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

SHANAYE BROWN,	)	
	)	
Appellant,	)	
	)	C.A. No. SN09A-09-010 PLA
v.	)	
	)	
THE WOOD COMPANY and UNEMPLOYMENT INSURANCE APPEAL BOARD,	)	
	)	
Appellees.	)	

ON APPEAL FROM THE
UNEMPLOYMENT INSURANCE APPEAL BOARD
AFFIRMED

Submitted: May 14, 2010
Decided: May 24, 2010

This 24th day of May, 2010, upon consideration of the appeal of Shanaye Brown ("Brown") from a decision of the Unemployment Insurance Appeal Board ("the Board"), it appears to the Court that:

1. The sole issue in this appeal concerns whether the Board properly refused review and affirmed a claims deputy's determination of disqualification based upon Brown's failure to timely appeal. After being separated from her employment with The Wood Company, Brown filed a claim for unemployment

benefits with the Department of Labor (DOL) on June 14, 2009. When Brown filed her claim, a claims deputy informed her that a decision would be rendered in approximately twenty-one days.[1] On July 10, 2009, the claims deputy issued a determination that Brown was disqualified for benefits because her former employer had demonstrated just cause for her termination. A Notice of Determination regarding this decision was mailed to 401 East 4th Street, Apartment B-2, in Wilmington, which was then Brown's most recent address of record. The notification included a statement that "This determination becomes final on 07/20/2009 unless a written appeal is filed. Your appeal must be received or postmarked on or before the date indicated."[2]

2. Brown submitted an appeal from the claims deputy's decision on August 5, 2009, approximately three weeks after the Notice of Determination was mailed and two weeks after the deputy's determination became final. On September 1, 2009, a DOL appeals referee conducted a hearing limited to the issue of the timeliness of Brown's appeal. At the hearing, Brown testified that she did not receive notice of the claims deputy's disqualification determination until she contacted the DOL by telephone on August 3, 2009, to check the status of her claim. Brown stated that she never received the mailed Notice of Determination,

[1] Tr. of Hr'g Before Appeals Referee (Sept. 1, 2009), at 8.

[2] UC-409 Notice of Determination (July 10, 2009), at 1.

and offered at least two possible explanations. First, in mid-July 2009, Brown had moved from her apartment at 401 East 4th Street, because that building was undergoing construction. However, because Brown retained access to her old mailbox and would continue to receive mail there, she did not file a change of address with the DOL. Brown's second suggestion was that the Notice of Determination may have been misdelivered because "six different buildings have the address."[3] The claims deputy testified that the Notice of Determination was not returned as undeliverable.

3. The appeals referee found that Brown's appeal was untimely, and therefore affirmed the claims deputy's decision that Brown was disqualified. The appeals referee noted that 19 *Del. C.* § 3318 provides a mandatory ten-day period for the filing of appeals from a claims deputy's determination, which "begins to run on the date of mailing [to the claimant's last known address] unless the mailing fails to reach a party because of some mistake made by employees of the Department of Labor."[4] By mailing the notice to Brown's last known address, the DOL fulfilled its obligations. The appeals referee found no evidence of error by DOL personnel, nor of any reason to rebut the usual presumption that a properly addressed and mailed notice of determination is deemed received by the addressee.

[3] Tr. of Hr'g Before Appeals Referee, at 6.

[4] Decision of the Appeals Referee (Sept. 3, 2009), at 3.

4. Brown timely appealed the appeals referee's decision to the Board, which again affirmed. The Board agreed with the appeals referee that the DOL had satisfied its statutory obligations by mailing the claims deputy's decision to Brown's address of record, and emphasized that Brown did not present any facts suggesting administrative error. In addition, the Board determined that the case provided "inadequate grounds" for the exercise of its discretion to resume jurisdiction under 19 *Del. C.* § 3220, because "[t]he record supports the inference that the only reason for the Claimant's delay in filing an appeal was her own negligence."[5]

5. Now before the Court is Brown's *pro se* appeal of the Board's decision. Brown contends that she was terminated without cause, and explains that she did not check with the DOL regarding the status of her claim until early August 2009 because she had been experiencing mental health problems. Furthermore, Brown points to the fact that the answering brief filed on behalf of the Board misstated the date of her original claim as evidence that "professionals can make mistakes[,] even mailmen."[6]

6. Upon appeal, this Court's review of decisions of the Board is limited. The Court's function is to determine whether the Board's findings and conclusions

[5] Decision of the Board (Sept. 28, 2009), at 2.

[6] Appellant's Reply Br. (Apr. 29, 2010), at 2.

are supported by substantial evidence and free from legal error.[7] The substantial evidence standard is satisfied if the Board's ruling is supported by "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion."[8] The Court does not weigh evidence, decide questions of credibility, or engage in fact-finding in reviewing a Board decision.[9] Where the Board has made a discretionary decision, the scope of the Court's inquiry includes examining the Board's action for abuse of discretion.[10] A discretionary decision will be upheld absent an abuse of discretion[11] in which the Board "exceeds the bounds of reason in view of the circumstances and has ignored recognized rules of law or practice so as to produce injustice."[12]

7. Under 19 *Del. C.* § 3318(b), a claims deputy's determination that an individual is disqualified from receiving benefits becomes final if no appeal is filed

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[7] *Stoltz Mgmt. Co. v. Consumer Affairs Bd.*, 616 A.2d 1205, 1208 (Del. 1992); *see also Lively v. Dover Wipes* Co., 2003 WL 21213415, at *1 (Del. Super. May 16, 2003).

[8] *Anchor Motor Freight v. Ciabottoni*, 716 A.2d 154, 156 (Del. 1998) (citation omitted).

[9] *Hall v. Rollins Leasing*, 1996 WL 659476, at *2 (Del. Super. Oct. 4, 1996) (citing *Johnson v. Chrysler Corp.*, 213 A.2d 64, 66 (Del. 1965)); *see also Duncan v. Del. Dep't of Labor*, 2002 WL 31160324, at *2 (Del. Super. Sept. 2, 2002).

[10] *See, e.g.*, *Funk v. Unemployment Ins. Appeal Bd.*, 591 A.2d 222, 225 (Del. 1991); *Meacham v. Del. Dep't of Labor*, 2002 WL 442168, at * 1 (Del. Super. Mar. 21, 2002).

[11] *Funk*, 591 A.2d at 225.

[12] *Nardi v. Lewis*, 2000 WL 303147, at *2 (Del. Super. Jan. 26, 2000) (citation omitted).

within ten days.[13] This ten-day period is "an express statutory condition of jurisdiction that is both mandatory and dispositive."[14] Where a failure to timely appeal is due to "unintentional or accidental actions" by the claimant, and was not caused by departmental error, the disqualification becomes final after the running of the ten days and § 3318(b) operates as a jurisdictional bar to further appeal.[15]

8. Here, substantial evidence supported the Board's decision to affirm the claims deputy's determination on the basis that it lacked jurisdiction to review the record on the merits. Brown's appeal from the claims deputy's determination was clearly untimely, and she has not alleged that her failure to receive the notice sent to her address of record resulted from any error on the part of the DOL. The Board's conclusion that the untimely appeal resulted from Brown's negligence is further supported by the fact that Brown waited more than six weeks after filing for benefits to check the status of her claim, despite being told by the DOL at the time of filing that a decision would be complete in approximately three weeks. When Brown informally discussed her change of residences with DOL personnel, she indicated that she would still be able to receive mail at her 4th Street apartment. If

[13] 19 *Del. C.* § 3318(b) ("Unless a claimant . . . files an appeal within 10 calendar days after such Claims Deputy's determination was mailed . . . the Claims Deputy's determination shall be final and benefits shall be paid or denied in accordance therewith.").

[14] *Lively*, 2003 WL 21213415, at *1 (quoting *Duncan*, 2002 WL 31160324, at *2).

[15] *Meacham*, 2002 WL 442168, at * 2; *Hartman v. Unemployment Ins. Appeal Bd.*, 2004 WL 772067, at *2 (Del. Super. Apr. 5, 2004).

Brown harbored concerns about the reliability of the mail service at her 4th Street address, she had the ability to change her address of record with the DOL during the pendency of her claim or to contact the DOL when she did not receive notice in the time-frame during which she was told to expect a decision. Although Brown explains her delay in contacting the DOL by indicating that she was experiencing mental health problems at the time, the statute contains no exception for this situation. Moreover, Brown's briefing and hearing testimony indicate that she was able to undertake a move during the same time period.

9. Similarly, the Board did not abuse its discretion by declining to assume jurisdiction under 19 *Del. C.* § 3220 to review the record on the merits. Pursuant to § 3220, notwithstanding that no valid timely appeal has been filed, the Board may review the record *sua sponte* if the failure to timely appeal was caused by administrative effort or if "the interests of justice would not be served by inaction."[16] As the Board noted in its decision, the Board's assumption of § 3220 jurisdiction is an extraordinarily rare event, triggered by extreme circumstances.[17]

10. Here, the Board did not abuse its discretion by declining to invoke § 3220 as a basis for review of the record. Even accepting Brown's version of

[16] *See* 19 *Del. C.* § 3320(a) ("The Unemployment Insurance Appeal Board may on its own motion, affirm, modify, or reverse any decision of an appeal tribunal on the basis of the evidence previously submitted to the appeal tribunal or it may permit any of the parties to such decision to initiate further appeal before it."); *Funk*, 591 A.2d at 225.

[17] *Funk*, 591 A.2d at 225.

events, this case did not involve administrative error, and the circumstances were not extraordinary or severe so as to require that the Board act to avoid injustice. This Court has previously held that it was not an abuse of discretion for the Board to refuse to exercise jurisdiction *sua sponte* over an appeal that was untimely filed as a result of the claimant's "mental anguish" during the appeal period.[18] The unspecified—and undocumented—mental health problems Brown allegedly experienced during the appeal period in this case are not materially distinguishable.

11. Based upon its review of the record, the Court is satisfied that the Board's decision was supported by substantial evidence and free from legal error. Therefore, the decision of the Board is hereby **AFFIRMED**.

IT IS SO ORDERED.

Peggy L. Ableman, Judge

Original to Prothonotary
cc: Shanaye Brown
Philip G. Johnson, Esq.

[18] *Meacham*, 2002 WL 442168, at * 2; *see also Zicarelli v. Boscov's Dep't Store LLC*, 2008 WL 3486207, at *2 (Del. Super. June 5, 2008) (noting Board holding that alleged illness did not constitute good cause for failure to timely appeal determination of claims deputy).