

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

DOUGLAS H. MILLER,)	
)	
Appellant,)	
)	
V.)	C.A. No. N10A-04-002 JRS
)	
GARDA CL ATLANTIC, Inc.)	
and The UNEMPLOYMENT)	
INSURANCE APPEAL BOARD,)	
)	
Appellees.)	

Date Submitted: February 7, 2011

Date Decided: April 7, 2011

Upon Consideration of
Appeal From the Unemployment Insurance Appeal Board.
AFFIRMED.

This 7th day of April, 2011, upon consideration of the *pro se* appeal of Douglas H. Miller from the decision of the Unemployment Insurance Appeal Board (the “Board”) denying his claim for unemployment benefits against his former employer, Garda Cash Logistics Atlantic, Inc. (“Garda”), it appears to the Court that:

1. Mr. Miller was employed as a security guard by Garda from March 20,

1995 until November 17, 2008.¹ On November 17, 2008, Mr. Miller was suspended pending further investigation of an allegation that he threatened a supervisor with physical violence.² Specifically, several witness statements and a video indicated that Mr. Miller was “aggressive, disrespectful and acted in a threatening” manner after being corrected by a supervisor. Upon review of this evidence, Mr. Miller was terminated from his position at Garda on November 24, 2008.³

2. Mr. Miller filed a claim for unemployment benefits with the Department of Labor (“DOL”) on November 8, 2009.⁴ A determination by the claims deputy that Mr. Miller was disqualified from receiving benefits was dated and mailed to him on December 1, 2009.⁵ Pursuant to 19 *Del. C.* § 3318(b), an appeal of the denial of benefits must be made within 10 calendar days after such determination was mailed

¹Record (“R.” at __) at 20.

²R. at 3.

³*Id.*

⁴R. at 20.

⁵*Id.*

to the claimant.⁶ Mr. Miller filed a late appeal on December 16, 2009.⁷

3. On January 12, 2010, the appeals referee conducted a hearing on the issue of timeliness only.⁸ The referee concluded that there was no evidence of any administrative error by the claims deputy and that there were no mitigating circumstances in this case to allow for any waiver of the applicable time deadlines.⁹ Accordingly, the referee affirmed the decision of the claims deputy.¹⁰

4. Mr. Miller appealed the decision of the appeals referee to the Board on January 22, 2010. The Board concluded that there was no evidence of departmental error and that the record supports the inference that the only reason for Mr. Miller's delay in filing an appeal was unrelated to any factor within the control of the DOL or subject to any remedy by the Board.¹¹ The Board noted that Mr. Miller had not

⁶19 *Del. C.* § 3318(b) states: "Unless a claimant or a last employer who has submitted a timely and completed separation notice in accordance with § 3317 of this title files an appeal within 10 calendar days after such Claims Deputy's determination was mailed to the last known addresses of the claimant and the last employer, the Claim's Deputy's determination shall be final and benefits shall be paid or denied in accordance therewith."

⁷R. at 20. The Court notes, as did the appeals referee, that the letter to Mr. Miller containing the claims deputy's decision was postmarked December 3, 2009. Whether one considers the notice sent on December 1, 2009 or December 3, 2009, Mr. Miller still filed a late appeal. At the latest, a timely filing must have been filed by December 13, 2009.

⁸R. at 19.

⁹*Id.* at 21.

¹⁰*Id.* at 22.

¹¹R. at 47.

shown that he missed the filing deadline because of severe circumstances (thereby allowing the Board to exercise its discretion to accept the appeal *sua sponte*).¹²

5. On appeal to this Court, as best as the Court can discern, Mr. Miller contends that he was told by a DOL employee that if a decision came to him over a weekend, that he would have an additional two or three days to file his appeal.¹³ Because he received the notice that he was disqualified from benefits on December 11, 2009 (a Saturday), and filed his appeal on December 16, 2009, Mr. Miller argues that he filed within the time limit he was told by the DOL employee would apply to his appeal.¹⁴

6. The Court's review is limited to determining whether the Board's decision was supported by substantial evidence and free from legal error.¹⁵ Substantial evidence is defined as "such relevant evidence as a reasonable mind might

¹²R. at 46. *See Funk v. UIAB*, 591 A.2d 222, 225 (Del. 1991) (The Board may only exercise its discretionary authority "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.").

¹³Appellant's Opening Br. pg. 1. The Court diligently attempted to discern Mr. Miller's handwritten opening brief, which is difficult to decipher.

¹⁴*Id.*

¹⁵*See, e.g., Holowka v. New Castle County Bd. of Adjustment*, 2003 WL 21001026, *3 (Del. Super. 2003).

accept as adequate to support a conclusion.”¹⁶ The record must be reviewed in the light most favorable to the prevailing party.¹⁷ Alleged errors of law are reviewed *de novo*, but in the absence of legal error, the Board’s decisions are reviewed for an abuse of discretion.¹⁸ This Court will find an abuse of discretion only when an administrative board’s decision “exceeds the bounds of reason given the circumstances, or where rules of law or practice have been ignored so as to produce injustice.”¹⁹

7. It is abundantly clear from the record that Mr. Miller failed to file a timely appeal pursuant to 19 *Del. C.* § 3318(b). Even assuming *arguendo* that his appeal was due by December 13, 2011 (accounting for the postmark), Mr. Miller missed this mark by three days. The DOL has no control over where Mr. Miller chooses to receive his mail or when he chooses to pick it up.²⁰ Thus, it cannot be said that the DOL shared any responsibility for Mr. Miller’s untimely appeal. Nor are

¹⁶*James Julian, Inc. of Del. v. Testerman*, 740 A.2d 514, 519 (Del. Super. Ct. 1999) (citations omitted)

¹⁷*See, e.g., Id.; E.I. DuPont De Nemours & Co. v. Faupel*, 859 A.2d 1042, 1046-47 (Del. Super. Ct. 2004).

¹⁸*See Merritt v. United Parcel Svc.*, 956 A.2d 1196, 1200 (Del. 2008) (citations omitted).

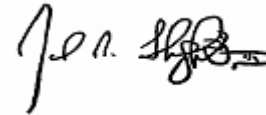
¹⁹*Bolden v. Kraft Foods*, 2005 WL 3526324, *3 (Del. Super. Ct. 2005).

²⁰Mr. Miller contends that he did not receive the notice until December 11, 2009 because he uses his father’s mailing address and the notice of determination was not included in the bundle of mail he retrieved from his father on December 9, 2009. R. at 47.

there other mitigating circumstances that would justify a waiver of the applicable appeal deadlines.

8. Based on the foregoing, the Court is satisfied that the Board applied the correct legal standards and that its decision is supported by substantial evidence. Accordingly, the decision of the Board dismissing Mr. Miller's appeal of the appeals referee's decision must be **AFFIRMED**.

IT IS SO ORDERED.

A handwritten signature in black ink, appearing to read "Joseph R. Slights, III". The signature is written in a cursive style with some flourishes.

Joseph R. Slights, III, Judge

Original to Prothonotary