

SUPERIOR COURT
OF THE
STATE OF DELAWARE

RICHARD F. STOKES
JUDGE

1 THE CIRCLE, SUITE 2
SUSSEX COUNTY COURTHOUSE
GEORGETOWN, DE 19947

George W. Smith, Jr.
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Hertrich's Family of Automobile Dealerships
Attn: Frederick W. Hertrich, III
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RE: ***George W. Smith, Jr. v. Hertrich's of Milford and Unemployment
Insurance Appeal Board***
S11A-07-006 RFS

Claimant's Appeal of a Decision of the
Unemployment Insurance Appeal Board. Decision AFFIRMED.

Submitted: February 15, 2012
Decided: March 9, 2012

Dear Gentlemen and Counsel:

This is my decision affirming an order of the Unemployment Insurance Appeal Board ("Board"). The Board found that Claimant George W. Smith, Jr. was disqualified from receipt of unemployment benefits because he fraudulently withheld information about earnings received from Hertrich's of Milford ("Hertrich's") while he was receiving unemployment benefits. Title 19 *Del.C.* § 3314(6).¹ The Court's role is to determine

¹Section 3314 provides as follows:
An individual shall be disqualified for benefits. . . .

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

whether there is substantial evidence to support the finding of fraud and whether the decision is free from legal error.²

Claimant argues that he did not commit fraud in failing to report wages from Hertrich's because he did not expect to receive wages from Hertrich's and he did not consider Hertrich's a "significant factor" in the unemployment benefits process.³ Hertrich's rests on the evidence presented below. The Board does not take a position.

The record shows the following chronology. After being discharged from Price Honda car dealership, Claimant received state unemployment benefits from January 25, 2010 through the week ending July 3, 2010 and two extensions of federal benefits through February 26, 2011.

However, Claimant earned income from two jobs in 2010. He worked as a car salesman at Hertrich's in January 2010. Hertrich's presented a copy of a check to Claimant for \$258.11, which was admitted into evidence at the referee's hearing. The check was dated January 22, 2010, but processed by the bank March 22, 2010. Hertrich's records listed a second check for \$232, but no copy of this check was presented and Claimant denied having received it. Claimant quit his job at Hertrich's January 26, 2010.

Claimant worked at Chipotle's Mexican Grille ("Chipotle's") for approximately one month ending September 10, 2010, when he was discharged. His total earnings were \$3,156. Claimant filed for unemployment benefits, which were awarded by a claims deputy February 9, 2011. Record of the Proceedings ("Rec.") at 14. However, at both the referee's hearing on April 4, 2011 and the Board hearing on June 15, 2011, Claimant stated that he did not report these earnings. Rec. at 63, 86.

On February 24, 2011, the claims deputy sent Claimant a letter informing him that

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 failure to disclose a material fact occurred. A disqualification issued pursuant to this subsection shall be considered a disqualification due to fraud.

²Title 19 *Del.C.* § 3323(a). *Starkey v. Unemployment Ins. Appeal Bd.*, 340 A.2d 165, 166 (Del. Super. 1975), *aff'd*, 363 A.2d 651 (Del. 1976).

³Opening Brief at 3. Claimant also argues that one of Hertrich's exhibits to the Board is incorrectly and fraudulently dated. Further, he refers to a reversal of a finding made by the benefit payment control manager that Claimant owes DOL \$18,665 plus interest in overpayments. These matters were not raised below and will not be considered on appeal.

DOL learned about his unreported wages from Hertrich's and that disqualification and recoupment were possible results.⁴

Following a DOL investigation, the claims deputy on March 7, 2011 ruled that Claimant knowingly failed to report his earnings from Hertrich's and Chipotle's. This constitutes fraud, pursuant to § 3314(6). Claimant was disqualified from receipt of benefits for a period of one year from the week ending January 23, 2010, the date of the first overpayment. The claims deputy also found that the amount of overpayment would be determined.

In April 2011, an appeals referee heard Claimant's appeal of the DOL Benefit Payment Control Unit's ("BPCU") finding that Claimant committed fraud and was liable for overpayment. Claimant acknowledged his dishonesty in failing to report his earnings from Chipotle's. He offered numerous explanations for not reporting the check from Hertrich's, which he received in the mail in March 2010. A representative from Hertrich's explained that Claimant had signed an employment agreement stating that Claimant would work on a commission basis but receive a weekly draw against commission to meet minimum wage requirements. If Claimant sold a car the draw would be deducted from his commission. The appeals referee affirmed the decision of the BPCU, but the amount of overpayment had not yet been determined.

On appeal from the appeals referee, Claimant challenged the finding of fraud in regard to Hertrich's. He stated that he did not expect any earnings because he had not sold any cars. He also stated that the check did not equal one and ½ of his weekly benefits. The DOL representative stated that Claimant's "real disqualification" would have been for the voluntary quit, Rec. at. 90, but this issue was not litigated. The Board affirmed the appeals referee's finding that Claimant committed statutory fraud.

Claimant appeals the Board's decision to this Court. It is undisputed that Claimant received a check for \$258.11 from Hertrich's in March 2010, while he was receiving unemployment benefits. Claimant did not report these earnings. Claimant did not

⁴Title 19 *Del.C.* § 3325 provides in part:

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.

dispute his obligation to report his earnings, which was stated in the benefits guidebook and also on the Tele-benefits system he called each week while he was receiving benefits. The Board found that Claimant's testimony that he misunderstood the payment process was not credible, and that finding stands.⁵

The bottom line is that Claimant knowingly chose not to report his earnings from Hertrich's. His various explanations do not alter the fact that he committed statutory fraud on the DOL. The Board's decision is supported by the record and is free from legal error.

For these reasons, the Board's decision is **AFFIRMED**.

IT IS SO ORDERED.

Very truly yours,

Richard F. Stokes

Original to Prothonotary

⁵*Thompson v. Unemployment Ins. Appeal Bd.*, 25 A.3d 778, 782 (Del.2011).