SUPERIOR COURT
OF THE
STATE OF DELAWARE

E. SCOTT BRADLEY
*JUDGE*

SUSSEX COUNTY COURTHOUSE
1 The Circle, Suite 2
GEORGETOWN, DE 19947

August 23, 2010

Tony A. Wilson
603 Mulberry Street
Milton, DE 19968

**RE: Tony A. Wilson v. The Breakers Hotel & Suites**
**C.A. No. S09A-08-004-ESB**
**Letter Opinion**

Date Submitted: June 30, 2010

Dear Mr. Wilson:

This is my decision on your Motion for Reargument regarding my decision affirming the Unemployment Insurance Appeal Board's denial of your claim for unemployment benefits.[1] I affirmed the Board's denial of your claim for unemployment benefits because it was in accordance with the applicable law and supported by substantial evidence in the record. You now argue that (1) this Court made its own factual findings and they are not supported by substantial evidence in the record, and (2) your employer "defaulted" because it was not represented by an attorney during your appeal of the Board's decision.

## STANDARD OF REVIEW

The standard for a Superior Court Civil Rule 59(e) motion for reargument is well defined under Delaware law. A motion for reargument "will be denied unless the Court has overlooked a controlling precedent or legal principle, or the Court has misapprehended the

[1] 2010 WL 2562214 (Del. Super. June 24, 2010).

law or facts such as would have changed the outcome of the underlying decision."[2] A motion for reargument is not intended to rehash the arguments already decided by the court.[3]

**DISCUSSION**

You argue that this Court made its own factual findings and they are not supported by substantial evidence in the record. Your argument is incorrect. An appeal to this Court of a decision made by the Unemployment Insurance Appeal Board is done on the record.[4] This Court does not accept new evidence and it does not determine questions of credibility on appeal.[5] The Board found that you were not totally or partially unemployed. The evidence in the record that the Board relied upon indicates that you worked as few as 15 hours a week and as many as 30.57 hours a week prior to the two work weeks you claimed represented your customary full-time hours. This evidence came from the time card information that was submitted to the Board. In trying to determine if you had customary full-time hours, the Board looked at the hours that you worked during the summer and compared them to the two weeks that you claimed represented your customary full-time hours. For the months of June, July and August, you worked less than 30 hours per week eight times and worked more than 30 hours per week six times. This is the evidence in the

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[2] *Board of Managers of the Delaware Criminal Justice Information System v. Gannett* Co., 2003 WL 1579170, at *1 (Del. Super. Jan. 17, 2003).

[3] *McElroy v. Shell Petroleum, Inc.,* 618 A.2d 91 (Table), 1992 WL 397468 (Del. Nov. 24, 1992).

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

[5] *Johnson v. Chrysler Corp.*, 213 A.2d 64, 66 (Del. 1965).

record. I did not create it. Based upon the record, more times than not, you did not work 30 hours per week. There was nothing customary about your work schedule. You certainly did not prove to the Board that you had customary full-time hours.

You argue, without citing any authority, that your employer had to retain legal counsel to represent it during your appeal of the Board's decision. Your argument is incorrect. The Court has held that "though corporations must be represented by an attorney in court proceedings, a non-attorney employee may represent the employer at an administrative hearing."[6] You do not allege that the Board was represented by an employee during your appeal of the Board's decision to this Court. In fact, your employer was not represented by anyone during the appeal. When an appeal reaches the Superior Court, a determination is made based upon the record. Your employer was satisfied with the record below and rested on that record. A reversal of the Board's decision is not automatically entered simply because your employer took no further action to defend the Board's decision. I decided the appeal on the record without hearing any further argument from your employer, which is within my discretion to do. Your Motion for Reargument is Denied.

**IT IS SO ORDERED**.

Very truly yours,

/s/ E. Scott Bradley

E. Scott Bradley

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[6] *Caldwell Staffing Servs. v. Ramrattan*, 2003 WL 194734, at *3 (Del. Super. Jan. 29, 2003).