

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

KIMBERLY DRONE,)	
)	
Claimant,)	C.A. No. N10A-02-002 DCS
)	
v.)	
)	
UNEMPLOYMENT INSURANCE)	
APPEAL BOARD,)	
)	
Appellee.)	
)	
)	

Submitted: June 17, 2011
Decided: July 19, 2011

On Appeal from a Decision of the Unemployment Insurance Appeal Board.
AFFIRMED.

ORDER

Kimberly Drone, *pro se*, Claimant.

Katisha D. Fortune, Esquire, Deputy Attorney General, Department of Justice,
Wilmington, Delaware, Attorney for Appellee, the Unemployment Insurance Appeal
Board.

STREETT, J.

This 19th day of July, 2011 upon consideration of Claimant's appeal from a decision on the Unemployment Insurance Appeal Board ("UIAB"), it appears to the Court that:

FACTS AND PROCEDURAL HISTORY

Claimant Kimberly Drone ("Claimant") filed a claim for unemployment benefits effective September 14, 2008¹ and signed a "Claimant Notice of Receipt of Benefit Rights and Responsibilities" form on September 16, 2008 which stated, in pertinent part,

I understand that in the event I am determined ... to be subject to a period of disqualification, all unemployment benefits that I have received for weeks of unemployment for which I am later disqualified, must be repaid to the Division of Unemployment Insurance.²

On September 16, 2008, the same day that Claimant signed the "Claimant Notice of Receipt of Benefit Rights and Responsibilities" in her application for unemployment benefits, Claimant was hired as a Representative by Innovative Consultants LLC ("Employer") and was scheduled to begin work that day.³ Employer hired Claimant at a rate of \$9 per hour.⁴ According to Employer, Claimant never came to work, never received training for the position, and never earned income from Employer.⁵ After Claimant failed to arrive for work, Employer terminated Claimant that same day (September 16, 2008).⁶

¹ Record at 32.

² Record at 12.

³ Record at 3-4.

⁴ Record at 4.

⁵ Record at 3.

⁶ Record at 3.

Claimant states that she notified Employer that she “would not be accepting any position offered.”⁷ Pursuant to 19 *Del. C.* § 3314(3), an individual is disqualified from receiving unemployment benefits “[i]f he has refused to accept an offer of work for which he is reasonably fitted ... and the disqualification shall begin with the week in which the refusal occurred and shall continue for each week thereafter until he has been employed in each of 4 subsequent weeks ... and has earned wages in covered employment equal to not less than 4 times the weekly benefit amount.” Claimant did not inform the Division of Unemployment Insurance that she had received and refused an offer for work from Employer.

The Division of Unemployment Insurance awarded Claimant benefits in the amount of \$203 per week for weeks ending September 20, 2008; September 27, 2008; October 4, 2008; October 11, 2008; October 18, 2008; October 25, 2008; November 1, 2008; November 8, 2008; November 15, 2008; November 22, 2008; November 29, 2008; December 6, 2008; December 13, 2008; December 20, 2008; December 27, 2008; January 3, 2009; January 10, 2009; and January 17, 2009.⁸

By letter dated January 12, 2009, the Quality Control Unit of the Division of Unemployment Insurance (“Quality Control”) notified Claimant that her claim for unemployment benefits had been randomly selected for review and that an in-person interview was required.⁹ The letter indicated that Claimant should report to the unemployment office no later than January 21, 2009 for her interview or contact the

⁷ Record at 67.

⁸ Record at 1-2.

⁹ Record at 5.

office within 3 days if Claimant could not report.¹⁰ The letter further stated that failure to respond “may result in retroactive disqualification, thereby causing an overpayment.”¹¹

Quality Control scheduled interviews with Claimant on January 21, 2009 and January 29, 2009, but Claimant did not report for either interview.¹² While conducting its review of Claimant’s claim for unemployment benefits, Quality Control discovered that Claimant had been hired by Employer in September, 2008.¹³ On February 2, 2009, Employer faxed a letter of explanation to Quality Control stating that, although Claimant was hired to begin work on September 16, 2008, Claimant never reported for work.¹⁴ Based on this information, on February 9, 2009, the Quality Control investigator concluded that Claimant had “refused an offer for work for which she was reasonably fitted” and recommended disqualifying her from receipt of benefits.¹⁵

On February 19, 2009, the Claims Deputy issued a determination that Claimant “refused work for which she was reasonably suited,” thereby disqualifying her from the receipt of unemployment benefits beginning the week ending September 20, 2008 and for each week thereafter pursuant to 19 *Del. C.* § 3314(3)¹⁶ (the “Disqualification

¹⁰ Record at 5.

¹¹ Record at 5.

¹² Record at 13.

¹³ Record at 13.

¹⁴ Record at 14.

¹⁵ Record at 13.

¹⁶ 19 *Del. C.* § 3314(3) states, in pertinent part: “An individual shall be disqualified for benefits: If he has refused to accept an offer of work for which he is reasonably fitted ... and the disqualification shall begin with the week in which the refusal occurred and shall continue for each week thereafter until he has been employed in each of 4 subsequent weeks ... and has earned wages in covered employment equal to not less than 4 times the weekly benefit amount.”

Determination”).¹⁷ That same day, the Disqualification Determination was mailed to Claimant’s last known address.¹⁸ The Disqualification Determination stated, “This determination becomes final on 3/01/2009 unless a written appeal is filed.”¹⁹ Claimant failed to timely appeal the Disqualification Determination and, thus, the Disqualification Determination became final.

On March 10, 2009, nine days after the deadline for a written appeal, the Claims Deputy issued a second determination that, due to non-fraudulent actions, Claimant had received an overpayment of benefits in the amount of \$3,654.00 over the course of 18 weeks beginning with the week ending September 20, 2008 pursuant to 19 *Del. C.* § 3325²⁰ (the “Overpayment Determination”).²¹ Claimant timely appealed the Overpayment Determination on March 18, 2009.²² Claimant received a written notice, dated March 26, 2009, that a hearing before an Appeals Referee regarding the Overpayment Determination was scheduled for April 13, 2009 at 11:30 AM.²³ Claimant failed to appear at the scheduled hearing and, consequently, the Appeals Referee dismissed the case.²⁴ The decision was mailed to Claimant on April 14, 2009.²⁵

¹⁷ Record at 37.

¹⁸ Record at 37.

¹⁹ Record at 37.

²⁰ 19 *Del. C.* § 3325 states, in pertinent part: “Any person who has received any sum as benefits ... to which it is finally determined that the person was not entitled shall be liable to repay in cash said overpayment.”

²¹ Record at 23. The determination states “Due to non-fraudulent actions, an overpayment of benefits has been issued in the amount of \$3,654.00 for 18 week(s), beginning 9/20/2008 to 11/15/2008.” The Court presumes that the 11/15/2008 date is a typographical error, as the last of the 18 weeks that Claimant received benefits was, in fact, the week ending January 17, 2009.

²² Record at 24.

²³ Record at 25.

²⁴ Record at 26-27.

On April 23, 2009, Claimant appealed the dismissal of her Overpayment Determination case.²⁶ The Unemployment Insurance Appeal Board (“UIAB”) reviewed Claimant’s appeal on July 8, 2009 and remanded the Overpayment Determination case to the Appeals Referee, finding that Claimant’s reasons for failing to attend the hearing were acceptable.²⁷

On August 14, 2009, the remanded hearing took place before the Appeals Referee.²⁸ Claimant and the Agency Representative appeared and both gave testimony.²⁹ Employer was not involved in the hearing.³⁰ The sole issue addressed was whether the Overpayment Determination should be affirmed.³¹ The Agency Representative testified that Quality Control issued a Disqualification Determination to Claimant on February 19, 2009 with an appeal deadline of March 1, 2009.³² The Agency Representative also stated that Claimant never appealed the Disqualification Determination and an overpayment of benefits was established in the amount of \$3,654.00 based on the disqualification.³³ Claimant testified that she did file an appeal of the Disqualification Determination, but could not produce the appeal or recall when she filed it.³⁴ At the conclusion of the hearing, the Appeals Referee affirmed the Overpayment Determination based on the fact

²⁵ Record at 26.

²⁶ Record at 28.

²⁷ Record at 29. It is unclear from the record what reason Claimant gave for missing the April 13, 2009 hearing before the Appeals Referee.

²⁸ Record at 30.

²⁹ Record at 30.

³⁰ Record at 30.

³¹ Record at 33.

³² Record at 44.

³³ Record at 44.

³⁴ Record at 48.

that Claimant failed to timely appeal the prior Disqualification Determination, which was the basis for establishing that she received an overpayment.³⁵

On August 18, 2009, Claimant filed a timely appeal of the Appeals Referee's decision with the UIAB.³⁶ The UIAB held a hearing on November 4, 2009 at which Claimant and the Agency Representative were present and gave testimony.³⁷ The UIAB found that "Claimant received unemployment compensation benefits from which she was disqualified by a [Disqualification Determination] dated February 19, 2009, which she failed to appeal."³⁸ On January 25, 2010, based on the fact that Claimant never appealed the Disqualification Determination, the UIAB found her liable for repayment of \$3,654.00 for the weeks ending September 20, 2008 through January 17, 2009 pursuant to 19 *Del. C.* § 3325 and affirmed the Appeals Referee's decision.³⁹

On February 2, 2010, Claimant filed her appeal with this Court.⁴⁰ Claimant's notice of appeal states: "(1) All issues of overpayment were not reviewed. (2) Employer that is being reported, I never received any wages from the company while I was on unemployment, nor completed training, manager was notified that I would not be accepting any position offered [sic]."⁴¹ In her opening brief, filed March 28, 2011, Claimant again states that she believes that she did not receive an overpayment because

³⁵ Record at 33.

³⁶ Record at 51.

³⁷ Record at 53.

³⁸ Record at 54.

³⁹ Record at 55.

⁴⁰ Record at 66.

⁴¹ Record at 67.

she “never reported to work for [Employer] nor ... collected any wages.”⁴² For these reasons, Claimant asks that the UIAB’s decision be reversed.

The UIAB filed a letter with the Court on May 3, 2011 indicating that the board did not intend to file a response to Claimant’s opening brief.⁴³

STANDARD OF REVIEW

The Superior Court’s review of UIAB decisions is limited to determining whether the UIAB’s decision is supported by substantial evidence and free from legal error.⁴⁴

“When reviewing a decision on appeal from an agency, the Superior Court does not weigh the evidence, determine questions of credibility, or make its own factual findings.”⁴⁵

In determining whether substantial evidence exists to support the UIAB’s decision, this Court must view the record in the light most favorable to the prevailing party.⁴⁶ If the UIAB’s decision is supported by “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion,” then the substantial evidence standard is satisfied.⁴⁷ “Even if this Court might have reached a different conclusion than

⁴² Claimant’s Opening Brief at 1.

⁴³ UIAB’s Letter at 1.

⁴⁴ *Broadnax v. West End Neighborhood House*, 2010 WL 740523, at *2 (Del. Super. March 2, 2010)(citing *Starkey v. Unemployment Ins. Appeal Bd.*, 340 A.2d 165, 166 (Del. Super. 1975)).

⁴⁵ *Id.* (citing *Holowka v. New Castle County Bd. of Adjustment*, 2003 WL 21001026, at *3 (Del. Super. April 15, 2003)).

⁴⁶ *Bromwell v. Chrysler LLC*, 2001 WL 4513086, at *3 (Del. Super. Oct. 28, 2010)(citing *E.I. DuPont De Nemours & Co. v. Faupel*, 859 A.2d 1042, 1046-47 (Del. Super. 2004)).

⁴⁷ *Milnamow v. E.F. Technologies, Inc.*, 2011 WL 1102977, at *2 (Del. Super. March 24, 2011)(citing *Anchor Motor Freight v. Ciabattoni*, 716 A.2d 154, 156 (Del. 1998)).

the [UIAB] in the first instance, a decision of the [UIAB] must be affirmed if it is supported by substantial evidence and is free from legal error.”⁴⁸

DISCUSSION

The sole issue on appeal is whether the UIAB’s finding that Claimant received an overpayment of unemployment compensation benefits based on her failure to appeal her disqualification from said benefits is supported by substantial evidence and is free from legal error. Pursuant to 19 *Del. C.* § 3318(b), a claimant must make an appeal of the disqualification from benefits within ten calendar days after such determination is mailed to the claimant.⁴⁹ Unless the claimant never received the mailing because of a Department of Labor error, the ten day period begins running on the date of the mailing.⁵⁰ If the appeal is not made within ten days of the mailing, the denial of benefits is final.⁵¹ Additionally, pursuant to 19 *Del. C.* § 3325, “Any person who has received any sum as benefits ... to which it is finally determined that the person was not entitled shall be liable to repay in cash said overpayment.”

In the present case it appears that Claimant failed to appeal the Disqualification Determination, thereby making her liable to repay the benefits she received. The Disqualification Determination was mailed on February 19, 2009.⁵² The determination

⁴⁸ *Bromwell*, 2001 WL 4513086, at *2 (citing *Brogan v. Value City Furniture*, 2002 WL 499721, at *2 (Del. Super. March 27, 2002)).

⁴⁹ 19 *Del. C.* § 3318(b) states, in pertinent part, “Unless a claimant ... files an appeal within 10 calendar days after such Claims Deputy’s determination was mailed to the last known addresses of the claimant and the last employer, the Claim’s Deputy’s determination shall be final.”

⁵⁰ *Lively v. Dover Wipes Co.*, 2011 WL 21213415, at *1 (Del. Super. May 16, 2003)(citing *Bowers v. Unemp’t. Ins. App. Bd.*, 1998 WL 283401, at *4 (Del. Super. Jan. 12, 1998)).

⁵¹ *Funk v. UIAB*, 591 A.2d 222, 224 (Del. 1991).

⁵² Record at 37.

stated that the deadline to appeal was March 1, 2009.⁵³ The Agency Representative testified that Claimant never appealed the Disqualification Determination.⁵⁴ Claimant offered no evidence to corroborate her claim that she had filed an appeal of the Disqualification Determination nor could she recall when she filed it.⁵⁵ The UIAB assessed the credibility of the parties' statements and upheld the Claims Deputy's determination that Claimant had received an overpayment based on her failure to appeal the Disqualification Determination. "It is the sole province of the [UIAB] to resolve questions of credibility and such determinations are conclusive."⁵⁶ The UIAB found the Agency Representative's testimony to be more credible, and this Court will not disturb the UIAB's finding on that matter.⁵⁷

Claimant has failed to exhaust her administrative remedies and, by her own admissions, acknowledges that, "I'm guessing the reason they were reporting the overpayment was because I guess in the system it's saying that I was employed. But I'm not employed. I never was employed. I never collected any wages from that employer."⁵⁸ In her notice of appeal, Claimant reiterates that she "never received any wages from [Employer] ... nor completed training, manager was notified that [she] would not be accepting any position offered."⁵⁹ Moreover, in her opening brief,

⁵³ Record at 9, 13. 19 *Del. C.* § 3318(b) states, in pertinent part, "Unless a claimant or a last employer ... files an appeal within 10 calendar days after such Claims Deputy's determination was mailed to the last known addresses of the claimant and the last employer, the Claims Deputy's determination shall be final."

⁵⁴ Record at 44.

⁵⁵ Record at 48.

⁵⁶ *Weikel v. Village Printing, Inc.*, 1995 WL 862124, at *2 (Del. Super. Aug. 17, 1995)(citing *Morgan v. Anchor Motor Freight, Inc.*, 506 A.2d 185, 188 (Del. Super. 1986)).

⁵⁷ See *Weikel*, 1995 WL 862124.

⁵⁸ Record at 46.

⁵⁹ Record at 67.

Claimant again says that she “never reported to work for [Employer] nor ... collected any wages.”⁶⁰ Because Claimant has failed to exhaust her administrative remedies by filing a timely appeal of the Disqualification Determination and the determination is final, this Court has no jurisdiction to consider the merits of whether she should have been disqualified from receiving benefits.⁶¹

Claimant’s duty to repay the benefits that she received is clear. 19 *Del. C.* § 3314(3) states that an unemployed individual must not reject an offer for work for which she is reasonably fitted in order to be eligible for benefits.⁶² The Claims Deputy found that Claimant had rejected an offer for work for which she was suited (based on Employer’s testimony that Claimant never reported to or began training for the position in issue) making her ineligible for benefits under 19 *Del. C.* § 3314(3). Claimant failed to appeal this finding prior to the March 1, 2009 deadline and thus, the determination that she was *disqualified* from receiving benefits became final. The record reflects that Claimant did file a timely appeal of the later Overpayment Determination.⁶³ However, as recognized by the Appeals Referee and the UIAB, because the finding of overpayment in the Overpayment Determination rests on the earlier finding of disqualification from benefits in the Disqualification Determination, which became final and binding when Claimant did not appeal it, the finding of overpayment must stand.

⁶⁰ Claimant’s Opening Br. at 1.

⁶¹ *Lively*, 2011 WL 21213415, at *2 (citations omitted).

⁶² 19 *Del. C.* § 3314(3) states, in pertinent part: “An individual shall be disqualified for benefits: If he has refused to accept an offer of work for which he is reasonably fitted ... and the disqualification shall begin with the week in which the refusal occurred and shall continue for each week thereafter until he has been employed in each of 4 subsequent weeks ... and has earned wages in covered employment equal to not less than 4 times the weekly benefit amount.”

⁶³ Record at 24.

CONCLUSION

Upon review of the record, the Court finds that the UIAB's decision to affirm the Appeals Referee's determination that Claimant is liable for an overpayment in the sum of \$3,654.00 for the weeks ending September 20, 2008 through January 17, 2009 is free from legal error, and involved no abuse of discretion.

For the forgoing reasons, this Court hereby affirms the decision of the UIAB.

IT IS SO ORDERED.

/s Diane Clarke Streett
Diane Clarke Streett
Judge