

SUPERIOR COURT
OF THE
STATE OF DELAWARE

RICHARD F. STOKES
JUDGE

SUSSEX COUNTY COURTHOUSE
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GEORGETOWN, DE 19947
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RE: ***Crescenzo v. Unemployment Ins. Appeal Bd.***
C.A. No. S12A-03-001 RFS

*Appeal of a Decision of the Unemployment Insurance Appeal Board.
Decision Affirmed. Appeal Denied.*

Submitted: September 5, 2012
Decided: November 9, 2012

Dear Ms. Crescenzo and Counsel:

This is my decision following remand to the Unemployment Insurance Appeal Board (“Board”). The Board’s conclusion on remand that Claimant Grace Crescenzo is liable for repayment on both her claims is affirmed.

Claimant filed an unemployment claim March 29, 2009 and a second one November 29, 2009 for her work at Employer Generations, which is not a party to this appeal. The Division did not find any record of Claimant’s work at Generations, but Claimant received benefits under the federal extension program for individuals who have exhausted their state remedies. According to the record, Claimant received \$2979.00 for these claims at the federal weekly rate of \$330.00.

On January 20, 2010, the Division of Unemployment Insurance (“the Division”) discovered the Generations wages and found that Claimant was eligible for a new state claim based on these wages rather than the federal benefits. Two days later, the Benefit Payment Control Manager

determined that Claimant was liable for repayment of the federal benefits on both claims under the recoupment statute, 19 *Del.C.* § 3325. The wages were not timely discovered by the Division because Generations submitted the pay stubs under an incorrect social security number. These wages would have disqualified Claimant from receiving federal benefits because she had not exhausted her State benefits. An appeals referee affirmed the recoupment decision on February 25, 2010, issuing separate decisions on the two claims. The Board heard the matter on May 25, 2010, but resolved only one of the referee's decisions.

On Claimant's appeal, this Court remanded the case to the Board on January 18, 2012. On February 15, 2012, the Board issued a decision vacating its previous decision and affirming the referee's decision that Claimant is liable for repayment of the federal extension benefits pursuant to § 3325 on both claims initially filed by Claimant. The total amount to be repaid is \$2970.00.

Claimant filed a timely appeal to this Court. The Court's role on review of an administrative decision is to determine whether the decision is supported by substantial evidence and is free from legal error.¹

Pursuant to § 3325, when unemployment benefits are overpaid, the claimant is liable for repayment even when the claimant is not at fault. When Claimant filed her claims in March and November 2009, she signed a Notice of Receipt of Benefit Rights, to the effect that she understood the consequences of overpayment. These documents are included in the certified record. The Board correctly applied the recoupment statute to both claims, and there is no legal error or lack of substantial evidence to support the Board's decision.

Claimant argues that the recoupment statute be revised, a task that can be undertaken by the General Assembly.

The decision of the Board is **AFFIRMED** and Claimant's appeal is **DENIED**.

IT IS SO ORDERED.

Very truly yours,

/s/ Richard F. Stokes

Richard F. Stokes

Original to Prothonotary

¹*Brown v. City of Wilmington*, 1995 WL 653460 (Del.Super.).