

SUPERIOR COURT
OF THE
STATE OF DELAWARE

T. HENLEY GRAVES
RESIDENT JUDGE

SUSSEX COUNTY COURTHOUSE
1 THE CIRCLE, SUITE 2
GEORGETOWN, DE 19947
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September 23, 2013

Cedric T. Barnes
507 Dover St.
Salisbury, MD 21804

Thomas H. Ellis, Esquire
Department of Justice
Carvel State Office Building
820 N. French Street, 6th Floor
Wilmington, Delaware 19801

**Re: *Barnes v. Unemployment Insurance Appeal Board,*
C.A. No. S13A-04-003 (THG)**

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

Date Submitted: September 16, 2013
Date Decided: September 23, 2013

Dear Mr. Barnes:

Cedric Barnes (“Barnes”) appeals the decision of the Unemployment Insurance Appeal Board (“the Board”) that found Barnes’ failure to report to the Georgetown Local Office (“Local Office”) as instructed was without good cause. The Board’s decision is affirmed for the reasons stated below.

Factual & Procedural Background

In July of 2012, Barnes began receiving federal extended unemployment benefits. Pursuant to the Middle Class Tax Relief and Job Creation Act of 2012, a claimant in receipt of such benefits

may be randomly selected to participate in an audit of his weekly work search logs.¹ Using Barnes' address of record, the Delaware Department of Labor ("DOL") notified Barnes that he had been selected for an audit and was to report to the Local Office on December 19, 2012 with his weekly work search logs and any supporting documentation. After having failed to show for the December 19th audit, a second letter was mailed to Barnes which notified him of an audit on December 26, 2012. Once again, Barnes failed to report to the Local Office as instructed.

By way of a determination dated January 8, 2013, a Claims Deputy concluded Barnes was ineligible for the continuing receipt of benefits based on his failure to report for the scheduled audits. Barnes appealed this determination and a hearing was held before an Appeals Referee on January 17, 2013. In a decision mailed January 28, 2013, the Appeals Referee reversed the Claims Deputy's decision, finding Barnes had shown good cause for his failure report to the Local Office as instructed. The DOL appealed and a hearing was held before the Board on April 10, 2013. The Board subsequently reversed the Appeals Referee's decision and, by way of a written opinion mailed April 18, 2013, found Claimant was disqualified from receipt of continuing benefits. Barnes timely filed an appeal with this Court.

Discussion

When reviewing the decisions of the Board, this Court must determine whether the Board's findings and conclusions of law are free from legal error and are supported by substantial evidence in the record.² "Substantial evidence" is "such relevant evidence as a reasonable mind might accept

¹ H.R. Rep. No. 112-3630 (2012).

² *Unemployment Ins. Appeal Bd. v. Martin*, 431 A.2d 1265 (Del. 1981); *Pochvatilla v. United States Postal Serv.*, 1997 WL 524062 (Del. Super. Jun. 9, 1997); 19 *Del. C.* § 3223(a) ("In any judicial proceeding under this section, 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.").

as adequate to support a conclusion.”³ The Court’s review is narrow: “It is not the appellate court’s role to weigh the evidence, determine credibility questions or make its own factual findings, but merely to decide if the evidence is legally adequate to support the agency’s factual findings.”⁴

Section 3315 of Title 19 of the Delaware Code provides, in pertinent part:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the Department finds that the individual:

(1) Has registered for work at and thereafter continues to report at an employment office in accordance with such regulations as the Department prescribes.⁵

Therefore, an individual *must* report to their local employment office when required to do so by the DOL. During the Board hearing, there was undisputed evidence that the DOL twice mailed letters of notice to Barnes’ address of record requiring him to report to the Local Office for an audit of his weekly work search logs. Barnes failed to report to the Local Office on December 19, 2012 and December 26, 2012.

The Board’s factual conclusion that Barnes should not receive further unemployment benefits was based on the following:

(1) Barnes did not provide testimony from his surrounding neighbors confirming his allegations that the mail carrier sometimes delivered his neighbors’ mail to him and vice-versa;

³ *Gorrel v. Division of Vocations Rehab.*, 1996 WL 453356, at *2 (Del. Super. July 31, 1996).

⁴ *McManus v. Christiana Serv. Co.*, 1197 WL 127953, at *1 (Del. Super. Jan. 31, 1997).

⁵ 19 *Del C.* § 3315(1).

(2) Barnes failed to present any document or testimony from the mail carrier that the mail carrier was not delivering the mail during the month of December 2012 as a result of Mr. Barnes' dog;

(3) As a result of the aforementioned, Barnes failed to overcome the presumption that correctly addressed and posted mail will be received by the addressee.

In this case, substantial evidence in the record supports the findings of the Board.

On appeal, Barnes' argument is one solely as to why the Board was incorrect as to its factual findings. As previously mentioned, this Court's review is limited. It is the Court's role to correct legal error, *not* revisit the Board's findings of facts as requested by Barnes. Accordingly, the Court is satisfied that the Board's decision is supported by substantial evidence and free from legal error.

Conclusion

In light of the foregoing, the Board's decision finding Barnes' failure to report to the Local Office as instructed was without good cause is **AFFIRMED**.

IT IS SO ORDERED.

Very truly yours,

T. Henley Graves

cc: Prothonotary's Office
cc: Unemployment Insurance Appeal Board