

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

HARVEY W. HANSEN, JR.,	)	
	)	
Appellant,	)	
	)	
v.	)	C.A. N10A-06-001-JRJ
	)	
E.I. DUPONT DE NEMOURS AND	)	
COMPANY,	)	
	)	
Appellee.	)	

Date Submitted: April 29, 2011  
Date Decided: July 29, 2011

Upon Appeal from the Unemployment Insurance Appeal Board: **AFFIRMED**

**OPINION**

Harvey W. Hansen, Jr., *Pro se*, 103 Lombard Road, Oxford, Pennsylvania 19363.

Sarah E. DiLuzio, Esq., 1313 North Market Street, Sixth Floor, P.O. Box 951,  
Wilmington, Delaware 19899, Attorney for Appellee.

## INTRODUCTION

Appellant Harvey W. Hansen, Jr. (hereinafter “Claimant”), files this appeal from the Unemployment Insurance Appeal Board’s (the “Board”) decision denying his petition for unemployment benefits. For the reasons explained below, the Court finds that the Board’s decision is supported by substantial evidence and is free from legal error. Accordingly, the Board’s decision is **AFFIRMED**.

## FACTS AND PROCEDURAL HISTORY

Claimant worked for E.I. duPont de Nemours and Company (hereinafter “Employer”) from December 1989 through May 16, 2007.<sup>1</sup> Claimant was discharged due to a “violation of company policy” and “refusal to participate in an assessment.”<sup>2</sup> On June 3, 2007, Claimant applied for unemployment benefits.<sup>3</sup> On June 11, 2007, the Claims Deputy found that Claimant was ineligible for unemployment benefits because he was discharged by Employer for “just cause.”<sup>4</sup> Claimant timely appealed this decision to the Appeals Referee who affirmed the Claims Deputy’s decision. Claimant timely appealed to the Board who also affirmed the decision. Claimant did not appeal to the Superior Court and the Board’s decision became final on November 6, 2007.

On October 5, 2008, Claimant applied for extended unemployment benefits.<sup>5</sup> On October 28, 2008, the Claims Deputy found that Claimant was disqualified from receiving extended benefits because he was previously denied initial unemployment

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<sup>1</sup> Record (“R.”) at 15.

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> *Id.* at 16, 30.

benefits.<sup>6</sup> This decision was mailed to Claimant and the last day to appeal was November 7, 2008.<sup>7</sup>

On January 13, 2009, Claimant filed an appeal in person at the Newark Department of Labor Office (hereinafter “DOL”).<sup>8</sup> In that appeal, Claimant references a handwritten letter that he wrote in person at the same location on November 6, 2008 and claims it represents a timely appeal. This handwritten letter gives no indication that it was an appeal of any decision and it was not on the official appeal form provided by the DOL.<sup>9</sup> The DOL has no record of Claimant filing an appeal on November 6, 2008.<sup>10</sup>

On January 19, 2009, the Claims Deputy found Claimant’s appeal untimely.<sup>11</sup> Claimant appealed that determination to the Appeals Referee and the Claims Deputy’s decision was affirmed.<sup>12</sup> Next, Claimant appealed the Claims Deputy’s decision to the Board, who affirmed.<sup>13</sup> On April 17, 2009, Claimant filed an appeal with the Superior Court,<sup>14</sup> who remanded the case to the Appeals Board for consideration of the complete record.<sup>15</sup> The Board issued a decision on May 21, 2010, vacating its previous decision, and determined that Claimant’s appeal was untimely.<sup>16</sup> Claimant filed the instant appeal with this Court on June 1, 2010.<sup>17</sup>

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<sup>6</sup> *Id.* at 23.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.* at 18, 19.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.* at 21.

<sup>11</sup> *Id.* at 16.

<sup>12</sup> *Id.* at 20-22.

<sup>13</sup> *Id.* at 37.

<sup>14</sup> *Id.* at 43-44.

<sup>15</sup> *Id.* at 47-49.

<sup>16</sup> *Id.* at 51-54.

<sup>17</sup> *Id.* at 96-101.

## STANDARD OF REVIEW

On appeal, this Court determines whether the Board's decision is supported by substantial evidence and is free from legal error.<sup>18</sup> Substantial evidence is such relevant evidence that a reasonable mind would accept as adequate to support a conclusion.<sup>19</sup> This Court does not act as the trier of fact, nor does it have authority to weigh the evidence, decide issues of credibility, or make factual conclusions.<sup>20</sup> In reviewing the record for substantial evidence, the Court must consider the record in the light most favorable to the party prevailing below.<sup>21</sup> The Court's review of conclusions of law is *de novo*.<sup>22</sup> Absent an error of law, the Board's decision will not be disturbed where there is substantial evidence to support its conclusions.<sup>23</sup>

## PARTIES' CONTENTIONS

Claimant contends that the letter he allegedly submitted to the DOL on November 6, 2010, was in fact a timely appeal. He further argues that even if the appeal was untimely, the Board should nonetheless consider the merits of his appeal. Employer contends the letter submitted by Claimant on November 6, 2010 is not a valid appeal because it does not conform to the appeals process, and Claimant's appeal, submitted on January 13, 2011, is untimely because it falls outside the 10-day statutory period. Further, Employer argues that even if the Court reviewed the underlying merits of the case, the Court would find that Claimant is not entitled to extended benefits because he was denied initial benefits.

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<sup>18</sup> *General Motors Corp. v. McNemar*, 202 A.2d 803, 805 (Del. Super. 1964); *General Motors Corp. v. Freeman*, 164 A.2d 686, 688 (Del. Super. 1960).

<sup>19</sup> *Oceanport Ind. v. Wilmington Stevedores*, 636 A.2d 892, 899 (Del. Super. 1994).

<sup>20</sup> *Johnson v. Chrysler Corp.*, 213 A.2d 64, 66 (Del. Super. 1965).

<sup>21</sup> *Benson v. Phoenix Steele*, 1992 WL 354033, at \*2 (Del. Super. Nov. 6, 1992).

<sup>22</sup> *Reese v. Home Budget Center*, 619 A.2d 907 (Del. Super. 1992).

<sup>23</sup> *Dellachiesa v. General Motors Corp.*, 140 A.2d 137 (Del. Super. 1958).

## DISCUSSION

Claimant asserts that the letter he allegedly submitted to the DOL was a timely appeal of the Claims Deputy's determination denying him extended unemployment benefits.<sup>24</sup> However, this "appeal" Claimant references is not an official appeal as specified by the Unemployment Insurance Appeal Board's regulations. According to 19 *Del. Admin. C.* § 1200-18.2, "[a] party appealing from a decision or order of a Deputy shall file with the Commission at the local Employment Office where the claim was filed a Notice of Appeal on Form UC-300 setting forth the information required thereby."<sup>25</sup> Claimant did not comply with the Unemployment Insurance Appeal Board's regulations. "The process by which a claim is prosecuted must be followed unless there is some compelling justification which would excuse the failure to do so."<sup>26</sup> Claimant offers no justification to excuse his failure to file the proper form for an appeal. Accordingly, his November 6, 2008 letter does not qualify as an appeal.

On January 13, 2009, the Claimant filed an appeal on the proper form, however, that appeal was untimely. A claimant has ten (10) calendar days from the date that the Claims Deputy's determination is mailed to file an appeal.<sup>27</sup> The Claims Deputy's determination will be deemed final if the claimant fails to file an appeal within the statutory deadline.<sup>28</sup> It is undisputed that the Claims Deputy's determination was mailed on October 28, 2008.<sup>29</sup> It is also undisputed that Claimant had until November 7, 2008 to file an appeal of the Claims Deputy's determination.<sup>30</sup> Claimant did not file an appeal

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<sup>24</sup> R. at 19.

<sup>25</sup> 19 Del. Admin. C. § 1200-18.2

<sup>26</sup> See *Manlove v. Sears Fashion Center*, 1994 WL 710834 \* 2 (Del. Super. Dec. 19, 2004).

<sup>27</sup> 19 Del. C. § 3318(b)

<sup>28</sup> *Id.*

<sup>29</sup> R. at 23.

<sup>30</sup> *Id.*

until January 13, 2009. Claimant's appeal falls outside of the 10-day statutory period, and thus, is untimely.

Assuming, *arguendo*, Claimant timely filed an appeal, he nonetheless is not entitled to extended unemployment benefits. Pursuant to 19 *Del. C.* § 3326(c)(2), an individual is entitled to extended benefits if “the individual has satisfied the requirements of this chapter for the receipt of regular benefits that are applicable to individuals claiming extended benefits, including not being subjected to a disqualification for the receipt of benefits.”<sup>31</sup> Claimant did not qualify for initial benefits because he was terminated from his employment for just cause.<sup>32</sup> Because he was ineligible for initial benefits, he is ineligible to receive extended benefits.

On some occasions, the Board may act *sua sponte* to consider an untimely appeal.<sup>33</sup> 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.”<sup>34</sup> Cases in which the Board assumes jurisdiction *sua sponte* to consider an untimely appeal are “few and far between” and involve “severe” circumstances.<sup>35</sup> Claimant does not contend that there was any error made by the DOL that impeded his ability to file a timely appeal to the Claim Deputy's determination. Additionally, there is no evidence of departmental error. Thus, there are no adequate grounds for the exercise of *sua sponte* discretion under 19 *Del. C.* § 3320.

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<sup>31</sup> 19 *Del. C.* § 3326(c)(2); *See Odom v. Dep't of Labor*, 1994 WL 780775 (Del. Super. Mar. 6, 1994).

<sup>32</sup> R. at 15.

<sup>33</sup> *Funk v. UIAB*, 591 A.2d 222, 225 (Del. 1991).

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

**CONCLUSION**

For the aforementioned reasons, the decision of the Unemployment Insurance Appeal Board is **AFFIRMED**.

**IT IS SO ORDERED.**

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Jan R. Jurden, Judge