

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

KIM L. CANNON,	)	
	)	
Appellant,	)	
	)	
V.	)	C.A. No. N09A-11-001 JRS
	)	
The UNEMPLOYMENT	)	
INSURANCE APPEAL BOARD,	)	
	)	
Appellee.	)	

Date Submitted: February 22, 2011  
Date Decided: May 18, 2011

*Upon Consideration of  
Appeal From the Unemployment Insurance Appeal Board.*  
**AFFIRMED.**

**ORDER**

This 18<sup>th</sup> day of May, 2011, upon consideration of the *pro se* appeal of Kim L. Cannon from the decision of the Unemployment Insurance Appeal Board (the “Board”), disqualifying her from the receipt of unemployment benefits and ordering restitution for overpayments, it appears to the Court that:

1. On October 9, 2007, Ms. Cannon filed for unemployment benefits with Delaware’s Department of Labor (“DOL”) after her contract with her employer came

to an end.<sup>1</sup> Ms. Cannon was found eligible for the receipt of unemployment benefits and collected benefits from October 13, 2007 until March 15, 2008 in the amount of \$207.00 per week.<sup>2</sup>

2. On October 22, 2007, Ms. Cannon obtained full-time employment with Compass One LLC (“Compass”) earning \$60,000.00 per year.<sup>3</sup> Despite her obtaining full-time employment, Ms. Cannon continued to file for weekly unemployment benefits without disclosing her wages to the DOL.<sup>4</sup> On March 1, 2008, Ms. Cannon resigned from her position with Compass because of an allegedly hostile supervisor.<sup>5</sup>

3. On March 12, 2009, the DOL discovered that Ms. Cannon had obtained employment benefits but had failed to report her wages.<sup>6</sup> Ms. Cannon was interviewed on March 23, 2009, and admitted that although she was working 40 hours per week for Compass and earning \$28.85 hourly, she did not disclose that income

---

<sup>1</sup>Record (“R.” at \_\_) R. at 14.

<sup>2</sup>*Id.* at 3, 29.

<sup>3</sup>*Id.*

<sup>4</sup>*Id.*

<sup>5</sup>*Id.* at 31.

<sup>6</sup>*Id.* at 14.

when filing for her weekly unemployment benefits.<sup>7</sup> On April 19, 2009, the Claims Deputy issued a determination (the “fraud determination”), pursuant to 19 *Del. C.* §3314(6), that Ms. Cannon was disqualified from the receipt of benefits from October 27, 2007 until October 25, 2008.<sup>8</sup>

4. Ms. Cannon appealed the Claim’s Deputy’s fraud determination and a hearing was held before the Appeals Referee on May 18, 2009.<sup>9</sup> The Appeals Referee affirmed the Claim’s Deputy’s fraud determination, finding that Ms. Cannon knowingly made false statements each week to the DOL.<sup>10</sup>

5. Ms. Cannon failed to file a timely appeal of the Appeals Referee’s affirmation of the Claim’s Deputy’s fraud determination and the decision is thus final.<sup>11</sup> On June 17, 2009, the Claim’s Deputy determined that Ms. Cannon received an overpayment of benefits pursuant to 19 *Del. C.* §3325 in the amount of \$4,347.00

---

<sup>7</sup>*Id.* The Court notes that Ms. Cannon contends that she was told by a “Delaware HR representative” that she had earned unemployment through a deduction from her paychecks from her previous employer. R. at 31.

<sup>8</sup> R. at 14; *See* 19 *Del. C.* §3314(6): “If the Department determines such individual has committed fraud and has made a false statement or representation, knowing it to be false or knowingly failed to disclose a material fact to obtain benefits to which he was not lawfully entitled, and such disqualification shall be for a period of 1 year beginning with the date on which the first false statement, false representation or failure to disclose a material fact occurred. A disqualification pursuant to this subsection shall be considered a disqualification due to fraud.”

<sup>9</sup> R. at 28.

<sup>10</sup>*Id.* at 29.

<sup>11</sup>*Id.* at 22.

and ordered that she pay restitution in that amount.<sup>12</sup>

6. Ms. Cannon filed a timely appeal of the Claim's Deputy's overpayment determination on June 30, 2009, and a hearing before an Appeals Referee on that limited issue was held on July 28, 2009.<sup>13</sup> Pursuant to 19 *Del. C.* §3325, the Appeals Referee affirmed the decision of the Claims Deputy as to the overpayment.<sup>14</sup>

7. On August 13, 2009, Ms. Cannon filed a timely appeal of the Appeals Referee's restitution decision with the Board.<sup>15</sup> A hearing was scheduled for October 21, 2009.<sup>16</sup> Notice of the hearing was mailed to Ms. Cannon on September 11, 2009, and stated that testimony by telephone would not be permitted.<sup>17</sup> Despite the fact that she had relocated to Florida in July of 2009, Ms. Cannon waited until October 20, 2009 (one day before the hearing was to take place) to inform the Board by fax that

---

<sup>12</sup> *Id.* at 17. See 19 *Del. C.* §3325: "Any person who has received any sum as benefits under this chapter to which it is finally determined that he was not entitled, shall be liable to repay in cash said overpayments to the Department for the Unemployment Compensation Fund, or to have such sum deducted from future benefits payable to him under this Chapter. Benefit overpayments to an individual as the result of fraud shall be repaid at a rate of 18% interest per year."

<sup>13</sup> *Id.* at 19-20.

<sup>14</sup> *Id.* at 22.

<sup>15</sup> *Id.* at 47.

<sup>16</sup> *Id.* at 48.

<sup>17</sup> *Id.*

she would be unable to attend the hearing because of financial difficulties.<sup>18</sup> In her fax to the Board, Ms. Cannon requested that she be able to testify at the hearing via webcam after being sworn in by a Florida notary.<sup>19</sup> Ms. Cannon's request was denied and the Board voted to dismiss her case on October 21, 2009 for failure to appear.<sup>20</sup> Ms. Cannon filed an appeal of the Board's dismissal with this Court on November 10, 2009.<sup>21</sup>

8. The Court's review is limited to determining whether the Board's decision was supported by substantial evidence and free from legal error.<sup>22</sup> Substantial evidence is defined as "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion."<sup>23</sup> The record must be reviewed in the light most favorable to the prevailing party.<sup>24</sup> Alleged errors of law are reviewed *de*

---

<sup>18</sup>*Id.* at 49. Ms. Cannon moved to Florida to be with family after she lost her home in Delaware to foreclosure. Opening Br. at p.1.

<sup>19</sup> R. at 49.

<sup>20</sup>*Id.* at 50.

<sup>21</sup>*Id.* at 57.

<sup>22</sup> See, e.g., *Holowka v. New Castle County Bd. of Adjustment*, 2003 WL 21001026, \*3 (Del. Super. 2003).

<sup>23</sup>*James Julian, Inc. of Del. v. Testerman*, 740 A.2d 514, 519 (Del. Super. Ct. 1999) (citations omitted)

<sup>24</sup> See, e.g., *Id.*; *E.I. DuPont De Nemours & Co. v. Faupel*, 859 A.2d 1042, 1046-47 (Del. Super. Ct. 2004).

*novo*, but in the absence of legal error, the Board’s decisions are reviewed for an abuse of discretion.<sup>25</sup> This Court will find an abuse of discretion only when an administrative board’s decision “exceeds the bounds of reason given the circumstances, or where rules of law or practice have been ignored so as to produce injustice.”<sup>26</sup>

9. Ms. Cannon’s Opening Brief to this Court apologizes for taking unemployment compensation to which she was not entitled and asks that the Court take some “mercy” on her given her extreme financial hardships.<sup>27</sup> While the Court certainly feels compassion for the difficult financial circumstances Ms. Cannon has encountered, the record is devoid of any explanation as to why she (1) failed to appeal the decision of the Claims Deputy; and (2) waited until the last minute to inform the Board that she could not attend her hearing, as opposed to filing a timely continuance request. The record reveals that Ms. Cannon has consistently failed to avail herself of the appeals process.

10. The Court is satisfied that the overwhelming evidence in the record supports the Board’s determination. The Court can find no abuse of discretion by the

---

<sup>25</sup> See *Merritt v. United Parcel Svc.*, 956 A.2d 1196, 1200 (Del. 2008) (citations omitted).

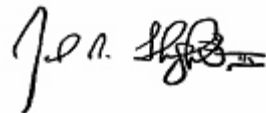
<sup>26</sup>*Bolden v. Kraft Foods*, 2005 WL 3526324, \*3 (Del. Super. Ct. 2005).

<sup>27</sup>Opening Br. at p.1.

Board; it is abundantly clear from the record that Ms. Cannon's own behavior (her abuse of unemployment benefits and subsequent failure diligently to pursue the appeals process allowed by Delaware law) is to blame for the situation she finds herself in today.

11. Based on the foregoing, the Court is satisfied that the Board applied the correct legal standards and that its decision is supported by substantial evidence. Accordingly, the decision of the Board dismissing Ms. Cannon's appeal of the appeals referee's decision must be **AFFIRMED**.

**IT IS SO ORDERED.**

A handwritten signature in black ink, appearing to read "J. R. Slights, III". The signature is written in a cursive style with a horizontal line at the end.

Joseph R. Slights, III, Judge

Original to Prothonotary