

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

GAIL FOSTER, )  
 )  
 Claimant–Appellant, )  
 )  
 v. ) C.A. No. 07A-08-006 JRS  
 )  
 )  
 WALT’S FLAVOR CRISP CHICKEN, )  
 )  
 Employer-Appellee. )  
 )

Date Submitted: November 1, 2007  
Date Decided: January 4, 2008

*Upon consideration of the  
Appellee’s Motion to Dismiss.*

**GRANTED.**

**ORDER**

This 4th day of January, 2008, Walt’s Flavor Crisp Chicken (“Walt’s”), having moved to dismiss the appeal filed by Gail Foster (“Foster”), it appears to the Court that:

1. On January 25, 2006, Foster suffered an injury while working for Walt’s. Foster was initially granted total disability compensation, but on January 11, 2007,

Walt's filed a petition with the Industrial Accident Board ("Board") to terminate Foster's benefits, alleging that Foster was capable of returning to full-time work.

2. On July 5, 2007, the Board issued a decision granting Walt's petition to terminate Foster's benefits. This decision was mailed to the parties on July 6, 2007. On August 9, 2007, Foster filed her notice of appeal of the Board's decision with this Court.

3. According to 19 *Del. C.* § 2349, a decision from the Board is final "unless within 30 days of the day the notice of the award was *mailed* to the parties either party appeals to the Superior Court..."

4. The Board mailed its decision to the parties on July 6, 2007. The deadline for initiating an appeal of that decision was August 6, 2007. Foster, however, did not file her appeal until August 9, 2007, three days after the deadline had passed.

5. As an explanation for the late filing, Foster's counsel claims that the Board's decision was not received in his office until July 17, 2007, and that Foster could not be reached to discuss an appeal until August 9, 2007. Foster asks the Court to adopt a "mailbox" rule that would allow each party thirty days from the day the decision was received, rather than mailed, to file an appeal.

6. The Court cannot adopt a “mailbox rule” in this instance because the statute is clear on its face that the parties have thirty days from the day the decision *is mailed* to file an appeal.<sup>1</sup> In *Irvin-Wright v. State*, after examining the language of 19 *Del. C.* § 2349, this court dismissed an untimely-filed appeal upon concluding that the statute was not ambiguous and required the appeal to be filed within 30 days of the mailing of the Board’s decision.<sup>2</sup> Under these circumstances, the Court cannot adopt a rule (or an interpretation of a statute) that is so contrary to the clear language of the statute.<sup>3</sup> Only the General Assembly can endorse such a change.

Based on the foregoing, Appellee’s Motion to Dismiss the Appeal is  
**GRANTED.**

**IT IS SO ORDERED.**

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Judge Joseph R. Slights, III

Original to Prothonotary  
cc: W. Christopher Componovo, Esquire  
Linda L. Wilson, Esquire

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<sup>1</sup> *Newtowne Village Service Corp. v. Newtowne Road Development Co.*, 772 A.2d 172, 175 (Del.Super.Ct. 2001)(Delaware courts will not engage in statutory construction if the statute is not ambiguous and the meaning of the statute is clearly ascertainable).

<sup>2</sup>2003 WL 21481004, at \*2 (Del. Supr. Ct. June 16, 2003).

<sup>3</sup> *Cede & Co. v. Technicolor, Inc.*, 758 A.2d 485, 495 (Del. 2000)(citing *Giuricich v. Emtrol Corp.*, 449 A.2d 232, 238 (Del. 1982).