settled that administrative agencies are not properly prepared to deal with constitutional questions. *Califano v. Sanders*, 430 U.S. 99, 109 (1977) ("Constitutional questions obviously are unsuited to resolution in administrative hearing procedures and, therefore, access to the courts is essential to the decision of such questions."). Harris was, therefore, not required to raise her constitutional complaint in the proceedings below and may raise them here for the first time. *See Berchock v. Council on Real Estate Appraisers*, 2001 WL 541026, at \*4 (Del. Super. Apr. 26, 2001) (citing *Down Under, Ltd. v. Alcoholic Beverage Control Comm'n*, 576 A.2d 675 (Del. Super. 1989)).

<sup>53</sup> *See Matthews v. Eldridge*, 424 U.S. 319, 335 (1976).

<sup>54</sup> *See* RICHARD J. PIERCE, ADMINISTRATIVE LAW TREATISE 803-05 (5th ed. 2011).

Due Process that must be afforded to litigants in an administrative proceeding.<sup>55</sup> Finally, the government's interest in protecting the efficiency of administrative proceedings is significant. Considering that the interest at stake is an administrative penalty only, and in the absence of any evidence that Harris's presentation or the Department's decision making process was impaired by the failure to disclose Unum's initial report, the Court can find no violation of Harris's Due Process rights.<sup>56</sup>

19. Finally, the duration of the administrative proceedings does not constitute a violation of Harris's Due Process rights. As a general rule, actual prejudice must be shown as a result of the delay in order for this Court to find a violation of Due Process.<sup>57</sup> Harris has not alleged that the delay was prejudicial to the outcome of her hearing. Moreover, the Department prosecuted the case within the statute of limitations.<sup>58</sup> Accordingly, the Court finds Harris's final argument without

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<sup>55</sup> See *Del. Transit Corp. v. Roane*, 2011 WL 3793450, at \*10 (Del. Supr. Aug. 24, 2011) ("In administrative proceedings, due process simply requires that the liberty and property of the citizen shall be protected by the rudimentary requirements of fair play.") (citations omitted). See also *Armstrong v. Manzo*, 380 U.S. 545, 393-94 (1965) ("A fundamental requirement of due process is the opportunity to be heard. It is an opportunity which must be granted at a meaningful time and in a meaningful manner.") (citation omitted).

<sup>56</sup> See *Quigley v. State Bd. of Pension Trustees*, 1987 WL 7531, at \*5 (Del. Ch. Apr. 29, 1987) (noting the substantial showing that must be made to establish a Due Process violation in an administrative proceeding).

<sup>57</sup> *Sandefur v. Unemployment Ins. Appeals Bd.*, 1993 WL 389217, at \*5 (Del. Super. Aug. 27, 1993).

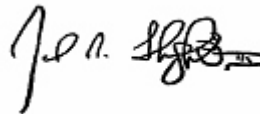
<sup>58</sup> 10 *Del. C.* § 8106(a).



merit.

20. Based on the foregoing, the Court is satisfied that the Department applied the correct legal standards and that its decision is supported by substantial evidence. Further, the Court finds no deprivation of Harris's Due Process rights. Accordingly, the Order of the Department finding Harris in violation of 18 *Del. C.* § 2407(a)(2) must be **AFFIRMED**.

**IT IS SO ORDERED.**

A handwritten signature in black ink, appearing to read "J.R. Slights, III". The signature is written in a cursive style with a horizontal line at the end.

Joseph R. Slights, III, Judge

Original to Prothonotary