IN THE SUPERIOR COURT OF THE STATE OF DELAWRE

IN AND FOR NEW CASTLE COUNTY

CHRISTIAN B. ANDERSON, Employee-Appellant, v. COMFORT SUITES Employer-Appellee and UNEMPLOYMENT INSURANCE APPEAL BOARD, Appellee.	)	C.A. No. 03A-05-011 JRJ

Date Submitted: January 22, 2004
Date Decided: February 12, 2004

O R D E R

On Appeal of the Decision of the Unemployment Insurance Appeal Board.
Decision **AFFIRMED**.

Christian B. Anderson, 3236 Seaborn Drive, Mt. Pleasant SC 29466, *pro se*.

Mary Paige Bailey, Esquire, Deputy Attorney General, Department of Justice, Carvel State Office Building, 820 N. French St., 6th Floor, Wilmington, DE 19801, attorney for Unemployment Insurance Appeal Board.

Comfort Suites, Attn: Personnel, 1130 Hungry Neck Blvd., Mt. Pleasant, SC 29464, no attorney of record.

JURDEN, J.

Upon consideration of the briefs of the parties and the record in this case, it appears to the Court that:

Procedural History

1. Appellant Christian B. Anderson ("Anderson" or "claimant") appeals from a decision of the Unemployment Insurance Appeal Board ("UIAB" or "Board") which held that his appeal from the decision of the Claims Deputy was untimely and therefore the Board did not have jurisdiction to hear the merits of his case.

2. Anderson was employed as a chief engineer by Comfort Suites ("Comfort Suites" or "employer") in Mt. Pleasant, South Carolina, from approximately September 6, 2002 until December 9, 2002, when his employment was terminated. Comfort Suites fired Anderson because he slid down a laundry chute from the third floor. The employer cited safety concerns and gross misconduct as the basis for its decision to terminate the claimant's employment.[1] Anderson filed a claim for unemployment benefits on or about December 15, 2002.[2]

3. Although Anderson asserted that he went down the laundry chute to see if smoke detectors had been installed in the chute, the Claims Deputy noted that Anderson had been warned about going down the laundry chute.[3] On January 8, 2003, the Claims Deputy determined that under 19 *Del. C.* § 3315(2) Anderson was not entitled to

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[1] Specifically, handwritten reports issued by the employer's general manager state the following: "Gross Misconduct – He went to 3rd floor & slid down our laundry shoot [sic]– Safety Issue – He could have been hurt or hurt others. . . . He is a large man & could have easily have [sic] gotten stuck or torn the shoot [sic] from its support. . . . He was considered a manager & this is a very poor example." UIAB Record (Docket No. 5) at 2, 6.

[2] *See* Unemployment Insurance Division Application for Benefits, UIAB Record at 7.

[3] The Claims Deputy's decision does not reveal many facts about the incident or the merits of the case. *See* Notice of Determination dated January 8, 2003, UIAB Record at 8.

unemployment benefits because he was "discharged from his employment for good cause."[4]

TIMELINESS ISSUE

4. The Claims Deputy's decision was dated and mailed to the claimant on January 8, 2003, but Anderson did not file an appeal of that decision until he sent an appeal letter by facsimile on February 28, 2003,[5] well after the ten (10) day statutory period for filing a timely appeal.[6] In response, the Department of Labor issued a second Notice of Determination on March 10, 2003, which declared the original decision on the merits to be "final and binding due to the claimant's failure to file a timely appeal."[7] The matter was then scheduled for a hearing before an Appeals Referee on the sole issue of the claimant's timeliness of appeal.[8]

5. The Referee held a hearing by telephone on March 24, 2003. Anderson testified that he never received a copy of the Claims Deputy's January 8, 2003 determination. He also testified that he was unaware of that decision until he made

[4] *See* Notice of Determination dated January 8, 2003, UIAB Record at 8.
[5] Exhibit C-1, Faxed Letter of Appeal from Anderson to Dept. of Labor dated Feb. 28, 2003, UIAB Record at 10.
[6] 19 *Del C.* § 3318(b) provides in pertinent part:

> 3318. Decision on claim by deputy; notice; appeal.
> * * *
> (b) Unless a claimant or a last employer who has submitted a timely and completed separation notice in accordance with § 3317 of this title files an appeal within 10 calendar days after such Claims Deputy's determination was mailed to the last known addresses of the claimant and the last employer, the Claims Deputy's determination shall be final and benefits shall be paid or denied in accordance therewith.

[7] *See* Notice of Determination dated March 10, 2003, UIAB Record at 9.
[8] *Id*; *see also* Notice of Hearing, UIAB Record at 13. The employer was not required to attend this hearing on timeliness.

several calls to the Interstate Unit and was "brought up to date."[9] In a decision mailed on March 27, 2003, the Referee determined that the Claims Deputy's January 8, 2003 determination was mailed to Anderson's last known address. The last day to file an appeal from that decision was January 18, 2003,[10] and therefore the Referee held that the claimant's appeal filed on February 28, 2003 was untimely. Concluding that there was no evidence of any administrative error on the part of the Department of Labor, the Referee did not excuse the untimely filing of claimant's appeal. Accordingly, the Referee affirmed the decision of the Claims Deputy.[11]

6. Anderson filed an appeal of the Referee's decision to the Unemployment Insurance Appeal Board. The Board reviewed the matter and upheld the Referee's decision that Anderson's first appeal was untimely.[12] This appeal followed.

Standard of Review

7. In reviewing a decision on appeal from the Unemployment Insurance Appeal Board, this Court must determine if the decision is supported by substantial evidence and is free from legal error.[13] Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.[14] Absent an abuse of discretion, this Court must uphold the Board's decision.[15]

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[9] *See* Transcript of the Hearing before the Referee (hereinafter "Tr.") at 7-8, UIAB Record at 24-25; *see also* Exhibit C-1, Faxed Letter of Appeal from Anderson to Dept. of Labor dated Feb. 28, 2003, UIAB Record at 10.
[10] *See Dorn v. UIAB*, 1986 WL 9030 (Del. Super. Ct. Aug. 5, 1986) (under 19 *Del. C.* § 3318(b), "when notification is given by mail, the time for taking an appeal begins to run upon mailing, instead of delivery, so that the time for appeal can be readily determined . . .").
[11] Referee's Decision, UIAB Record at 14-16.
[12] *See* Decision of the Appeal Board (hereinafter "Bd. Dec."), UIAB Record at 31-32.
[13] *K-Mart v. Bowles*, 1995 WL 269872 (Del. Super. Ct. Mar. 23, 1995), citing 29 *Del. C.* § 10142(d); *Johnson v. Chrysler Corp.,* 213 A.2d 64 (Del. 1965).
[14] *Oceanport Ind. v. Wilmington Stevedores*, 636 A.2d 892, 899 (Del. Super. Ct. 1994).
[15] *Id*.

8. "As an appellate court, it [is] not within the province of the Superior Court to weigh the evidence, determine questions of credibility or make its own factual findings."[16] The Court will only reverse a decision of the Board if its findings are not supported by substantial evidence, or where the Board has made a legal mistake.[17]

9. The Court's review of the Board's decision is twofold. First, the Court must determine if there are facts to support the finding that the appeal was untimely. Second, the Court must determine whether the Board abused its discretion by not exercising, *sua sponte*, its power to review the record for an injustice despite the untimely appeal.[18]

Analysis

10. Anderson asserts that he was justified in filing his appeal late because he never received the Claims Deputy's January 8, 2003 determination. In support of this assertion, the claimant has attached to his brief several exhibits purporting to "establish a pattern of incorrect addressing of correspondence" by the Delaware Department of Labor.[19] These exhibits were not submitted to the Referee or to the Board.

11. Anderson admitted at the Referee's hearing that the Claim's Deputy's January 8, 2003 determination listed his correct address.[20] A representative from the Department of Labor testified that this determination was mailed to that correct address and was never returned.[21] Accordingly, the Board found that "[t]here is no evidence of error on the part of the Department . . . The Department properly fulfilled its

[16] *Unemployment Ins. Appeal Bd. v. Div. of Unemployment Ins.,* 803 A.2d 931, 937 (Del. 2002).
[17] *Delgado v. Unemployment Insurance Appeal Board*, 295 A.2d 585 (Del. Super. Ct. 1972).
[18] *Robledo v. Stratus*, No. C.A. 00A-09-001-HDR, 2001 WL 428684 (Del. Super. Ct. March 27, 2001) at ¶3.
[19] Claimant's Opening Brief ("Claimant's Op. Br.") (Docket No. 8) at 2-3.
[20] Tr. at 4-5, UIAB Record at 20-21.
[21] Tr. at 4, UIAB Record at 21.

responsibility by mailing the determination to claimant's address of record."[22] The Court finds that there is substantial evidence in the record to support this conclusion.

12. "Properly addressed mail is presumed to be received by the addressee. The addressee's mere denial of receipt of the notice is insufficient to rebut this presumption."[23] Here, the decision was properly mailed to the claimant's correct address and it was not returned as "undeliverable." Moreover, there is no evidence of error by an employee of the Department of Labor. Based on the above findings, the Board's determination that the notice was properly mailed to the claimant and that the subsequent appeal was untimely filed was based on substantial evidence.[24]

13. The Board does have authority under 19 *Del. C.* § 3320 to "act *sua sponte* beyond the ten day appeal period to consider a case where no valid appeal has been filed by the parties."[25] However, this authority is used only "where there has been some administrative error on the part of the Department of Labor which deprived the claimant of the opportunity to file a timely appeal, or in those cases where the interest of justice would not be served by inaction."[26] Absent abuse of discretion the Court must uphold a decision of an administrative tribunal.[27]

14. Although Anderson's opening brief asserts that the "State of Delaware has demonstrated a consistent pattern of carelessness from administrative error in addressing correspondence to me from the Delaware Department of Labor Appeals Board,"[28] the

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[22] Bd. Dec. at 1, UIAB Record at 31.
[23] *Robledo, supra*, at ¶6 (citing *Brown v. City of Wilmington*, C.A. No. 95A-01-007, 1995 WL 653460 (Del. Super. Ct. Sept. 21, 1995)).
[24] *See Robledo, supra*, at ¶6.
[25] *Funk v. UIAB*, 591 A.2d 222, 225 (Del. 1991) (en banc), *quoted in Robledo, supra*, at ¶7.
[26] *Id.*
[27] *Id.*
[28] Claimant's Op. Br. at 3.

record is void of any administrative error.[29] "Upon appeal from the denial of unemployment benefits, the Superior Court is limited to consideration of the record which was before the administrative agency."[30] Because the exhibits attached to claimant's opening brief were not a part of that record below, they may not be considered now in the Court's determination of whether the evidence supports the findings of the Referee and the Board.[31]

15. A decision by an administrative agency is not an abuse of discretion "unless it is based on clearly unreasonable or capricious grounds," or the agency "exceeds the bounds of reason in view of the circumstances and has ignored recognized rules of law or practice so as to produce injustice."[32] The claimant has failed to show any error on the part of the Department of Labor that might have delayed the claimant's receipt of the decision or delayed his filing of the appeal. The Board had discretion in this matter, and, under the circumstances, it did not abuse its discretion by refusing to consider the case *sua sponte*.[33]

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[29] The Court notes that after the UIAB filed an answering brief which pointed out the legal insufficiency of the claimant's opening brief, the claimant failed to file a reply brief, even after a Final Delinquent Brief Notice was sent to the claimant at his correct address. *See* Final Delinquent Brief Notice (Docket No. 11).
[30] *Hubbard v. UIAB*, 352 A.2d 761, 763 (Del. 1976).
[31] *Id.* Even if the Court were allowed to consider the claimant's exhibits, today's decision would remain the same. Many of the claimant's exhibits are envelopes addressed to him from the Department which list "29464" as his zip code, whereas the claimant's correct zip code is "29466." *See* Claimant's Op. Br., Ex. A through F. These exhibits cannot change the fact that the January 8, 2003 determination was properly addressed. Having admitted that the decision from which he did not file a timely appeal listed his correct address and zip code, the claimant has failed to point out any administrative error on the part of the Department that would have affected delivery of the notice. Furthermore, the claimant obviously received the mailings that contained the erroneous zip code, a fact which only supports the presumption that the properly addressed January 8, 2003 determination also arrived at the correct location.
[32] *K-Mart v. Bowles, supra*.
[33] *See Funk*, 591 A.2d at 225-26. The circumstances here are no more severe than other cases in which the statutory time limit was strictly enforced. *See, e.g. Id.*; *Rosembert v. Perdue, Inc.*, C.A. No. 96A-01-003, 1996 WL 662988 (Del. Super. Ct. Sept. 12, 1996).

16. For the reasons stated above, the decision of the Board is supported by substantial evidence, is free from legal error, and is not an abuse of discretion. Consequently, the decision of the Board is hereby **AFFIRMED**.

IT IS SO ORDERED.

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Jan R. Jurden, Judge