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

JUANITA SCOTT,	)	
	)	
Appellant/Claimant Below,	)	
	)	
v.	)	**CA No. 02A-05-013-JEB**
	)	
STATE OF DELAWARE,	)	
	)	
Appellee/Employer Below.	)	

Submitted: November 19, 2002
Decided: January 21, 2003

OPINION

Appeal of a Decision of the Industrial Accident Board.
Decision Affirmed.

Employer's Motion to Dismiss.
Motion Denied.

Appearances:

Juanita Scott, *Pro Se* Appellant, Wilmington, Delaware.

David G. Culley, Esquire, Tybout, Redfearn & Pell, Wilmington, Delaware, Attorney for Appellee/Employer Below.

JOHN E. BABIARZ, JR., JUDGE.

This is the Court's decision on Claimant Juanita Scott's appeal of a decision of the Industrial Accident Board (Board) denying her petition for workers' compensation benefits. Claimant's employer, State of Delaware, Red Clay Consolidated School District, filed a motion to dismiss for failure to timely file the notice of the appeal, pursuant to Super.Ct.Civ.R. 72(i). For the reasons explained below, Employer's motion to dismiss is denied, and the Board's decision is affirmed.

Claimant alleges that in September 2000 she injured her back while carrying a container of fruit during the course of her duties as a food service worker for the school district. Acting *pro se*, Claimant filed for workers' compensation benefits with the Department of Labor. She met with the Department's Workers' Compensation Specialist, who informed her that she needed a doctor to testify on her behalf and to present medical evidence at the hearing. Despite this advice, Claimant appeared at the hearing on March 28, 2002, without a medical witness or admissible medical evidence. For these reasons, the Board denied Claimant's petition.

The decision was mailed to the parties by first class mail on April 29, 2002, according to a handwritten date and initials at the bottom of the second page of the decision, and also according to the Board's assistant administrator. Claimant filed

a notice of appeal with the Prothonotary on May 23, 2002.

In its motion to dismiss, Employer asserts that the decision was mailed on March 28, 2002, and that Claimant's notice of appeal was therefore untimely. Pursuant to Del. Code Ann. tit. § 2349 (2000 Supp.), an appeal of a Board decision must be filed "within 30 days of the day the notice was mailed to the parties. . . ." The decision is dated March 28, 2002. The handwritten note on the decision as well as the statement of the Board's administrative assistant indicate that the decision was mailed on April 29, 2002. This fact is confirmed in part by the Board's stamp on the decision, which indicates that the Board received the decision on April 18, 2002, after being prepared at the Board's request by Mr. Culley, Employer's attorney. Thus, contrary to Employer's assertion, the decision could not have been mailed on March 28, 2002, because the Board had not yet received it. Giving all favorable inferences to Claimant,[1] the Court finds that the decision was mailed on April 29, 2002, as indicated by the clerk's date and initials, and that Claimant's notice of appeal on May 23, 2002 was timely. Employer's motion to dismiss is denied.

Employer also argues that Claimant offers no cognizable legal grounds for a

[1]*Ramunno v. Cawley*, 705 A.2d 1029, 1034 (Del.1998).

reversal of the Board's decision. Claimant states that she saw a doctor regarding her back injury and that she has documentation to support this assertion. However, she did not present such evidence either at the hearing or on appeal, and this Court cannot consider evidence that is not part of the record below.[2] At the hearing, Claimant acknowledged that the Workers' Compensation Specialist had told her to obtain medical testimony and evidence for the hearing. She came to the hearing without a medical expert to testify on her behalf. The record clearly shows the basis on which the Board acted, and the Court finds no error or abuse of discretion.[3] The Board's dismissal of Claimant's petition is affirmed.

For these reasons, Employer's motion to dismiss is ***Denied***, and the Board's decision is ***Affirmed***.

It Is So ORDERED.

_____

_____Judge John E. Babiarz, Jr.

JEB,jr/rmp/bjw
Original to Prothonotary

[2]*Hubbard v. Unemployment Insurance Appeal Board*, 352 A.2d 761, 763 (Del.1976).

[3]*Spear v. Blackwell & Son*, 221 A.2d 52 (Del.Super.Ct.1996).