

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

HELEN D. MARTIN,)	
)	
Claimant-Below, Appellant)	
)	
v.)	
)	
UNEMPLOYMENT INSURANCE)	
APPEAL BOARD,)	C.A. No. 03A-08-002 RRC
)	
Appellee)	
)	
&)	
)	
PACHULSKI, STANG, ZIEHT, YOUNG)	
JONES & WEINTRAUB P.C.,)	
)	
Employer-Below, Appellee)	
)	

Submitted: January 22, 2004
Decided: February 25, 2004

**UPON APPEAL FROM A DECISION OF THE UNEMPLOYMENT
INSURANCE APPEALS BOARD. AFFIRMED.**

ORDER

Upon this 25th day of February, 2004 it appears to the Court that:

1. Claimant Helen D. Martin (“Martin”) has filed a *pro se* appeal to this Court from a decision of the Unemployment Insurance Appeals Board (the “UIAB”) that had denied, as untimely, an appeal to the UIAB by Martin from a decision of the Appeals Referee. The Appeals Referee had affirmed the decision of the Division of Unemployment Insurance’s Claims Deputy (“Claims Deputy”), who had denied Martin’s claim for unemployment benefits.

2. Martin had been employed by the law firm of Pachuski, Stang, Ziecht, Young, Jones & Weintraub, P.C. (“Pachuski, Stang”) as the Managing Supervisor of the File Room from January 2000 until January 2003, when she resigned. Martin filed a claim for unemployment benefits on March 30, 2003, in which she claimed she resigned due to job related stress.¹ Pachuski, Stang maintained that Martin voluntarily resigned due to “disappointment over [her] most recent salary increase.”²

The Claims Deputy denied Martin’s unemployment benefits because Martin had not met the burden of proof establishing that she had resigned for

¹ Record at 7 (hereinafter “R at _”).

² R at 7.

good cause.³ The Claims Deputy, relying on 19 *Del. C.* §3315, ruled that a claimant must exhaust all administrative remedies available before resigning a position because of work related stress.⁴ In Martin's case, the Claims Deputy ruled Martin had not exhausted all administrative remedies available and that no evidence existed to show a valid work related reason for Martin to have resigned and that she had resigned voluntarily for personal reasons.⁵

Martin's appeal to the Appeals Referee was heard on May 14, 2003. The Appeals Referee then affirmed the decision of the Claims Deputy. The Appeals Referee found that under the totality of the circumstances, Martin was disqualified from receiving unemployment insurance benefits because she had voluntarily quit without good cause.⁶ The decision of the Appeals Referee was mailed on May 15. The Referee's decision noted that the last day to file an appeal was May 25. However, May 25 was a Sunday and Monday, May 26 was Memorial Day, therefore, the last day to file an appeal

³ R at 8

⁴ *Id.*

⁵ *Id.*

⁶ R at 13.

pursuant to 19 *Del. C.* §3318(c) was Tuesday, May 27.⁷ Martin filed her appeal of the Referee's decision to the UIAB on May 29, 2003.

In its June 18, 2003 decision, the UIAB declined to assume jurisdiction of the case because Martin had filed her appeal late pursuant to 19 *Del. C.* §3318(c). Subsequently, the UIAB reviewed Martin's request for a rehearing on its decision, which she based on the contention that she did not receive the Referee's decision until May 28, one day after the last day to file. The UIAB denied her application for a rehearing by decision issued July 17, 2003. This appeal followed.

3. Martin urges this Court to reverse 1) the UIAB's original decision not to assume jurisdiction because the appeal to it from the decision of the Appeals referee was filed late and 2) its decision denying her a rehearing. Martin asserts that she did not receive the Appeals Referee's denial until May 28, which was after the last day in which an appeal could be filed. She disputes that the Appeals Referee could have held the hearing on May 14 and then made a decision and mailed it by May 15.⁸ She claims that the

⁷ 19 *Del. C.* §3318(c) states: "The parties shall be duly notified of the tribunal's decision, together with its reason therefore, which shall be deemed final unless within 10 days after the date of notification or mailing of such decision further appeal is initiated pursuant to §3320 of this title.

⁸ Appellant's Ans. Br. at 4.

correct deadline for filing an appeal should have been June 2.⁹ She also argues that she should have had notice or a Certificate of Service stating when the mailing took place or that she should have been served via certified or registered mail.

The UIAB argues in this Appeal that it did not abuse its discretion in denying Martin's late appeal. The UIAB contends that 19 *Del. C.* § 3318(c) precludes it as a matter of law from accepting a late appeal brought by a party. The UIAB argues that its power to consider a late appeal *sua sponte* pursuant to 19 *Del. C.* §3320 is limited to cases where there has been some administrative error on the part of the Department of Labor, or where the circumstances are such that in the interests of justice the appeal should be heard. The UIAB further argues that it did not abuse its discretion in denying Martin's request for a rehearing because the appeal from the Appeals Referee was untimely and there were no administrative errors on the part of the Department of Labor to justify the UIAB to hear the appeal *sua sponte*. The employer, Pachuski, Stang, joins the UIAB in arguing that Martin failed to file a timely appeal to the UIAB.¹⁰

⁹ *Id.* Martin is apparently arguing that she had ten business days in which to file an appeal. Inexplicably, Martin has identified June 2, 2003 as the last day in which to file an appeal.

¹⁰ Pachuski, Stang raised three arguments in its Answering Brief: (1) that Claimant failed to exhaust all administrative remedies by failing to timely file her appeal to the UIAB,

4. When this Court reviews a procedural decision of the UIAB, which in this case is a discretionary decision (as opposed to a factual decision of the UIAB that would require a substantial evidence review), the Court must consider whether the UIAB abused its discretion in rendering its decision.¹¹ A procedural decision by an administrative agency is not an abuse of discretion “unless it is based on clearly unreasonable or capricious grounds” or “the Board exceeds the bounds of reason in view of the circumstances and had ignored recognized rules of law or practice so as to produce injustice.”¹² Absent an abuse of discretion, the Court must affirm the judgment of the UIAB.¹³

6. This Court affirms the UIAB’s decision not to assume jurisdiction of her appeal from the Appeals Referee because the appeal was filed late to the UIAB pursuant to 19 *Del. C.* § 3318(c). This Court also denies Martin’s appeal of the UIAB’s denial of her request for a rehearing of its decision because it has been waived by not being argued in either of Martin’s briefs

(2) that the UIAB’s decision was based on substantial evidence that Martin voluntarily resigned without good cause, and (3) that Martin was provided a full and fair hearing before the Claims Deputy and the Appeals Referee. This Court does not reach the second two arguments.

¹¹ *Funk v. UIAB*, 591 A.2d 222, 225 (Del. 1991).

¹² *K-Mart, Inc. v. Bowles*, Del. Super., C.A. No. 94A-10-007, Cooch, J. (March 23, 1995).

¹³ *Funk*, 591 A.2d at 225.

on appeal, and because it was within the UIAB's discretion not to hold a rehearing.¹⁴ Section 3318(c) is explicit as to the requirements of filing an appeal to the UIAB. Section 3318(c) states

an appeals tribunal, after affording the parties reasonable opportunity for a fair hearing, shall affirm, modify or reverse the decision of the deputy . . . [and] [t]he parties shall be duly notified of the tribunal's decision, together with its reason therefore, which shall be deemed final unless with in 10 days after the date of notification or mailing of such decision further appeal is initiated.

19 *Del. C.* § 3304 states that “[w]hen any notice, report or other document required to be filed under this chapter and the same is forwarded by mail to the Department, the day of mailing shall be deemed to be the day of filing.”

The UIAB lacks the power to accept a late appeal from a party because the

¹⁴ Martin's Opening Brief to this Court did not address the Board's decision denying her request to hear her late appeal or the Board's decision denying her request for a rehearing. In her "Answering" [sic] Brief, Martin only addressed the issue of the Board's denial to hear her appeal because of lateness; therefore, she has waived the claim of error as to the Board's denial of her request for a rehearing by not pursuing it on appeal. *See Murphy v. State*, 2001 Del. LEXIS 540 at 1 (Del. Supr.) (holding that because Appellant did not argue in his appeal to the Supreme Court some of the arguments he had raised in the Superior Court those arguments were deemed waived and were not addressed by the Supreme Court); *Roca v. E.I. DuPont de Nemours & Co.*, 2004 Del. LEXIS 59 at 12 (Del. Supr.) (holding that the "failure of a party appellant to present and argue a legal issue in the text of an opening brief constitutes a waiver of that claim on appeal").

UIAB is a “creature of statute” and the parties are subject to a statutory ten-day limitation period.¹⁵

The Supreme Court did recognize in *Funk v. UIAB* that the UIAB had the discretion under 19 *Del. C.* § 3320 to consider a late appeal *sua sponte* if the situation involved circumstances “severe enough” to require the UIAB to exercise its discretion.¹⁶ The UIAB had explained in its letter opinion denying benefits to the claimant in *Funk* that it was “extremely cautious in assuming jurisdiction [*sua sponte* when an appeal is filed late] and it does so only in those cases where there has been some administrative error on the part of the Department of Labor . . . or in those cases where the interests of justice would not be served by inaction” and that “such cases are far and few between.”¹⁷

The UIAB had no discretion pursuant to 19 *Del. C.* §3318(c) to accept a late appeal from the Appeals Referee directly from Martin and therefore could not have abused its discretion in refusing to assume jurisdiction of her

¹⁵ *Chrysler Corp. v Dillion*, 327 A.2d 604, 605 (Del. 1974); see *Funk v. UIAB*, 591 A.2d 222, 225 (Del. 1991) (holding that claimant’s appeal was untimely because it was not filed within the ten-day limit set by statute for such appeals).

¹⁶ *Funk*, 591 A.2d at 225 (quoting, with approval, the UIAB’s letter opinion of June 27, 1989 in *Funk*’s appeal of the Appeal Referee’s decision denying him unemployment benefits).

¹⁷ *Id.*

appeal. The Appeal Referee's decision was dated and mailed May 15, 2003. Because the deadline, May 25, was a Sunday and May 26 was Memorial Day, Martin actually had until May 27 to file her appeal with the UIAB.¹⁸ Section 3318(c) specifies a ten-day time frame without reference to calendar days or business days. However, the proceeding section of the statute, § 3318(b), requires a ten-day time frame based on "calendar days" in which to file an appeal after the Claims Deputy's decision. The logical presumption is that § 3318(c) is also based on "calendar days" because the legislature would have specified the method of calculation had it been intended to be different from § 3318(b).

Martin has not presented sufficient evidence to rebut the presumption that the UIAB's decision was mailed on May 15 or that she did not receive it before the May 27 deadline to file an appeal. Delaware case law has established the legal principle that properly addressed mail is presumed to be received by the addressee and mere denial of receipt of the notice is insufficient to rebut this presumption.¹⁹ This Court finds that it is reasonable

¹⁸ 19 *Del. C.* § 3304. Whether May 15 or May 16 should be considered the first day of the ten-day time period is immaterial as Martin's appeal would be untimely starting from either date.

¹⁹ *Brown v. City of Wilmington & UIAB*, Del. Super. LEXIS 477 at 8 (Del. Super. Ct.); *Robledo v. Stratus & the UIAB*, 2001 WL 428684 at 2 (Del. Super.) *quoting Brown* (holding that properly addressed mail is presumed to be received and mere denial of receipt is insufficient to rebut this presumption).

to expect that mail, properly mailed to the claimant's correct address, is presumed to have been delivered in a timely manner.

The UIAB also did not abuse its discretion in not hearing the appeal *sua sponte* pursuant to 19 *Del. C.* §3320 because there was no administrative error on the part of the Department of Labor, nor do the circumstances of the situation rise to the level “where the interests of justice would not be served” if the UIAB did not act on its own.²⁰ Martin has not presented any evidence to show that the mailing of the decision of the Appeals Referee was defective in any manner.

7. The Court finds that the Unemployment Insurance Appeal Board did not abuse its discretion when it declined to assume jurisdiction over Martin's appeal because it was filed late pursuant to 19 *Del. C.* § 3318(c). The Court also finds that the UIAB did not abuse its discretion when it declined to act *sua sponte* pursuant to 19 *Del. C.* §3320 when it found that the circumstances of Martin's case did not rise to the level required for it to act. The decision of the UIAB is **AFFIRMED**.

²⁰ See, e.g., *Anderson v. Comfort Suites and UIAB*, 2004 Del. Super. LEXIS 30 at 10 (Del. Super. Ct.) (holding that the UIAB should act *sua sponte* in accepting an untimely appeal only “where there has been [an] administrative error on the part of the DOL . . . or in those cases where the interests of justice would not be served by inaction”).

IT IS SO ORDERED.

Richard R. Cooch

oc: Prothonotary
cc: Helen D. Martin, *pro se*
Mary Page Bailey, Esquire, Deputy Attorney General, Attorney for the
Unemployment Insurance Appeals Board
Richard R. Wier, Jr., Esquire and Daniel W. Scialpi, Esquire, Richard R.
Wier, Jr., P.A., Attorneys for Pachulski, Stang, Ziehle, Young & Jones P.C.