

SUPERIOR COURT
OF THE
STATE OF DELAWARE

RICHARD F. STOKES
JUDGE

1 THE CIRCLE, SUITE 2
SUSSEX COUNTY COURTHOUSE
GEORGETOWN, DE 19947

January 23, 2008

Ms. Felica D. Sheppard
142-A Norwood Street
Rehoboth Beach, DE 19971

Re: *Sheppard v. GPM Investments, LLC*
C.A. No. 07A-06-002-RFS

Dear Ms. Sheppard:

You have appealed a decision of the Unemployment Insurance Appeal Board (“Board”) to this Court. You were required to file an opening brief on October 23, 2007 and have failed to do so. You were advised that the appeal could be dismissed because of this failure under Superior Court Civil Rule 107(e).

After review, your appeal is dismissed because you did not follow through with an opening brief. Further, even on the merits, the Court would still dismiss the appeal for the following reasons:

You were employed as a cashier by GPM Investments, LLC (“Employer”). On March 2, 2007, your employer fired you for violation of company policies. Thereafter, you filed a claim for unemployment compensation. In the administrative proceedings before the Claims Deputy, the Employer was found to have just cause to terminate you. This was based on information that you violated the Employer’s policies by being rude to customers. The Deputy found that you were previously warned about this situation. Therefore, the Deputy ruled that you were not entitled to an award and mailed the decision on March 26, 2007.

Under the law, you were required to file an appeal on or before Thursday, April 5, 2007. However, you brought a letter to the agency on Monday, April 9, 2007, which was several days late. The Claim Deputy’s decision then became a final order that the Employer had just cause to terminate you. You appealed the decision to the Appeals Referee, and the issue then focused on your failure to file a timely appeal. The Referee determined that the Deputy’s decision was mailed to the correct address, 142-A Norwood Street, Rehoboth, DE 19971 (which is the address of record in the case). You claimed that you did not receive the mail from the mailbox until Saturday, April 7, 2007. You advised that there were past delays in the mail, and people sometimes would park in front

of the mailbox. The Referee ruled that as you knew about these problems, it was your responsibility to pay closer attention to receive the mail. Further, as there was no error by the agency, that is, the mail was sent to your right address, the failure to file an appeal within the ten day period was fatal to your claim.

The decision was appealed to the Board. You testified that 142-A Norwood Street, Rehoboth, was the correct address. Nothing in the transcript shows any error by the Department of Labor that prejudiced your right to appeal. The Board found that mail properly addressed and not returned as undeliverable is presumed to be received. Your late appeal of the Claim Deputy's decision, therefore, was a jurisdictional bar to further proceedings. 19 *Del.C.* § 3318.

DISCUSSION

A procedural question is presented about the Board's determination that the Claim Deputy's decision was final and that the Referee was correct in refusing to accept your reasons as good cause to excuse the late filing. A discretionary ruling of the nature will be affirmed if the Board did not abuse its discretion. *Hartman v. Unemployment Insurance Appeal Board*, 2004 WL 772067, at *2 (Del. Super. Ct. Apr. 5, 2004). A procedural decision 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." *Id.* Absent abuse of discretion, the Board's judgment must be affirmed. *Funk v. UIAB*, 591 A.2d 222, 225 (Del. 1991).

The Superior Court has ruled that if an employee fails to file an appeal of a disqualification within 10 days, then the decision becomes final. *Lively v. Dover Wiper Co.*, 2003 WL 21213415, at *1 (Del. Super. Ct. Mar. 16, 2003). The *Lively* Court also held that "[t]he time for filing an appeal is an express statutory condition of jurisdiction that is both mandatory and dispositive." *Id.* Where the lateness of an appeal is due to the claimant's inadvertent, unintentional or accidental actions and not due to an administrative error, the Claim Deputy's determination will become final and § 3318(b) will jurisdictionally bar the claim from further appeal. *Meacham v. UIAB*, 2002 WL 442168 (Del. Super. Ct. Mar. 21, 2002).

Here, the Deputy mailed the decision to your correct address. "When notification . . . is made through the mail, the ten day period begins to run on the date of mailing unless the mailing fails to reach a party because of some mistake made by employees of the Department of Labor" (emphasis added). *Funk*, 591A.2d at 224. A properly addressed, posted, and mailed notice is presumed to be received by claimant, and mere denial of receipt of notice is insufficient to rebut this presumption. *Robledo v. Stratus v. Unemployment Insurance Appeal Board*, 2001 WL 428684, at *2 (Del. Super. Ct. Mar. 27, 2001).

In the proceedings below, you did not claim any error by the Claims Deputy. Rather, you said you received the mail on a Saturday and attempted to file an appeal on Monday which was too late. Yet, as the Supreme Court observed in *Funk*, “[i]t is reasonable to expect that a claimant awaiting an important decision from an appeal tribunal would regularly check the locations at which he receives his mail.” *Funk*, 591 A.2d at 226. The record does not show that you checked the mailbox every day or spoke to the postmaster about the importance of receiving the Deputy’s decision. You could have called the Deputy’s office about the claim. You claimed problems with mail deliveries which pre-existed this claim. Yet, beyond a conversation with the postmaster, you did not take other action like obtaining a mail box at the post office if the circumstances were a continuing problem as you claim. It also appears that you have received notice of your appeal rights from the Referee to the Board, from the Board to this Court and from this Court to you at the same address.

Nonetheless, the Board could, by itself, have exercised discretion to hear your late appeal for good cause under 19 *Del.C.* § 3320. However, this discretion is cautiously exercised and is limited to “. . . only in those cases 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 interests of justice would not be served by inaction. Such cases have been few and far between . . .” *Funk*, 591 A.2d at 225. The Board did not abuse its discretion given your longstanding experience with problems in getting the mail for which the Department of Labor had no responsibility.

In conclusion, there is a need for certainty and finality in litigation, and appeal deadlines serve an important function in our legal system. *Holbrook v. Dep’t. of Labor*, 1995 WL 411389 (Del. Super. Ct. June 9, 1995) (ORDER). Admittedly, the deadline was not followed. Given the absence of severe circumstances to persuade the Board to excuse the tardiness, your appeal to the Court must be dismissed.

IT IS SO ORDERED.

Very truly yours,

Richard F. Stokes

RFS/cv

cc: Prothonotary
GMP Investments, LLC
Unemployment Insurance Appeal Board