

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR KENT COUNTY

ADAM HOBBS & SONS, INC.,	:	
	:	C.A. No. 02A-05-006
Appellant,	:	
	:	
v.	:	
	:	
D. E. SCHELLINGER and	:	
DIVISION OF UNEMPLOYMENT	:	
INSURANCE APPEALS,	:	
	:	
Appellees.	:	

Submitted: November 26, 2002

Decided: February 10, 2003

ORDER

Upon Appeal from Division of Unemployment
Appeals. Affirmed.

Adam Hobbs & Son, Inc., *pro se*, Felton, Delaware, Appellant.

Division of Unemployment Insurance Appeals, Wilmington, Delaware, Appellee.

WITHAM, J.

I. Introduction

Before this Court is the appeal of Adam Hobbs & Son, Inc. from a decision of the Division of Unemployed Insurance Appeals in favor of the Unemployment Insurance Benefit Accounting Specialist. The Appeals Referee properly stated and applied the law to the facts of this case; thus, the decision below is *affirmed*.

II. Background

D.E. Schellinger, the employee, filed a claim for unemployment benefits effective July 29, 2001. The Unemployment Insurance Benefit Accounting Specialist awarded Mr. Schellinger benefits charged to Adam Hobbs & Son's experience merit rating account in the amount of \$8,500. The employer appealed that decision and a hearing was held before Division of Unemployment Insurance Appeals on August 5, 2002.

According to the findings of the Appeals Referee and the transcript below, it appears that Mr. Schellinger's last employer was Wooters Excavation. Mr. Schellinger apparently left the employ of Wooters because of a lack of work, thus, he is entitled to unemployment benefits.¹ Immediately prior to working at Wooters, Mr. Schellinger was employed by Adam Hobbs & Son. Since the date of Mr. Schellinger's claim was July 29, 2001, according to the testimony of the representative of the Department of Labor (Department), the base period is the

¹ See *Schellinger v. Adam Hobbs & Son, Inc.*, Appeal No. 31329 Appeals Referee's Decision at 2 (Division of Unemployment Insurance Appeals May 16, 2002) (hereinafter Appeals Referee's Decision).

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second quarter of 2000 through the first quarter of 2001.² The representative further testified that Mr. Schellinger had wages from Adam Hobbs & Son during that time frame, specifically the second, third, and fourth quarter of 2000. Those wages totaled \$13,183.65, with a maximum chargeable of \$8,500. Since Adam Hobbs & Son was a base period employer, a notice to provide separation information on Mr. Schellinger, referred to as a UC-119 form, was computer generated by the Department and mailed out to the employer on or about August 1, 2001. The form was mailed to the address of record for the employer, and the employer confirmed that the address was accurate. The UC-119 form requests separating information so the Department can determine liability to the employer's account. In this case, the Department did not show the form being returned by the employer, nor was it returned by the Postal Service as undeliverable.³ Since the employer did not file the UC-119, the Department charged the employer's account \$8,500 in accordance with title 19, section 3317(b) of the Delaware Code.

Before the Appeals Referee, the employer was represented by Adam Hobbs. Mr. Hobbs testified that he was uncertain if the company received the UC-119. Mr. Hobbs further stated that his wife normally responds to these forms, and she was unable to attend the hearing. Concerning Mr. Schellinger's separation from the company, Mr. Hobbs testified that the employee was not laid off nor was he fired,

² *Id.*

³ Appeals Referee's Decision at 2.

rather he voluntarily resigned his position because he received a DUI.⁴

The Appeals Referee stated that pursuant to section 3317⁵ an employer who does not timely return a separation notice (the UC-119) will be barred from seeking relief from benefit wages charged to its experience merit ratings account.⁶ Moreover, the Appeals Referee found that “Because the employer representative could not state with any type of certainty that the UC-119 form on this claimant was actually returned to the Department, this tribunal cannot find that the employer even attempted to return the form. Since the Department did not receive the form back

⁴ Tr. of May 9, 2002 Hearing before the Division of Unemployment Insurance Appeals at 2; *see also* Appeals Referee’s Decision at 2.

⁵ DEL. CODE. ANN. tit. 19, § 3317(b). Section 3317(b) states:

Whenever an individual files a claim for benefits, the Department shall forward to the employer by whom the claimant was most recently employed, hereafter the "last employer", and to each base period employer relating to the individual's claim a separation notice. The last and base period employer(s) shall return such notices completed, indicating the reason for the claimant's separation from work with them and the individual claimant's last date of work with them, within 7 days of the date contained on the separation notice. Any last or base period employer who fails to timely return a separation notice or who fails to complete a separation notice within the period prescribed above shall be barred from claiming subsequently that the individual claimant to whom such separation notice applied shall be disqualified under any provisions of § 3315 of this title and shall be barred from seeking relief from benefit wage charges to its experience merit rating account under §§ 3349-3356 of this title unless the Department for reasons found to constitute good cause, shall release such employer from the default. If the last or base period employer fails to timely submit a completed separation notice, the Department shall not be required to issue a determination on said claim or to make an examination of said claim or be required to follow the remaining procedures as set forth in §§ 3318-3320 of this title.

⁶ Appeals Referee’s Decision at 2-3.

from the employer, this tribunal must conclude that the employer is not entitled to any relief of benefit wages charged.”⁷ Consequently, the Appeals Referee affirmed the decision of the Unemployment Insurance Benefit Accounting Specialist specifically stating that benefit wages in the amount of \$8,500 were properly charged to the employer’s experience merit rating account because the employer failed to timely return the separation notice.

On May 29, 2002, the employer filed its Notice of Appeal to the Superior Court, pursuant to title 19, section 3355(d) of the Delaware Code.⁸ In its appeal the employer claims that the UC-119 form was completed and returned to the Department of Labor-Division of Unemployment. In the opening brief, Ms. Hobbs claims that her husband was not “fully aware of everything that had taken place in reference to this situation.”⁹ Ms. Hobbs further states that she personally completed the UC-119 form and returned the form via the U.S. mail. Subsequently, Ms. Hobbs received the notice that benefits were being paid out to Mr. Schellinger. She then states that she telephoned the Department of Labor explained the situation and was told to file an appeal, which she did. Ms. Hobbs further asserts that she had

⁷ *Id.*

⁸ DEL. CODE. ANN. tit. 19, § 3355 (d), in pertinent part states: “The base period employer . . . Shall be duly notified of the appeals tribunal’s decision on each benefit wage charge for which redetermination is requested, together with its reasons therefor, which shall be deemed final unless within 15 days after the delivery of such decision, a petition for judicial review is filed in the Superior Court.”

⁹ Opening Brief for Appellant at 1.

previously filled out UC-119 forms and returned them via U.S. mail without any problems. Therefore, Adam Hobbs & Son contends that it has fulfilled its statutory obligation.

III. Analysis

This Court's review of benefit wage charge determination is limited by title 19, section 3355(d) of the Delaware Code. Section 3355 (d) states in pertinent part that "In any proceeding under this section the findings of the appeals tribunal as to the facts, if supported by the evidence and in the absence of fraud, shall be conclusive, and the jurisdiction of the [Superior] Court shall be confined to the questions of law. No additional evidence shall be received by the Court, *but* the Court *may* order additional evidence to be (sic) taken before the appeals tribunal."¹⁰ The policy behind the enactment of Chapter 33 is captured in title 19, section 3301 of the Delaware Code which states in relevant part:

[E]conomic insecurity due to unemployment is a serious menace to the health, morals and welfare of the people of this State. Involuntary unemployment is therefore a subject of general interest and concern which requires appropriate action by the General Assembly to prevent its spread and to lighten its burden which now so often falls with crushing force upon the unemployed worker and the worker's family. . . . This can be accomplished by encouraging employers to provide more stable employment and by the systematic accumulation of funds during periods of employment from which benefits may be paid for periods of unemployment, thus maintaining purchasing power and limiting the serious social consequences of poor relief

¹⁰ DEL. CODE. ANN. tit. 19, § 3355(d) (emphasis added).

assistance.¹¹

Therefore, where there are ambiguities the Unemployment Compensation Act should be construed to provide benefits to the employee in order to lighten the financial hardship on the employee, and maintain the employee's purchasing power.

Typically under section 3355(d) this Court should defer to the Appeals Referee's findings of facts; however, this Court does have the flexibility to order new evidence to be brought before the Division of Unemployment Insurance Appeals.¹² However, in view of the policy statement of this chapter, in the case at bar a remand to take additional evidence is not warranted. During the course of the employer's appeal before the Division of Unemployment, the employer was represented by Mr. Hobbs, who testified that the employee resigned his position. However, as to whether someone in the company completed the UC-119 form Mr. Hobbs testified "I'm not quite sure if we received the, I know we received something on this and I thought my wife usually responds to these issues and she was unable to make it today. But so whether she responded you know to the notice

¹¹ *Id.* at § 3301; *see also State, Dep't of Elections v. Carello*, 516 A.2d 453 (Del. 1985) ("The purpose of the Unemployment Compensation Act is to prevent the spread of unemployment and to lighten the burden of unemployment on the displaced worker and his family."); *E. I. Du Pont de Nemours & Co. v. Dale*, 271 A.2d 35 (Del. 1970) ("[T]he interpretation and application of the Unemployment Compensation Law shall be to eliminate economic insecurity due to involuntary unemployment.").

¹² DEL. CODE. ANN. tit. 19, § 3355(d).

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or not I'm not sure.”¹³ Pursuant to section 3317, an employer who fails to complete the UC-119 form is barred from subsequently claiming that the employee should not receive benefits for reasons such as voluntary resignation.¹⁴ Although this appears to be a harsh penalty, section 3317 does provide that the Appeals Referee can release the employer from this strict bar if the employer provides good cause.¹⁵ In this case, the Department representative testified that the computer generated UC-119 form was mailed to the employer. The employer confirmed that the address of record was correct. Consequently, since the form was properly mailed out to the employer there is a presumption that the employer received the UC-119 form.¹⁶ Nevertheless, the UC-119 was never received by the Department. Mr. Hobbs did not provide any reasons for not returning the form;¹⁷ therefore, the Appeals Referee properly found that since the UC-119 form was not returned the employer is not entitled to any relief of the benefit wages charged.

The employer is now seeking to introduce evidence that it in fact did

¹³ Tr. of Hearing at 4.

¹⁴ DEL. CODE. ANN. tit. 19, § 3317(b).

¹⁵ *Id.*

¹⁶ *Integrity Staffing Solutions, Inc. v. Division of Unemployment Insurance*, 2001 Del. Super. LEXIS 527 (Del. Super. Ct. 2001).

¹⁷ Specifically, the Appeals Referee stated “Because the employer representative could not state with any type of certainty that the UC-119 form on this claimant was actually returned to the Department, this tribunal cannot find that the employer even attempted to return the form.” Appeals Referee’s Decision at 3.

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complete and return the UC-119. Ms. Hobbs in the opening brief explains that her husband was not aware that she had completed the form and returned the UC-119 form that was sent to the company in reference to Mr. Schellinger. Ms. Hobbs further explains that the first time she was informed that the Department did not receive the form was after the benefits were awarded to the employee and she called the Department of Labor to inquire why benefits were charged to Adam Hobbs & Son's account. The employer then filed an appeal of the initial determination of benefits and that appeal was heard before the Appeals Referee. Given the factual circumstances of this case, it is apparent that the employer knew that the issue of whether or not it had completed and returned the UC-119 would be raised during the appeal. Despite this the employer was not prepared to answer any questions concerning the forms, much less provide the Appeals Referee sufficient just cause to relieve the employer from the strict bar on asserting that the claimant should not receive benefits created by section 3317. If the Appeals Referee determined that additional evidence would have been helpful in making her decision she had the discretion to either grant a continuance¹⁸ or take additional evidence¹⁹ as she deemed necessary. Mr. Hobbs did not request either of these two remedies in this case.

¹⁸ Code of Delaware Regulation, C.D.R. 65-600-18 (3)(b) which states : "The Referee, with or [without] notice to any of the parties may take such additional evidence as he deems necessary, provided that where additional evidence is so taken the parties shall be given an opportunity of examining and refuting such evidence."

¹⁹ C.D.R. 65-600-18 (4) which states: "The Referee shall use his best judgment as to when a continuance, postponement, adjournment or reopening of a hearing shall be granted in order to [gather] all the necessary evidence and to be fair to all parties."

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This Court finds that the Appeals Referee did not abuse her discretion in not *sua sponte* requesting additional evidence. Therefore, the employer will not be given a second chance to present evidence that should have been presented in the appeal before the Appeals Referee. In affirming the Unemployment Insurance Benefit Accounting Specialist the Appeals Referee correctly applied section 3317(b) to prohibit the employer from asserting that Mr. Schellinger voluntarily resigned.

IV. Conclusion

Consequently, in this case it is apparent that the Appeal Referee properly applied the statutory law to the facts of this case. Therefore, the decision of the Division of Unemployment Insurance Appeals is *affirmed*.

IT IS SO ORDERED.

/s/ William L. Witham, Jr.
J.

WLW/dmh

oc: Prothonotary

xc: Order Distribution
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