

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

KAREN LYLES,)	
)	
Appellant,)	
)	
v.)	C.A. No. N12A-09-007 EMD
)	
UNEMPLOYMENT INSURANCE)	
APPEAL BOARD,)	
)	
Appellee.)	

Submitted: February 25, 2013
Decided: June 10, 2013

On Appeal from the Unemployment Insurance Appeal Board
*Decision **AFFIRMED***

Karen Lyles, Rock Hill, South Carolina pro se *Appellant*.

Caroline Lee Cross, Esquire, Wilmington, Delaware, *Attorney for Appellee*.

DAVIS, J.

INTRODUCTION

This is an appeal from a decision of the Unemployment Insurance Appeal Board (the “Board”). The Board’s decision affirmed findings by a Department of Labor appeals referee that Claimant-Appellant Karen Lyles failed to file a timely appeal of a determination by a Department of Labor claims deputy (the “Deputy”) that Ms. Lyles received and was liable for an overpayment of unemployment benefits.

The Board based its determination on evidence including the transcript of a hearing before the appeals referee on the issue of timeliness, the notice of the Deputy’s

determination sent to Ms. Lyles by the Department of Labor, and Ms. Lyles' appeal of the Deputy's decision.¹ Ms. Lyles contends the Board denied her an appeal without cause, contending she never received notice of the Deputy's determination of overpayment of benefits. For the reasons set forth below, the Board's decision is **AFFIRMED** as the record on appeal contains substantial evidence to support the Board's determination and is otherwise free from legal error.

PROCEDURAL POSTURE AND RELEVANT FACTUAL BACKGROUND

On April 3, 2012, the Deputy determined, under 19 *Del. C.* § 3325, that Ms. Lyles received and was liable for an overpayment of unemployment benefits in the amount of \$37.00 (the "Benefits Determination"). The Deputy issued and mailed the Benefits Determination on the same date. The Benefits Determination was addressed to Ms. Lyles at an address in Townsend, Delaware. The Benefits Determination stated that it became "final on 04/13/2012 unless a written appeal [was] filed," with such written appeal received by the Department of Labor or post marked on or by the same date.

Ms. Lyles filed an appeal of the Benefits Determination. Her appeal was accompanied by documents dated May 23, 2012, however the Department of Labor did not receive the appeal, via fax, until June 7, 2012. In her letter of appeal, Ms. Lyles provided the Department of Labor her new address in South Carolina.

On June 12, 2012, an entirely different Department of Labor claims deputy determined that Ms. Lyles' appeal was untimely (the "Untimely Determination"). The Untimely Determination notes that the Determination was sent to Ms. Lyles' Townsend, Delaware address. The Untimely Determination further noted that the Townsend,

¹ Record [hereinafter "R."] at 39.

Delaware address was her address of record at the time and there was no information in her file to indicate the Benefits Determination was returned by the U.S. Post Office.

A hearing before an appeals referee on the sole issue of the timeliness of Ms. Lyles' appeal was scheduled for July 9, 2012. Ms. Lyles failed to appear at that hearing, and the referee dismissed her appeal for failure to prosecute.

Ms. Lyles filed an appeal of the referee's dismissal on July 17, 2012. On July 18, 2012, the Board reviewed Ms. Lyles' appeal and accepted her explanation for not attending the hearing held on July 9, 2012. The Board remanded the matter to the referee for another hearing.

A hearing on the sole issue of the timeliness of Ms. Lyles' appeal of the Benefits Determination was held before an appeals referee on August 16, 2012. The referee heard testimony from Ms. Lyles and a representative from the Department of Labor. Finding that Ms. Lyles failed to timely appeal the claims deputy's determination of overpayment, the referee affirmed the Benefits Determination in a decision dated and mailed on August 16, 2012 (the "Referee's Decision").

Ms. Lyles filed an appeal of the Referee's Decision on August 21, 2012. In a decision dated and mailed on September 10, 2012, the Board affirmed the Referee's Decision. The Board found that Ms. Lyles was provided notice and an opportunity to be heard sufficient to satisfy the requirements of due process. The Board based its determination on Ms. Lyles' testimony that she did not change her address of record with the Department of Labor until she filed her appeal in May 2012, as well as the absence of evidence of departmental error causing a late appeal on the part of the Department of Labor.

Ms. Lyles filed her appeal to this Court on September 27, 2012. The Court received the record and transcript of the proceedings below on December 3, 2012. A briefing schedule was issued on December 17, 2012. Ms. Lyles filed her Opening Brief on January 8, 2013. The Board filed a letter memorandum in lieu of an answering brief on January 28, 2013. Ms. Lyles filed a letter memorandum in lieu of a reply brief on February 25, 2013.

PARTIES' CONTENTIONS

Ms. Lyles disputes that she received an overpayment of benefits and contends that the Board has denied her an appeal without cause. Ms. Lyles argues that she did not receive notice of the Benefits Determination until May 2012 because she was traveling for employment she obtained in January 2012—the week that was the subject of the Benefits Determination. Ms. Lyles additionally argues that the Board lacked evidence that she received notice of the Benefits Determination. Ms. Lyles contends that the Department of Labor should have mailed the notice to the employer for whom she became employed in January—her last employer under 19 *Del. C.* § 3325.

The Board contends that substantial evidence in the record before the Court supports the Board's findings, and that the findings are free from legal error. The Board argues that Ms. Lyles did not receive notice of the claims deputy's April 3, 2012 determination only because she failed to inform the Department of Labor of her change of address.

STANDARD OF REVIEW

On review, under 19 *Del. C.* § 3323, “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.”² Therefore, this Court’s role upon appeal is to determine whether the Board’s findings are “supported by substantial evidence and free from legal error.”³ Substantial evidence is “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.”⁴ Moreover, the Court may only consider the record before it.⁵ In reviewing the record for substantial evidence, the Court considers the record in “the light most favorable to the party prevailing below.”⁶

Consequently, the Court will not disturb the Board’s determination absent an abuse of discretion by the Board.⁷ The Court will find an abuse of discretion only if “the Board ‘acts arbitrarily or capriciously’ or ‘exceeds the bounds of reason in view of the circumstances and has ignored recognized rules of law or practice so as to produce injustice.’”⁸

² 19 *Del. C.* § 3323 (2012); *Coleman v. Dep’t of Labor*, 288 A.2d 285, 287 (Del. Super. 1972) (“[T]he credibility of the witnesses, the weight of their testimony, and the reasonable inferences to be drawn therefrom are for the Board to determine.”).

³ *Ridings v. Unemployment Ins. Appeal Bd.*, 407 A.2d 238, 239 (Del. Super. 1979); *Crews v. Sears Roebuck & Co.*, N10A-08-011, 2011 WL 2083880, at *2 (Del. Super. May 11, 2011).

⁴ *Oceanport Indus. v. Wilmington Stevedores*, 636 A.2d 892, 899 (Del. 1994).

⁵ *Hubbard*, 352 A.2d at 763.

⁶ *Steppi v. Conti Elec., Inc.*, 2010 WL 718012, at *3, 991 A.2d 19 (table) (Del. Mar. 16, 2010); *Gen. Motors Corp. v. Guy*, 90A-JL-5, 1991 WL 190491, at *3 (Del. Super. Aug. 16, 1991).

⁷ *Crews*, 2011 WL 2083880, at *2; *see also Funk v. Unemployment Ins. Appeal Bd.*, 591 A.2d 222, 225 (Del. 1991) (“The scope of review for any court considering an action of the Board is whether the Board abused its discretion.”).

⁸ *Straley v. Advanced Staffing, Inc.*, 2009 WL 1228572, at *2 (Del. Super. 2009) (citations omitted).

DISCUSSION

The recoupment of overpayment of unemployment benefits is governed by 19 *Del. C.* § 3325. The statute provides that a person receiving benefits to which that person is finally deemed not entitled “shall be liable to repay in cash said overpayment,” regardless of whether she received those funds through fraud or mistake.⁹ The Department of Labor may initiate an action to collect an overpayment of benefits after issuing a notice of overpayment and an order for recoupment unless the claimant “files an appeal to an Unemployment Insurance appeals referee within 10 days after such order was mailed to the person at the person’s last known address”¹⁰

A claims deputy may reconsider a determination of qualification for benefits.¹¹ A decision of a claims deputy is final unless a claimant files an appeal “within 10 days after the determination was mailed to the last known address of the claimant and the last employer.”¹² A claimant’s “last employer” is “the employer by whom the claimant was most recently employed” when she files a claim for benefits.¹³

The Board may affirm a decision “on the basis of the evidence previously submitted to the appeal tribunal.”¹⁴ “The 10 day period for filing an appeal begins running on the date of mailing unless the mailing fails to reach the recipient because of a mistake made by [a claims deputy].”¹⁵ This Court has held that the Board properly affirmed an appeals referee’s decision that a claims deputy’s determination was final and

⁹ 19 *Del. C.* § 3325.

¹⁰ *Id.*

¹¹ *Id.* § 3318(a).

¹² *Id.* § 3318(b).

¹³ *Id.* § 3317(b).

¹⁴ *Id.* § 3320(a).

¹⁵ *Lively v. Dover Wipes Co.*, 02A-08-003, 2003 WL 21213415, at *1 (Del. Super. May 16, 2003).

binding where the claims deputy's determination was mailed to the claimant at his address of record, and the claimant failed to receive notice of the determination because he was out of town.¹⁶ The Court based its decision on (i) evidence supporting the Board's conclusion that the deputy's determination was mailed to the claimant's address of record and (ii) the lack of evidence of error on the part of the Department of Labor that could have delayed the claimant's response.¹⁷

Where the basis for a decision leading to an appeal is the lateness of a claimant's appeal from a claim deputy's determination on benefits, the Court will only consider whether the appeal was timely.¹⁸ The Court may not consider the substance of the claims deputy's determination.¹⁹

Ms. Lyles advances arguments in her brief which relate to the substance of the claims deputy's decision that she was overpaid benefits. Because the issue in the proceedings below—the decisions of the appeals referee and the Board—relate only to the timeliness of Ms. Lyles' appeal of the claims deputy's determination, that is the issue before the Court. The Court cannot consider the correctness of the Deputy's Benefits Determination, nor can the Court consider the amount of the overpayment. Additionally, Ms. Lyles attached a number of exhibits to her Opening Brief. The Court cannot consider those exhibits, because its review is limited to the record of the administrative proceedings below.²⁰

¹⁶ *McKinley v. First Impressions, Inc.*, 04A-04-009, 2005 WL 1654013, at *1 (Del. Super. June 20, 2005).

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Hubbard v. Unemployment Ins. Appeal Bd.*, 352 A.2d 761, 763 (Del. 1976) ("Upon appeal from a denial of unemployment benefits, the Superior Court is limited to consideration of the record which was before the administrative agency").

The sole issue before the Court is whether the Board's decision on September 10, 2012 is supported by substantial evidence and free from legal error.²¹ The Board considered evidence, received into the record at the hearing before the appeals referee on August 16, 2012, that Ms. Lyles did not receive the Benefits Determination until May 2012 because she was living in South Carolina for employment in North Carolina.²² A representative from the Department of Labor testified that the Benefits Determination was mailed to Ms. Lyles at her address of record and that nothing in Ms. Lyles' file indicated mail was returned by the U.S. Post Office.²³ Ms. Lyles testified that she notified the Department of Labor of her South Carolina address when she appealed the claims deputy's determination in May 2012.²⁴ The record reflects that the Department of Labor received Ms. Lyles' appeal on June 7, 2012, via a fax transmittal dated May 23, 2012.²⁵

On this record, the Board's decision is supported by the evidence and is free from legal error. In concluding that the Department of Labor provided Ms. Lyles notice and an opportunity to be heard, the Board noted that the Department of Labor provided Ms. Lyles notice (as expressly set out in the Benefits Determination) that the Benefits Determination would become final unless Ms. Lyles filed an appeal within 10 days of the date of the determination.²⁶ The record supports that Ms. Lyles did not receive the claims deputy's determination in time to file a timely appeal because she failed to notify the Department of Labor of her change of address until she filed her appeal in May

²¹ See *Ridings v. Unemployment Ins. Appeal Bd.*, 407 A.2d 238, 239 (Del. Super. 1979); *Crews v. Sears Roebuck & Co.*, N10A-08-011, 2011 WL 2083880, at *2 (Del. Super. May 11, 2011).

²² R. at 24.

²³ *Id.* at 22.

²⁴ *Id.* at 25-26.

²⁵ *Id.* at 2, 22.

²⁶ See *id.* at 1, 39.

2012.²⁷ Ms. Lyles' basis for her late appeal is not one that warranted reversal of the Referee's Decision by the Board.²⁸ Furthermore, the record supports the Board's finding that no error on the part of the Department of Labor delayed Ms. Lyles' receipt of the Benefits Determination, as that determination was sent to Ms. Lyles' address of record without having been returned by the U.S. Post Office.²⁹

Finally, the Deputy was not under a duty to notify Ms. Lyles of the Benefits Determination by mailing that determination to her employer in North Carolina. Ms. Lyles' last employer, for the purposes of the statute governing benefits, was the employer for whom she was most recently employed at the time she filed for benefits. Moreover, the statute in requiring the Department of Labor to notify claimants' last employers of determinations has no discernible purpose of providing notice to a claimant via her last employer.³⁰ Therefore, the Board committed no error in not considering that the Department of Labor did not mail the claims deputy's determination to Ms. Lyles' employer in North Carolina.

²⁷ *Id.* at 24.

²⁸ *McKinley v. First Impressions, Inc.*, 04A-04-009, 2005 WL 1654013, at *1 (Del. Super. June 20, 2005).

²⁹ *R.* at 22.

³⁰ *See* 19 *Del. C.* § 3317 (governing determination of base periods and wage charges for qualification for and calculation of benefits); *Id.* § 3318.

CONCLUSION

For the reasons stated above, the Board's finding that Ms. Lyles' appeal of the Benefits Determination was untimely is supported by substantial evidence and is free from legal error. Therefore, the Board's decision is **AFFIRMED**.

IT IS SO ORDERED.

Eric M. Davis
Judge