

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

ALISON MORRISON,

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Appellant,

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v.

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C.A. No. N12A-12-007-MJB

)

)

UNEMPLOYMENT

)

INSURANCE APPEAL BOARD,

)

)

Appellee.

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)

Submitted: July 22, 2012
Decided: October 18, 2013

Upon Appellant's Appeal from the Unemployment Insurance Appeal Board's Decision.
AFFIRMED.

OPINION AND ORDER

Alison Morrison, *pro se*, Appellant.

James T. Wakley, Esq., Attorney for Appellee Unemployment Insurance Appeal Board
Thomas H. Ellis, Esq., Attorney for Appellee Division of Unemployment Insurance.

BRADY, J.

I. INTRODUCTION

Alison Morrison (“Morrison”) initially filed an unemployment claim on July 8, 2012 with the Delaware Department of Labor (“Department”).¹ She filed weekly claim forms for the weeks ending July 14, 2012 and July 21, 2012.² Morrison was denied unemployment benefits on July 20, 2013.³ Morrison appealed the Department’s denial on July 24, 2012.⁴ Her appeal was successful and she was granted unemployment benefits in a determination dated September 25, 2012.⁵

While awaiting the outcome of her appeal, from July 24, 2012 to September 29, 2012, Morrison stopped filing the required weekly pay orders for unemployment benefits.⁶ Once she was notified that her appeal had been successful, Morrison attempted to retroactively file for benefits for the week ending August 4, 2012 through the week ending September 22, 2012.⁷ At an October 12, 2012 determination, a Claims Deputy for the Department found Morrison to be ineligible for benefits for the weeks in question because she failed to submit her claim forms in a timely fashion.⁸

Morrison timely appealed the Claim Deputy’s October 12, 2012 determination, and a hearing was held before the Appeals Referee on November 9, 2012.⁹ In a decision dated November 14, 2012, the Appeals Referee affirmed the decision of the Claims Deputy, finding Morrison ineligible for benefits for the week ending August 4, 2012

¹Record at 6 (hereinafter “R.”).

²*Id.*

³*Id.* at 45.

⁴*Id.* The Department’s determinations regarding whether a claimant is entitled to unemployment benefits are first reviewed by an Appeals Referee, then by the Unemployment Insurance Appeals Board, before being subject to review by this Court.

⁵*Id.*

⁶*Id.*

⁷Morrison at one point also includes the week ending July 21, 2012. R. at 9.

⁸*Id.*

⁹*Id.* at 13.

through the week ending September 22, 2012.¹⁰ The Referee found Morrison ineligible because Morrison failed to submit claim forms for the weeks in question on time, and found that the appeal form used by Morrison clearly states that failure to submit the weekly claims in a timely manner could result in denial of the benefits.¹¹ Similar notices appear (1) on the July 20, 2012 notice that originally disqualified Morrison for benefits and (2) in the *Division of Unemployment's Guide to Unemployment Insurance Benefits*, making it clear that this is the policy of the Department.¹² Under 19 *Del. C.* §3315(2), an unemployed individual, such as Morrison, is eligible for benefits for a given week only if she “has made a claim for benefits with respect to such week in accordance with such regulations as the Department prescribes.”¹³ By not filing the claim forms on time, Morrison failed to comply with Department regulations.

Morrison appealed the Appeals Referee’s decision to the Unemployment Insurance Appeal Board (“UIAB” or “Board”) on November 26, 2012.¹⁴ Morrison argued that she should not be disqualified for the weeks in question because she was advised by a representative at the Unemployment Office not to claim benefits until her

¹⁰*Id.* at 29.

¹¹*Id.* at 31. The text on the appeal form, which is located directly below Morrison’s signature, reads as follows: “To the Claimant: As long as you remain unemployed you must continue to submit weekly claims through your selected method, mail or Telebenefits. Failure to submit such weekly claims in a timely manner could result in the denial of those benefits.” *Id.* at 37.

¹²R. at 44–45. The *Guide to Unemployment Insurance Benefits*, under “the Appeal” section, states:

Continue to file for benefits as long as you are unemployed!! During the course of your appeal, you should continue filing for your unemployment insurance payment each week and maintaining your eligibility for unemployment insurance benefits. **See Protect Your Eligibility While Receiving Benefits.** At any point during the process, if it is determined that you are eligible for benefits, you will receive benefits only for the weeks for which you filed timely and met all eligibility requirements, even if there is a further appeal.

Id. at 45 (emphasis in original).

¹³19 *Del. C.* §3315(2).

¹⁴R. at 43.

appeal was resolved.¹⁵ Morrison argues that the Unemployment Office is responsible for false or misleading statements made by its representatives, and therefore she should not be penalized for following the representative’s advice.¹⁶ Further, Morrison argues that under 19 *Del. C.* §1114, the Department is authorized to “make and revise or rescind such regulations as it may deem necessary or appropriate to enforce this chapter.”¹⁷ Finally, Morrison cites language in the notice that failure to submit claim forms in a timely fashion “*could* result in the denial of those benefits.”¹⁸ She concludes that a denial of benefits under these circumstances is not mandatory but within the Department’s discretion, and therefore the Claims Deputy could have permitted her to receive benefits. Thus, Morrison argues that it is within the power of the Department to consider the circumstances and forgive her mistake for not filing on time.¹⁹

¹⁵*Id.* at 43.

¹⁶*Id.* at 43. Morrison incorrectly cites 19 *Del. C.* §3381 in support of her claim. Contrary to Morrison’s position, 19 *Del. C.* §3381 pertains to penalties for persons knowingly making false representations or omitting facts with the intention of obtaining or increasing unemployment compensation for themselves or other persons. *Klerlein v. Local Union No. 451*, 1979 WL 174451, at *3 (Del. Ch. Sept. 11, 1979) (explaining that 19 *Del. C.* §3381 “specifically deal[s] with criminal penalties for unlawful receipt of unemployment compensation funds.”). This section does not concern the Unemployment Office’s responsibility for false or misleading statements of its employers.

¹⁷*Id.* at 43. The statute cited by Morrison, 19 *Del. C.* §1114, applies to the chapter on the Department’s powers with respect to wage payment and collection, not the chapter concerning unemployment benefits. See 19 *Del. C.* §1114 (indicating that Chapter 11 of Title 19, which includes Section 1114, is titled “Wage Payment and Collection”). Nevertheless, it is reasonable to infer that the Department has similar authority to adjust regulations for the enforcement of unemployment benefits. This inference is based on both (1) various provisions in Chapter 33 (*e.g.*, 19 *Del. C.* §3312, §3315, and §3317) that speak of “regulations such as the Department prescribes” (implying that it is with the purview to prescribe—and change—its regulations), and (2) general state policy of delegating the power to adjust regulations to the appropriate administrative agency. See, *e.g.*, *Carroll v. Tarburton*, 58 Del. 297, 301 (Del. Super. Ct. 1965) (“It is well-settled that the General Assembly may grant an administrative agency the power to promulgate rules and regulations The necessity of so delegating the detail work of implementation in a day when there are so many demands on the legislature has long been recognized”). Nevertheless, Morrison’s argument that the authority of the Department to adjust the regulations occasions an exception in her case remains problematic. This argument is addressed *infra* Part III.

¹⁸*R.* at 43 (emphasis added by Morrison).

¹⁹*Id.* at 43.

The UIAB affirmed the decision of the Appeals Referee, finding Morrison ineligible for benefits for the weeks in which she failed to submit weekly claims.²⁰ The Board cited the fact that it was clearly stated on multiple forms and in multiple locations that a claimant, such as Morrison, must continue filing for weekly benefits while her appeal is pending.²¹

Morrison now appeals the UIAB decision to Superior Court.²² She reiterates the arguments offered in her November 26, 2012 appeal to the Board,²³ that she was merely following the erroneous advice of an Unemployment Office representative, that the Unemployment Office is responsible for mistaken or misleading statements by its representatives, and that it is within the discretion of the Department to apply the regulations in this case to permit her to file.²⁴

II. STANDARD OF REVIEW

The standard under which this Court reviews the UIAB's decision is deferential.²⁵ The Board's decision is only to be disturbed in very limited circumstances.²⁶ So long as the Board's conclusions are (1) supported by "substantial evidence"²⁷ in the record²⁸ and are (2) "free from legal error,"²⁹ the Board's decision must stand—even if the Court itself

²⁰*Id.* at 46.

²¹*Id.* at 44–45.

²²*Id.* at 52.

²³*Id.* at 53.

²⁴R. at 53.

²⁵29 *Del. C.* § 10142 ("The Court, when factual determinations are at issue, shall take due account of the experience and specialized competence of the agency and of the purposes of the basic law under which the agency has acted. The Court's review, in the absence of actual fraud, shall be limited to a determination of whether the agency's decision was supported by substantial evidence on the record before the agency.").

²⁶*Delaware Transit Corp. v. Roane*, 2011 WL 3793450, *6 (Del. Super. Ct. Aug. 24, 2011).

²⁷*See Unemployment Ins. Appeal Bd. v. Duncan*, 337 A.2d 308, 309 (Del. 1975).

²⁸Under 29 *Del. C.* § 10142(d), this court's present review is limited to matters of law and bound by the facts in the record.

²⁹*See Longobardi v. Unemployment Ins. Appeal Bd.*, 287 A.2d 690, 692 (Del. Super. Ct. 1971), *aff'd*, 293 A.2d 295 (Del. 1972).

would have decided the matter differently.³⁰ Substantial evidence means “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.”³¹ Substantial evidence requires “more than a scintilla but less than a preponderance.”³² The Court does not weigh evidence, determine questions of credibility, or make its own factual findings.³³ The Court’s role is merely to determine if the evidence is legally adequate to support the agency’s factual findings.³⁴ Accordingly, the Board’s decision will be overturned only if the Board “acts arbitrarily or capriciously” or “exceeds the bounds of reason.”³⁵

III. DISCUSSION

The Court finds that the Board’s decision must be affirmed. It is undisputed that Morrison failed to follow the Department’s regulations and did not submit her claim forms on time.³⁶ It is also clear that Morrison should have been aware of this requirement as it appears in clear, unambiguous language on various forms and notices, including the appeal form used by Morrison, directly below Morrison’s signature.³⁷ When such information is clearly available, alleged improper advice of Unemployment Office representatives is not a valid excuse for failing to follow Department procedure.³⁸

³⁰*Delaware Transit Corp.*, 2011 WL 3793450 at *6.

³¹*MBNA America Bank, N.A. v. Capella*, 2003 WL 1880127, *2 (Del. Super. Ct. Apr. 15, 2003) (citing *Oceanport Ind. v. Wilmington Stevedores*, 636 A.2d 892, 899 (Del. 1994)).

³²*Id.* at *2 (quoting *Onley v. Cooch*, 425 A.2d 610, 614 (Del. 1981)).

³³*Id.* (citing *Johnson v. Chrysler Corp.*, 213 A.2d 64, 66 (Del. Super. Ct. 1986)).

³⁴*Keim v. Greenhurst Farms*, 2001 WL 1490060, *2 (Del. Super. Ct. Nov. 15, 2001) (citing 19 *Del. C.* § 3323(a)).

³⁵*Id.* at *6 (citing *Straley v. Advanced Staffing, Inc.*, 2009 WL 1228572, *2 (Del. Super. Ct. Apr. 30, 2009)).

³⁶R. at 6.

³⁷*Id.* at 30–31.

³⁸*Spicer v. Spicer Unlimited*, 2005 WL 914469, at *2 (Del. Super. Apr. 21, 2005) (citing *Vosters v. Delaware Racing Comm’n*, 1987 WL 8896, at *2 (Del. Super. Ct. Apr. 1, 1987) (“Ms. Spicer argues that the Board’s decision should be reversed because she was misled by a state employee when she was not informed that she needed to be actively seeking work in order to be eligible to receive unemployment benefits. Ignorance of the law is no excuse, however.”)).

In *Sapp v. Unemployment Insurance Appeal Board*, just as in the instant case, the claimant was denied benefits for weeks in which she failed to file claim forms.³⁹ After reading the Claimant Handbook, the claimant and her mother were under the mistaken impression that the correct procedure was to wait for a decision on eligibility before filing for weekly benefits.⁴⁰ Upon learning of her mistake, the claimant requested that the claim be backdated to include the five weeks for which she did not originally file weekly claims.⁴¹ The Appeals Referee, whose decision stood because the Board, consisting of four members, could not reach a majority decision,⁴² denied the claimant's request, noting that "the requirements are outlined in the online material," and further suggesting that the claimant should have contacted the local office with questions if she was confused.⁴³ The claimant appealed the decision to Superior Court, and the Court affirmed the denial of benefits, finding the the decision below to be "supported by substantial evidence" and "free from legal error."⁴⁴

The facts of the instant case very closely parallel the facts in *Sapp*. Both claimants failed to file for benefits for specific weeks while awaiting the Department's determination of eligibility.⁴⁵ Both claimants argued they were mistaken about the

³⁹*Sapp v. Unemployment Ins. Appeal Bd.*, 2012 WL 7671627, at *4 (Del. Super Ct. March 1, 2012).

⁴⁰*Id.* at *1. At the hearing before the Appeals Referee, the claimant testified that although she and her mother had read the instructions for filing online, the instructions were difficult to understand. Thus they were left with the mistaken impression that the claimant could wait to file. *Id.*

⁴¹*Id.*

⁴²Although the claimant in *Sapp* appealed to the UIAB, "[t]he Board, consisting of four members, split two to two, with two members voting to affirm the Appeals Referee and two members voting to reverse. When the Board is evenly divided, the decision of the Appeals Referee stands as the final decision." *Id.*

⁴³*Id.* at *3.

⁴⁴*Sapp*, 2012 WL 7671627, at *4.

⁴⁵*Compare id.* at *1 ("After reviewing the [Claimant Handbook and online] instructions, the claimant and her mother were under the mistaken belief that the correct procedure was to file for unemployment benefits, and then wait to hear back from the Department of Labor to determine if the claimant was eligible to receive unemployment benefits"), *with* R. at 6 (stating that Morrison stopped filing weekly claim forms after the week ending July, 28, 2012, and did not seek benefits for August 4, 2012–September 22,

requirement to do so.⁴⁶ Both claimants were exposed to written materials on which the requirements were clearly stated.⁴⁷ The differentiating fact in the instant case is that Morrison maintains that she was following the advice of an Unemployment Office representative.

In *Spicer v. Spicer Unlimited*, the Court explained that “ignorance of the law is no excuse” for failing to follow the proper procedure for unemployment benefits, even if the claimant, like Morrison, relied on the false or misleading advice of a Department employee.⁴⁸ In *Spicer*, the claimant, Spicer, applied for unemployment benefits, and she was found to be ineligible, in part, “because she was not actively seeking work.”⁴⁹ On appeal, Spicer claimed that “she was misled by a state employee when she was not informed that she needed to be actively seeking work in order to be eligible to receive unemployment benefits.”⁵⁰ The Court held that the Board decision, denying unemployment benefits, should not be reversed even if a state employee misled Spicer concerning eligibility requirements.⁵¹

2012 until on September 26, 2012 when Morrison sought the retroactive benefits that gives rise to the case *sub judice*).

⁴⁶*Compare Sapp*, 2012 WL 7671627, at *2 (“The claimant contends that she is entitled to the backdated benefits because the instructions for filing for weekly benefits were unclear.”), *with* R. at 45 (“Claimant testified she . . . was advised by an employee at the Department [of Labor] to not file [a claim for] benefits until a final determination was made [regarding her appeal].”).

⁴⁷*Compare* R. at 31 (stating that the determination Morrison received clearly set forth that she was to continue submitting weekly claims during the pendency of her appeal), *with Sapp*, 2012 WL 7671627, at *2 (“[A]lthough it is unfortunate that the claimant did not understand the correct procedures for claiming weekly benefits, ‘the requirements are outlined in the online material,’ and ‘[i]f the claimant was unclear as to what she needed to do, it would have behooved her to contact the local office with any questions.’”) (citation omitted).

⁴⁸*Spicer v. Spicer Unltd.*, 2005 WL 914469, *2 (Del. Super. Ct. Apr. 21, 2005).

⁴⁹*Id.* at *1.

⁵⁰*Id.* at *2.

⁵¹*Id.*; *see also*, *Mathis v. Delaware River and Bay Authority*, 2012 WL 5288757, *4 (Del. Super. Ct. Aug. 22, 2012)

Morrison argues that it is within the Department’s power to make an exception in her case.⁵² While it is clear that the Department is vested with the power to adjust regulations in the abstract,⁵³ there is no case law or other, relevant authority that supports the Board having the power to compel the Department to modify regulations and procedures, or to exercise specific discretion in their application. Further, rather than considering the Department’s actions directly, this Court has the limited role of determining whether the Board’s ruling, which reviews the Department’s decisions, was “arbitrary or capricious” or “exceeds the bounds of reason.”⁵⁴ Even assuming it is within the Department’s authority to make an exception in Morrison’s case, it is clearly not unreasonable for the Department to decline to do so.

IV. CONCLUSION

Because there is substantial evidence to support the decision of the Board, the decision of the Board is **AFFIRMED**.

IT IS SO ORDERED.

M. Jane Brady
Superior Court Judge

⁵²R. at 53.

⁵³See *supra* note 17.

⁵⁴*Keim v. Greenhurst Farms*, 2001 WL 1490060, *6 (Del. Super. Ct. Nov. 15, 2001); see also *Delaware Transit Corp.*, 2011 WL 3793450, at *6.