

SUPERIOR COURT  
OF THE  
STATE OF DELAWARE

T. HENLEY GRAVES  
*RESIDENT JUDGE*

SUSSEX COUNTY COURTHOUSE  
1 THE CIRCLE, SUITE 2  
GEORGETOWN, DE 19947  
(302) 856-5257

January 18, 2012

Sharon West  
P.O. Box 173  
Rehoboth Beach, Delaware 19971

**RE: *West v. Heritage Inn & Golf*;  
Civil Action No. S11A-04-002**

Submitted: January 5, 2012  
Decided: January 18, 2012

On Appeal from the Unemployment Insurance Appeal Board: **AFFIRMED**

Dear Ms. West:

Sharon West appeals the decision of the Unemployment Insurance Appeals Board (“the Board”) that held Ms. West is disqualified for the receipt of unemployment benefits for a period of one year due to the commission of fraud. For the reasons set forth herein, the Board’s decision is affirmed.

*Procedural & Factual Background*

Ms. West filed for an extension of unemployment benefits on April 25, 2010. Ms. West was awarded benefits in the amount of \$136.00 per week. Through a quarterly employer cross-match audit conducted on October 14, 2010, the Division of Unemployment Benefit Payment Control (“the Division”) discovered that Ms. West

received wages from Heritage Inn & Golf<sup>1</sup> while collecting unemployment benefits. A Claims Deputy determined Ms. West was disqualified from the receipt of benefits for one year, commencing the week ending May 8, 2010. Ms. West appealed this determination to an Appeals Referee. The Appeals Referee held a hearing on December 20, 2010. At the hearing, Stacy Davis testified on behalf of the Division. She stated that the Division received a report from Heritage Inn & Golf reporting wages for Ms. West. The report the Division received covered the period from the week ending May 1, 2010, through the week ending July 24, 2010. Ms. Davis testified that the wages Ms. West earned for those weeks, with the exception of two weeks, would have affected the amount of her unemployment benefit. Ms. Davis also described for the tribunal the method by which a claimant files wage information via the TeleBenefits system on a weekly basis. Ms. Davis testified Ms. West would have been prompted to input a number reflecting the dollar amount of the wages she earned that week. Ms. West entered the number “0” for all of the weeks in question. Ms. Davis pointed out that Ms. West had previously claimed and received unemployment benefits and had reported wages in all of those instances. The fraud investigation was triggered as a result of the noticed discrepancy between those previous claims and this claim.

Ms. West testified on her own behalf. She suggested she might have been confused

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<sup>1</sup> Ms. West worked for Sand Castle Motel, which is owned by Five D LLC d/b/a Heritage Inn & Golf.

by the TeleBenefits system. She stated she did not have her pay stubs and had lost all documentation of hours she worked. She also told the Appeals Referee that she had sometimes been paid in cash and that she believed she did not have to report that income as it was “under the table.” In sum, Ms. West testified that she would not have intentionally committed fraud.

By way of decision mailed January 14, 2011, the Appeals Referee found Ms. West had knowingly failed to disclose earnings in order to obtain unemployment benefits to which she was not entitled and affirmed the Claims Deputy’s determination. Ms. West appealed to the Board.

The Board held an evidentiary hearing on March 2, 2011. At the hearing, Ms. West produced pay stubs dated May 23, 2010 (gross income \$208.00), June 6, 2010 (gross income \$192.00), June 20, 2010 (gross income \$164.00), July 14, 2010 (gross income \$136.00), and July 18, 2010 (gross income \$216.00). Ms. West also testified that the cash she received from her employer was not “under the table” income but an advance on her wages. The Division rested on the record before the Appeals Referee.

By way of written decision mailed March 21, 2011, the Board affirmed the Appeals Referee’s decision. Ms. West filed an appeal with this Court.

#### *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.<sup>2</sup> “Substantial evidence” is “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.”<sup>3</sup> 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.”<sup>4</sup>

In this case, Ms. West takes specific issue with the Appeals Referee’s finding that Ms. West “had [worked] varied hours between 40 or 50 hours a week to only one day a week.” The Court agrees with Ms. West that this finding is not supported by the record. Unfortunately for Ms. West, that finding was not pivotal to either the Appeals Referee’s decision or the Board’s decision.

Section 3314 of Title 19 of the Delaware Code reads, in relevant part:

An individual shall be disqualified for benefits:

...

(6) If the Department determines such individual has made a false statement or representation knowing it to be false or knowingly has failed to disclose a material fact to obtain benefits to which the individual 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

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<sup>2</sup> *Unemployment Ins. Appeal Bd. v. Martin*, 431 A.2d 1265 (Del. 1981); *Pochvatilla v. U.S. Postal Serv.*, 1997 WL 524062 (Del. Super.); 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.”).

<sup>3</sup> *Gorrell v. Division of Vocational Rehab.*, 1996 WL 453356, at \*2 (Del. Super.).

<sup>4</sup> *McManus v. Christiana Serv. Co.*, 1197 WL 127953, at \*1 (Del. Super.).

failure to disclose a material fact occurred. A disqualification issued pursuant to this subsection shall be considered a disqualification due to fraud.<sup>5</sup>

In this case, substantial evidence exists in the record to support the Board's finding that Ms. West earned income she knowingly failed to report to the Division. Ms. West's appeal is, in nature, more of an apology and an attempt to excuse the misrepresentations she made to the Division than a challenge to the record. In fact, the evidence Ms. West presented to the Board did nothing but bolster the Division's position that Ms. West had received unreported income.

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<sup>5</sup> 19 *Del. C.* § 3314.

The Board's decision is supported by substantial evidence in the record and is free from legal error, as well.

*Conclusion*

For the reasons set forth herein, the Board's decision that held Ms. West is disqualified for the receipt of unemployment benefits for a period of one year commencing the week ending May 8, 2010, due to the commission of fraud is AFFIRMED.

IT IS SO ORDERED.

Very truly yours,

/s/ T. Henley Graves

oc: Prothonotary  
cc: Unemployment Insurance Appeal Board  
Five D LLC d/b/a Heritage Inn & Golf