

SUPERIOR COURT  
OF THE  
STATE OF DELAWARE

T. HENLEY GRAVES  
RESIDENT JUDGE

SUSSEX COUNTY COURTHOUSE  
ONE THE CIRCLE, SUITE 2  
GEORGETOWN, DE 19947

May 5, 2010

Charles E. Jackson  
24952 Crooked Stick Way  
Millsboro, Delaware 19966

Philip G. Johnson, Esquire  
Department of Justice  
820 North French Street, 6<sup>th</sup> Floor  
Wilmington, DE 19801

**RE: *Jackson v. Division of Unemployment Insurance***  
**Civil Action No. S09A-08-002**

Submitted: February 26, 2010  
Decided: May 5, 2010

On Unemployment Insurance Appeal Board's Decision  
to Recoup Unemployment Benefits Paid: **AFFIRMED**

Dear Mr. Jackson and Counsel:

Charles Jackson appeals the decision of the Unemployment Insurance Appeals Board ("the Board") that held Mr. Jackson is liable to the Department of Labor for the overpayment of unemployment benefits. For the reasons set forth herein, the Board's decision is affirmed.

***Procedural & Factual Background***

Mr. Jackson filed for unemployment benefits on April 27, 2008. On April 30, 2008, Mr. Jackson signed a "Claimant Notice of Receipt of Benefit Rights and Responsibilities" ("Notice"). The Notice included a portion of the language of Section 3325 of Title 19 of the Delaware Code. Specifically, the Notice included the following language:

Recoupment of Overpayment of Benefits:

Any person who has received any sum as benefits under this chapter to which it is finally determined that the person was not entitled shall be liable to repay in cash said overpayment, to the Department for the Unemployment Compensation Fund, or to have such sum deducted from future benefits payable to the person under this chapter.

Benefit overpayments paid to a claimant as the result of fraud shall be repaid with interest at the same rate as provided from past due assessments and reimbursement payments in lieu of assessments in Section 3357 of this title and Department of Labor Regulation No. 45.

Mr. Jackson was paid unemployment benefits in the amount of \$330.00 per week for four weeks during the month of May 2008. An Appeals Referee held a hearing on June 23, 2008, to determine whether Mr. Jackson was an unemployed person as contemplated by the Unemployment Compensation Statute (“Statute”). By way of decision mailed July 16, 2008, the Appeals Referee determined Mr. Jackson was not an unemployed person as contemplated by the Statute. Mr. Jackson did not appeal this determination to the Board. The last day to file an appeal from the Appeals Referee’s decision was July 26, 2008.

On March 12, 2009, a Claims Deputy determined Mr. Jackson was overpaid \$1,320.00 in unemployment benefits because he was not unemployed as contemplated by the Statute pursuant to the Appeals Referee’s decision mailed July 16, 2008 (“the Appeals Referee’s 2008 decision”). An Appeals Referee affirmed the Claims Deputy’s decision after a hearing. Mr. Jackson appealed this decision to the Board. A hearing was held before the Board on July 8, 2009. By way of decision mailed July 31, 2009, the Board affirmed the Appeals Referee’s decision and ordered Mr. Jackson to reimburse the Department of Labor \$1,320.00. Mr. Jackson appeals that decision.

### *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. *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. § 3323(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."). "Substantial evidence" is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Gorrell v. Division of Vocational Rehab.*, 1996 WL 453356, at \*2 (Del. Super. July 31, 1996), *aff'd*, 693 A.2d 1082 (Del. 1997) (TABLE). The Court's review is limited: "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." *McManus v. Christiana Serv. Co.*, 1997 WL 127953, at \*1 (Del. Super. Jan. 31, 1997).

In this case, the Board made a determination based upon the procedural rules that govern the Department of Labor. That decision is supported by the record. Section 3325 of Title 19 of the Delaware Code establishes the procedure for the recoupment of overpayment of unemployment benefits. Mr. Jackson signed the Notice indicating he was aware of the recoupment procedure. Section 3325 also states, in pertinent part, "Appeal from an Unemployment Insurance appeals referee decision to the Unemployment Insurance Appeal Board must be filed within 10 days after such decision was mailed to the person." The Appeals Referee's 2008 decision clearly listed the date by which an appeal thereof must be taken to the Board. Moreover, Mr. Jackson acknowledged receipt

of the Appeals Referee's 2008 decision. Mr. Jackson testified before the Board that he did not appeal the Appeals Referee's 2008 decision as a matter of choice because he thought he would be returning to work shortly. The only factual finding the Board was required to make regarding the current proceeding was whether there was a dispute regarding the amount of overpayment. Mr. Jackson focuses his attention on the 2008 proceeding and contends that the Appeals Referee improperly concluded Mr. Jackson was not an unemployed person. The Board correctly noted that the issue of whether the Appeals Referee was correct in making that determination was not properly before it. When Mr. Jackson decided not to appeal the Appeals Referee's 2008 decision, the decision became binding and the Board lacked, and continues to lack, the jurisdiction to consider its merits.

Mr. Jackson does not dispute the amount of unemployment benefits he received and he testified that he made a tactical decision not to appeal the Appeals Referee's determination that he was not an unemployed person as contemplated by the Statute. Accordingly, the Board's decision concluding Mr. Jackson is liable to the Department of Labor for overpayment of unemployment benefits is free from legal error and is supported by the record.

### ***Conclusion***

For the reasons set forth herein, the Board's decision that Mr. Jackson is liable for the overpayment of unemployment benefits is affirmed.

Very truly yours,

T. Henley Graves

cc: Prothonotary  
Unemployment Insurance Appeal Board