

SUPERIOR COURT
OF THE
STATE OF DELAWARE

E. SCOTT BRADLEY
JUDGE

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

June 14, 2012

Jobe A. Tomer
11 Beebe Drive
Lewes, DE 19958

RE: *Jobe A. Tomer v. Jobe's Landscape, Inc.*
C.A. No. S11A-10-002-ESB

Date Submitted: March 12, 2012

Dear Mr. Tomer:

This is my decision on your appeal of the Unemployment Insurance Appeal Board's finding that you must pay back certain unemployment benefits that you improperly received. You were an owner and employee of Jobe's Landscape, Inc., a landscaping business. When work got slow in the winter of 2010, you filed a claim for unemployment benefits. Your claim was approved and you collected \$1,420 in unemployment benefits for four weeks. Then, for reasons that are not set forth in the record for this case, a Claims Deputy referred your claim to an Appeals Referee to determine if your ownership interest in Jobe's Landscape, Inc., affected your eligibility for unemployment benefits. The Appeals Referee determined that you were not eligible for unemployment benefits because you were still working by trying to get customers for Jobe's Landscape, Inc. The Appeals Referee's decision was issued on February 22, 2011. You appealed the Appeals Referee's decision to the Board. However, you failed to appear for your hearing before the Board. The Board then dismissed your appeal, making the Appeals Referee's decision final. The Department of Labor then instituted proceedings to recover the unemployment benefits that you had improperly received. The

Claims Deputy ruled that you had received an overpayment of unemployment benefits totaling \$1,420. You filed an appeal of the Claims Deputy's decision with the Appeals Referee, who affirmed the Claims Deputy's decision. You then filed an appeal of the Appeals Referee's decision with the Board. The Board affirmed the Appeals Referee's decision, reasoning that the prior determination that you were ineligible for unemployment benefits was final. Thus, since you were ineligible to receive unemployment benefits, the Claims Deputy's decision that you had to repay those benefits was correct. You then filed an appeal with this Court, arguing that you had previously been found to be eligible for unemployment benefits and, therefore, should not have to repay the unemployment benefits that you had received through no fault of your own.

STANDARD OF REVIEW

The Supreme Court and this Court repeatedly have emphasized the limited appellate review of the factual findings of an administrative agency. The Court must determine whether the Board's findings and conclusions are free from legal error and supported by substantial evidence in the record.¹ Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.² The appellate court does not weigh the evidence, determine questions of credibility, or make its own factual findings.³ It merely determines if the evidence is

¹ *Unemployment Insurance Appeal Board v. Martin*, 431 A.2d 1265, 1266 (Del. 1981).

² *Oceanport Ind. v. Wilmington Stevedores*, 636 A.2d 892, 899 (Del. 1994); *Battista v. Chrysler Corp.*, 517 A.2d 295, 297 (Del. Super.1986), *app. disp.*, 515 A.2d 397 (Del. 1986)(TABLE).

³ *Johnson v. Chrysler Corp.*, 213 A.2d 64, 66 (Del. 1965).

legally adequate to support the agency's factual findings.⁴ Absent an error of law, the Board's decision will not be disturbed where there is substantial evidence to support its conclusions.⁵

DISCUSSION

Your unemployment appeal process was separated into two phases. The first phase was the eligibility phase. During this phase, the Appeals Referee, in a decision dated February 22, 2011, determined that you were ineligible for unemployment benefits. You appealed the Appeals Referee's decision to the Board, but failed to appear at your hearing, citing your need to be at a job site. You did not make any effort to inform the Board of your work demands, nor did you attempt to postpone or reschedule your hearing. The Board dismissed your appeal and the Appeals Referee's decision became final. The second phase was the recovery phase. The Claims Deputy found that you received an overpayment of benefits totaling \$1,420. The Appeals Referee and Board affirmed the Claims Deputy's decision.

You argue now that you were eligible for unemployment benefits. Unfortunately, the time for consideration of this argument has passed. The Appeals Referee's decision that you were ineligible for unemployment benefits is final and binding on you because you failed to exhaust all of your administrative remedies.⁶ You argue that you did not pursue your appeal because you had to be at a job site. It was your responsibility to inform the Board of your inability to attend the hearing. Your failure to do so resulted in your appeal being dismissed and the Appeals Referee's decision becoming final.

⁴ 29 *Del.C.* § 10142(d).

⁵ *Dallachiesa v. General Motors Corp.*, 140 A.2d 137 (Del. Super. 1958).

⁶ 19 *Del.C.* § 3320 and §3322(a).

Thus, the issue before the Board and this Court is whether you received an overpayment of benefits. The issue is not whether you were eligible for unemployment benefits. It has already been determined that you were ineligible for unemployment benefits. 19 *Del.C.* § 3325 provides as follows:

“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. 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.”

Since you were ineligible for unemployment benefits, it is clear that you have a statutory obligation to repay all of the unemployment benefits that you received. The Board’s finding that you must repay the overpayment of unemployment benefits that you received is based upon substantial evidence in the record and is in accordance with the applicable law.

CONCLUSION

The Unemployment Insurance Appeal Board’s decision is **AFFIRMED**.

IT IS SO ORDERED.

Very truly yours,

/s/ E. Scott Bradley

cc: Prothonotary
Unemployment Insurance Appeal Board