

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

<b>ALICE R. BOURBONNAIS</b>	)	
	)	CIVIL ACTION NUMBER
Plaintiff	)	
	)	08A-06-008-JOH
v.	)	
	)	
<b>UNEMPLOYMENT INSURANCE</b>	)	
<b>APPEAL BOARD</b>	)	
	)	
Defendant	)	
	)	

*Submitted: March 3, 2009*  
*Decided: June 5, 2009*

**MEMORANDUM OPINION**

*Upon Appeal from the Unemployment Insurance Appeal Board - **AFFIRMED***

***Appearances:***

Alice R. Bourbonnais, 107 Halloween Run, Newark, Delaware, 19702, *Pro Se*

Ralph K. Durstein, Esquire, Deputy Attorney General, Department of Justice, Wilmington, Delaware, attorney for the defendant

HERLIHY, Judge

Before the Court is a *pro se* appeal filed by Alice R. Bourbonnais (“Bourbonnais”) against the Unemployment Insurance Appeal Board (“Board”). Bourbonnais filed her appeal on June 23, 2008. The appeal disputes the dismissal of her claims by an Appeals Referee. The Referee dismissed her claim that she had not received excess benefits during a period of time when she was receiving unemployment benefits. The basis of the Referee’s dismissal was due to Bourbonnais’ failure to appear for the scheduled hearing. Bourbonnais appealed that dismissal to the Board. The Board upheld the Referee’s dismissal. She now appeals the Board’s ruling to the Superior Court. For the reasons stated below, her appeal is denied and the decision of the Board is AFFIRMED.

### ***Factual Background***

In 2007, Bourbonnais was receiving unemployment benefits and was required, as a recipient of those benefits, to report payments she was receiving from her insurance company to the Department of Labor (“Department”). During a random audit, the Department determined it had overpaid Bourbonnais for a period of three weeks. Pursuant to 19 *Del. C.* §3325, the Department moved to recover the overpayments.<sup>1</sup> A

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<sup>1</sup> Recoupment of overpayments 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. The person shall be so liable regardless of whether such sum was received through fraud or mistake.

representative of the Department wrote Bourbonnais about the overpayments asking her to contact that representative.<sup>2</sup>

The record supplied to the Court is a little unclear but it appears to indicate that a Claims Deputy made a decision on February 7, 2008, upholding the benefit overpayment.<sup>3</sup> Bourbonnais filed a timely appeal of Claims Deputy's decision on March 19, 2008.<sup>4</sup> On March 20<sup>th</sup>, notice was sent to Bourbonnais of the appeal hearing to be held on April 10, 2008.<sup>5</sup> However, Bourbonnais did not appear at the hearing. The Referee found that Bourbonnais had been given notice of the hearing and dismissed the claim.<sup>6</sup> The dismissal was subsequently mailed to Bourbonnais. Within that ruling, it was written, "LAST DAY TO FILE AN APPEAL: 4-20-08".<sup>7</sup>

Bourbonnais filed her appeal of the Referee's decision to the Board on May 16, 2008. On her appeal paper, she stated that she had failed to appear on April 10<sup>th</sup> due to

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<sup>2</sup> Appeal Record at 10.

<sup>3</sup> R. at 2.

<sup>4</sup> R. at 20.

<sup>5</sup> R. at 21.

<sup>6</sup> R. at 22.

<sup>7</sup> R. at 22.

“asthmatic exasperation”.<sup>8</sup> However, she did admit to having received the Referee’s decision during the week of April 14<sup>th</sup>.<sup>9</sup>

On May 28, 2008 the Board issued an opinion refusing to hear Bourbonnais’ appeal.<sup>10</sup> It determined that her appeal filed on May 16<sup>th</sup> had been filed past the appeals deadline. Furthermore, the Board upheld the April 10<sup>th</sup> decision of the Referee by declaring it final and binding. The Board’s decision does not state whether she was present or absent at its hearing.

Bourbonnais has filed an opening brief to this Court and attached compensation vouchers that were not a part of the record before the Board. These vouchers, Bourbonnais asserts, help to show the amount of money she was paid on a weekly basis from her insurance company and what she reported to the Department. She contends the auditor did not appreciate the fact that “[t]he audited amounts...show amounts earned a week earlier than the actual dates received.”<sup>11</sup>

### *Parties’ Contentions*

Bourbonnais contends she did not receive notice of the April 10<sup>th</sup> Appeals Referee hearing until April 14, 2008 because of illness. On appeal, she also disputes the

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<sup>8</sup> R. at 24.

<sup>9</sup> *Id.*

<sup>10</sup> R. at 25-6.

<sup>11</sup> Appellant’s Opening Brief.

overpayments by attaching her pay stubs as exhibits. She argues that the auditor mistakenly used incorrect weekly figures, resulting in the Department's belief that it had overpaid benefits to her.

The Board here rests on the decision of the Referee and Board's opinion below supporting the Referee's dismissal. It argues the record shows that Bourbonnais failed to appear on the scheduled date despite proper notice. Finally, the Board notes Bourbonnais failed to file her appeal to it on time and, therefore, the Board's decision to deny review was merited.

### *Standard of Review*

The duty of this Court on an appeal from the Unemployment Insurance Appeal Board "is to determine whether the decision below is supported by substantial evidence and free from legal error."<sup>12</sup> Substantial evidence "means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion."<sup>13</sup> The standard of review "requires the reviewing court to search the entire record to determine whether, on the basis of all of the testimony and exhibits before the agency, it could fairly and reasonably reach the conclusion that it did."<sup>14</sup>

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<sup>12</sup> *General Motors Corp. v. Jarrel*, 493 A.2d 978, 980 (Del. Super. 1985).

<sup>13</sup> *Histed v. E.I. DuPont de Nemours & Co.*, 621 A.2d 340, 342 (Del. 1993).

<sup>14</sup> *National Cash Register v. Riner*, 424 A.2d 669, 674-75 (Del. Super. 1980).

### *Discussion*

On a review of a Board decision, the Court's decision is bound to the record that was presented before the Board.<sup>15</sup> Therefore, the Court will not consider the new arguments that Bourbonnais now presents concerning possible overpayment or of underpayment by the Department. The issue, on appeal, is whether the Board's decision in this case is free of legal error and supported by substantial evidence.

The May 28<sup>th</sup> decision of the Board upheld the Referee's dismissal and determined that Bourbonnais' appeal to it was untimely filed by twenty-six days. In its decision, the Board noted it could, in extreme circumstances, excuse a claimant's late filing.<sup>16</sup> Although the Board was aware of Bourbonnais' reported illness, the Board elected against exercising that power. The Board's decision to dismiss her appeal was based on the lateness of her appeal to it from the Appeals Referee, not her failure to appear before the Referee.<sup>17</sup>

In this particular case, the Board's refusal was not an abuse of discretion.<sup>18</sup> The Board's decision is supported by the record. Bourbonnais admitted in her own brief that she had received the referee's decision on April 14, 2008. The decision documented her

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<sup>15</sup> *Hubbard v. Unemployment Ins. Appeal Bd.*, 352 A.2d 761, 763 (Del. 1976).

<sup>16</sup> *Funk v. Unemployment Ins. Appeal Bd.*, 591 A.2d 222, 225 (Del. 1991).

<sup>17</sup> The note of the Appeals Referee hearing was sent March 20<sup>th</sup> to Bourbonnais' address of record (it never changed). Based on her appeal to the Board, she did not receive it until 25 days later.

<sup>18</sup> *Funk* at 225.

last date to appeal the decision was April 20, 2008. For reasons unknown to the Board, Bourbonnais did not meet her filing deadline. Furthermore, the Board found no evidence to conclude the Department was responsible for delaying Bourbonnais' appeal. Given the record before the Board, the Court is satisfied the Board's decision is supported by substantial evidence. Nor can the Court discern any legal error in the decision.

*Conclusion*

For the reasons stated herein, the decision of the Unemployment Insurance Appeal Board is AFFIRMED.

**IT IS SO ORDERED.**

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J.