

SUPERIOR COURT  
OF THE  
STATE OF DELAWARE

E. SCOTT BRADLEY  
JUDGE

1 The Circle, Suite 2  
GEORGETOWN, DE 19947

June 24, 2005

Dante G. Molinaro  
28909 Poplar Grove Drive  
Milton, DE 19968

RE: Molinaro v. Division of Unemployment Insurance Appeal Board  
C.A. No. 04A-11-003

Date Submitted: March 31, 2005

Dear Mr. Molinaro:

This is my decision on your appeal of the Unemployment Insurance Appeal Board's (the "Board") decision that you must repay \$2,546 in unemployment benefits. I have affirmed the Board's decision for the reasons set forth herein.

**STATEMENT OF FACTS**

Dante G. Molinaro ("Molinaro") received unemployment benefits totaling \$2,546. The Department of Labor ("DOL") later determined that Molinaro should not have received these unemployment benefits. Molinaro challenged this determination within the DOL and later filed an appeal with the Superior Court, which affirmed the DOL's determination.<sup>1</sup>

The DOL then issued a "decision of overpayment" to reclaim the unemployment benefits received by Molinaro. Molinaro appealed this decision to the Appeals Referee, who concluded that Molinaro did have to repay the unemployment benefits. Molinaro then filed

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<sup>1</sup>*Molinaro v. Unemployment Insurance Appeal Board*, 2004 WL 2828048 (Del. Super. Ct.).

an appeal with the Board, which affirmed the Appeals Referee's decisions. Molinaro then filed an appeal with this Court.

### STANDARD OF REVIEW

The Supreme Court and this Court repeatedly have emphasized the limited appellate review of the factual findings of an administrative agency. On appeal from a decision of the UIAB, this Court is limited to a determination of whether there is substantial evidence in the record sufficient to support the Board's findings, and that such findings are free from legal error.<sup>2</sup> Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.<sup>3</sup> The Board's findings are conclusive and will be affirmed if supported by "competent evidence having probative value."<sup>4</sup> The appellate court does not weigh the evidence, determine questions of credibility, or make its own factual findings.<sup>5</sup> It merely determines if the evidence is legally adequate to support

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<sup>2</sup> *Employment Ins. Appeals Board of the Dept. of Labor v. Duncan*, 337 A.2d 308, 309 (Del. 1975); *Longobardi v. Unemployment Ins. Appeal Board*, 287 A.2d 690, 692 (Del. Super. Ct. 1971), *aff'd* 293 A.2d 295 (Del. 1972).

<sup>3</sup> *Oceanport Ind. v. Wilmington Stevedores*, 636 A.2d 892, 899 (Del. 1994); *Battisa v. Chrysler Corp.*, 517 A.2d 295, 297 (Del.), *app. dismiss.*, 515 A.2d 397 (Del. 1986).

<sup>4</sup> *Geegan v. Unemployment Compensation Commission*, 76 A.2d 116, 117 (Del. 1950).

<sup>5</sup> *Johnson v. Chrysler Corp.*, 312 A.2d 64, 66 (Del. 1965).

the agency's factual findings.<sup>6</sup> Absent an error of law, the Board's decision will not be disturbed where there is substantial evidence to support its conclusions.<sup>7</sup>

## **DISCUSSION**

### **I. The Board was not under a duty to notify Molinaro of the review date of his appeal.**

Molinaro argues that he had a right to both be notified of and present when the Board reviewed his appeal. However, 19 Del. C. §3321 (a) permits the Board to determine the “manner in which disputed claims shall be presented and the conduct of hearings and appeals shall be in accordance with regulations prescribed by the [Board] for determining the rights of parties, whether or not such regulations conform to common-law or statutory rules of evidence and other technical rules of procedure.” The Division of Unemployment Labor published a handbook that describes and explains the rights and responsibilities of the claimant. The Delaware Unemployment Compensation Handbook specifically states that, “the Board does not hold hearings on every appeal request. Most cases are settled based upon a review of the formal record of the Referee Hearing, the Referee’s Decision and the pertinent law.”<sup>8</sup> The Board did not err in failing to provide notice to Molinaro concerning the date, time and location of its consideration of his appeal. It is clear that the Board followed its own procedures as set forth in the handbook. The Board reviewed Molinaro’s appeal by going over the record before it. In reaching its decision the Board

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<sup>6</sup> 29 *Del.C.* § 10142(d).

<sup>7</sup> *Dellachiesa v. General Motors Corp.*, 140 A.2d 137 (Del. Super. Ct. 1958).

<sup>8</sup> Division of Unemployment Insurance, *Your Guide to Unemployment Insurance*

reviewed the evidence presented to the Appeals Referee, the Appeals Referee's decision, and Molinaro's notice of appeal. Additional testimony was not taken or given by anyone present at the hearing. As such, the Board did not err in not giving Molinaro notice of the date, time and location of its consideration of his of his appeal.

**II. Substantial evidence exists to support the Board's finding that Molinaro received an overpayment of benefits in the amount of \$2,546.**

This Court, in reviewing an appeal from the Board, is limited to determining whether or not there is substantial evidence to support the Board's findings, and that such findings are free from legal error. The Board's decision that Molinaro must repay \$2,546 in unemployment benefits is in accordance with both the law and evidence. The Board and this Court determined that Molinaro was not entitled to receive unemployment benefits. Molinaro received unemployment benefits totaling \$2,546 before those decisions were made and became final. After determining that Molinaro was disqualified from receiving unemployment benefits, the DOL sought the return of the monies paid to Molinaro. Irrespective of whether Molinaro was entitled to benefits at the time they were awarded or whether he followed the rules, as he claims, 19 Del. C. §3325 provides that, "the person shall be so liable regardless of whether such sum was received through fraud or mistake, or whether that person was legally awarded the payment of benefits at the time but on appeal was subsequently found not to be entitled thereto." The decision that Molinaro received an overpayment of \$2546 in unemployment benefits and must now repay them is both based upon substantial evidence and free from legal error.

**CONCLUSION**

The Board's decision is affirmed.

**IT IS SO ORDERED.**

Very truly yours,

E. Scott Bradley