

**THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY**

DARA BOYD,)	
Appellant,)	
)	
v.)	
)	C.A. No.: 10A-05-004 FSS
AI DUPONT INSTITUTE and)	
UNEMPLOYMENT INSURANCE)	
APPEAL BOARD)	
Appellees.)	

Submitted: September 16, 2010
Decided: December 29, 2010

ORDER

**Upon Appeal From the Unemployment Insurance Appeal Board –
*AFFIRMED***

This is a timely appeal from the Unemployment Insurance Appeal Board. The Board refused to hear Dara Boyd’s appeal because it was filed late. Boyd claims she failed to receive notice of the appeals referee’s hearing or of the referee’s decision and the warning she had ten days to appeal. Boyd blames her failure on “gross negligence on the part of the Division of Unemployment Insurance.” Boyd presented evidence the Department of Labor mislabeled an earlier mailing to her. But, without evidence the Department mislabeled the mailings at issue, and with evidence the Department properly mailed the decision and the ten-day warning, the

court must affirm the Board's decision.

1. Boyd filed for unemployment on January 20, 2010. Nine days later, she filed a change of address with the Department. A claims deputy denied the claim but mailed the decision to Boyd's old address. Boyd did not receive the decision until after the deadline to appeal passed. She promptly appealed. The Board accepted the appeal to correct the deputy's error.

2. A hearing before an appeals referee was scheduled for March 17, 2010. The Department mailed notice to Boyd's correct address of record twice, and twice it was returned as undeliverable. The hearing went on as scheduled. When Boyd did not appear, the referee dismissed the claim.

3. The same day, the referee's decision was properly addressed and mailed to Boyd's then-current address of record. It was not returned. The decision warned the last day to appeal was March 27, 2010, or it would become final. In fact, Boyd had until March 29, 2010, because March 27, 2010, was a Saturday.

4. On March 31, 2010, several days after the decision was finalized, Boyd spoke to Department representatives. That was when she allegedly first learned of the hearing and referee's dismissal. She appealed that day.

5. As mentioned, the Board refused the appeal. On the record presented to the Board, it found the referee's decision was "mailed by first-class

mail to [Boyd’s] last address of record and was not returned to the Department as undeliverable by the United States Postal Service.” The Board also found the notices were properly posted. The Board concluded Boyd was “given notice and opportunity to be heard sufficient to satisfy the requirements of due process.” Consequently, it refused to exercise its discretion to hear a late appeal. That decision precipitated this appeal.

6. The court’s role on appeal is limited. It must determine if the Board’s factual findings are supported by substantial evidence.¹ Then the court must determine if the Board correctly applied the law to the facts.² If the Board’s factual findings hold up and are free from legal error, the court must affirm unless the Board abused its discretion.³

7. Boyd admits her appeal was late under 19 *Del. C.* § 3318(c), which says a referee’s decision “shall be deemed to be final unless within 10 days after the date of . . . mailing of such decision further appeal is initiated pursuant to § 3320 of this title.” She contends, however, the appeal “was not timely due to negligence on the part of the Division of Unemployment Insurance – not through any

¹ *Unemployment Ins. Appeal Bd. v. Duncan*, 337 A.2d 308, 309 (Del. 1975).

² *Ridings v. Unemployment Ins. Appeal Bd.*, 407 A.2d 238, 239 (Del. Super. 1979).

³ *Funk v. Unemployment Ins. Appeal Bd.*, 591 A.2d 222, 225 (Del. 1991).

fault of [her] own.” It seems from the record that, besides her allegation she did not receive the mail, Boyd provided no evidence to the Board supporting her contention. Here, Boyd has embellished her position by claiming that she was misled by Department personnel about the status of the referee’s decision. But, sitting on appeal, this court cannot judge new factual claims.

8. The law presumes “that mailed matter, correctly addressed, stamped and mailed, was received by the party to whom it was addressed” unless the addressee can show otherwise.⁴ “Mere denial of receipt is insufficient to rebut the presumption.”⁵ Finally, “[t]here is a denial of due process only if the Board is at fault for the misdelivery.”⁶

9. The correspondence speaks for itself. The notices and decision at issue were properly addressed to Boyd’s then-address of record. Boyd’s evidence the Department mislabeled an earlier mailing does not rebut the presumption she received the referee’s decision. Nor was that mailing returned. Therefore, the Board could find, at least, that Boyd received the referee’s decision and warning of the ten day deadline.

⁴ *Straley v. Advance Staffing, Inc.*, 2009 WL 3451919 at *2 (Del. 2009) (TABLE) *citing Windom v. Ungerer*, 903 A.2d 276, 282 (Del. 2006).

⁵ *Id.*

⁶ *Id. citing PAL v. Wilmington*, 2008 WL 2582986, at *4 (Del. Super. Sept. 4, 2001).

10. Next, Boyd contends her due process rights were violated because she “was not informed as to the times/dates of either hearing.” The Board has “wide discretion over the unemployment insurance benefits appeals process,” including whether to hear untimely appeals.⁷ It can hear untimely appeals “where . . . some [Department] error . . . 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.”⁸ Absent an abuse of discretion, there is no due process violation.

11. Finally, although unimportant for this appeal’s purposes, by way of background, the claims deputy found Boyd “left her employment without exhausting all of the administrative remedies available to her.” Specifically, Boyd was ordered to justify her absence from work. She was fired after she failed to meet that request. Boyd also did not return the Department of Labor’s doctor’s certificate. Thus, the record suggests Boyd twice failed to prove that she missed work for a real medical problem. Again, the court only offers this as background. Just as the court could not consider Boyd’s new, factual claims, the court did not consider what allegedly justified Boyd’s dismissal for cause.

⁷ *Funk*, 591 A.2d at 225 *citing* 19 *Del. C.* § 3320.

⁸ *Id.*

For the reasons presented in paragraphs 1 through 10, above, the Unemployment Insurance Appeals Board's April 7, 2010 decision is **AFFIRMED**.

IT IS SO ORDERED.

/s/ Fred S. Silverman

Judge

cc: Prothonotary
Dara Boyd, *Pro Se*
Kathleen Furey McDonough, Esquire
Phillip G. Johnson, Esquire