

IN THE SUPREME COURT OF THE STATE OF DELAWARE

LEROY HEFLEY,	§
	§ No. 467, 2009
Appellant Below-	§
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware
	§ in and for Kent County
UNEMPLOYMENT INSURANCE	§ C.A. No. 09A-01-002
APPEAL BOARD,	§
	§
Appellee Below-	§
Appellee.	§

Submitted: December 18, 2009

Decided: January 26, 2010

Before **STEELE**, Chief Justice, **HOLLAND** and **RIDGELY**, Justices

ORDER

This 26th day of January 2010, upon consideration of the briefs on appeal and the record below, it appears to the Court that:

(1) The appellant, Leroy Hefley, filed an appeal from the Superior Court’s July 17, 2009 order affirming the January 3, 2009 decision of the Unemployment Insurance Appeal Board (“UIAB” or “Board”). We find no merit to the appeal. Accordingly, we affirm.

(2) The record reflects that, on September 11, 2008, a Notice of Determination was mailed to Hefley by a Claims Deputy with the Delaware Department of Labor stating that Hefley was liable for an overpayment of

benefits that he had obtained by fraud. The notice also stated that the last day to appeal the decision of the Claims Deputy was September 21, 2008. Hefley filed his appeal on September 25, 2008. On September 29, 2008, the Claims Deputy determined that its September 11, 2008 decision was final and binding.

(3) On October 28, 2008, the Referee held a hearing to address the issue of the untimely filing. At the hearing, Hefley testified that he did not receive the decision of the Claims Deputy until September 25, 2008, and stated that he lived in a rooming house where he did not always receive his mail at the time of delivery by the postal service. Hefley did not dispute that the decision was received at the proper address in sufficient time for him to have filed a timely appeal. The Referee's decision, which was dated October 31, 2008, determined that Hefley's appeal was jurisdictionally barred because the untimely filing was due to reasons personal to Hefley and not due to error on the part of the Department of Labor.

(4) On December 3, 2008, Hefley's application for further review was considered by the UIAB, which denied the application and affirmed the Referee's decision that the appeal was jurisdictionally barred. Hefley then appealed to the Superior Court, which affirmed the Board's decision.

(5) In this appeal, Hefley claims that he is entitled to a hearing on the merits of the Claims Deputy's determination that he received unemployment benefits to which he was not entitled.

(6) The Superior Court's review of a decision of the UIAB is limited to a determination of whether there is substantial evidence in the record to support the Board's findings, and whether such findings are free from legal error.¹ The Superior Court does not weigh the evidence, determine questions of credibility, or make its own factual findings.² Upon an appeal from the Superior Court's affirmance of a decision of the Board, this Court's review is similarly limited. Where the Board's decision is supported by substantial evidence in the record and is free from legal error, this Court will affirm.³ A discretionary decision of the Board will be reviewed for abuse of discretion.⁴

(7) Under the statutory provisions governing unemployment insurance appeals, a claimant must file his appeal within 10 calendar days after the Claims Deputy's determination was mailed to his last-known address or the Claims Deputy's determination will be deemed to be final.⁵

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

² *Johnson v. Chrysler Corporation*, 213 A.2d 64, 66 (Del. 1965).

³ *Unemployment Ins. Appeal Board v. Duncan*, 337 A.2d at 309.

⁴ *Funk v. Unemployment Ins. Appeal Board*, 591 A.2d 222, 225 (Del. 1991).

⁵ Del. Code Ann. tit. 19, §3318(b).

While the Board has discretion to grant further review of untimely appeals,⁶ such discretion is exercised rarely and primarily in cases of administrative error that has the effect of depriving a claimant the opportunity to file a timely appeal.⁷

(8) We have carefully reviewed the record in this case and find no support for Hefley's claim of error.⁸ We conclude that the Board's decision is supported by substantial record evidence and is free from legal error. As such, we conclude that the Superior Court's decision must be affirmed.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Myron T. Steele
Chief Justice

⁶ Del. Code Ann. tit. 19, §3320.

⁷ *Funk v. Unemployment Ins. Appeal Board*, 591 A.2d at 225.

⁸ To the extent that Hefley argues that he was confused by a misprint on the notice from the Claims Deputy, our review of the record reflects that that argument was never raised below. Supr. Ct. R. 8. Moreover, that argument does not assist Hefley, since he alleges that the misprint directed the appeal to be filed even earlier than September 21, 2008.