

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

JOSEPH T. SPENCE,)	
)	
Appellant,)	
)	
V.)	C.A. No. 08A-11-007 JRS
)	
FURNESS ELECTRIC, and the)	
UNEMPLOYMENT INSURANCE)	
APPEAL BOARD,)	
)	
Appellees.)	

ORDER

This 1st day of February, 2010, upon consideration of the *pro se* appeal of Joseph T. Spence from the decision of the Unemployment Insurance Appeal Board (the “Board”), dated November 7, 2008, affirming the Appeal Referee’s determination that his appeal of the Claims Deputy’s determination was untimely, it appears to the Court that:

1. Mr. Spence was employed by Furness Electric (“Furness”) from May 1, 2008 through July 2, 2008.¹ On July 2, 2008, Mr. Spence allegedly arrived at work while under the influence of an intoxicating substance, in violation of Furness’ safety

¹ D.I. 4 at 9.

policy. As a result of this violation, his employment with Furness was terminated.²

2. Mr. Spence filed a request for unemployment benefits with the Delaware Department of Labor, Division of Unemployment Insurance on July 6, 2008. The request cited “lack of work” as the reason for his termination.³ On July 22, 2008, the Claims Deputy determined that Mr. Spence “gave a false reason for his separation from employment in order to obtain benefits he was not entitled to receive.”⁴ Therefore, the Claims Deputy denied Mr. Spence’s request for benefits under Title 19, § 3314(6) of the Delaware Code.⁵ Notice of the Claims Deputy’s decision was mailed to Mr. Spence on July 22, 2008. The Notice specifically indicated that the Claims Deputy’s determination would become final on August 1, 2008, unless Mr. Spence filed a written appeal prior to that date.⁶ Despite this notice, Mr. Spence did not file his Appeal Request Notification until August 7, 2008, six days after the Claims Deputy’s determination became final. Mr. Spence indicated that he was

² *Id.* at 10. The information provided by Furness indicated that Mr. Spence was fired for a safety violation. *Id.*

³ *Id.* at 1.

⁴ *Id.* at 10.

⁵ *Id.*

⁶ *Id.*

unable to file the appeal in a timely manner because of financial problems.⁷ The hearing for the appeal, set for September 12, 2008, was limited to the issue of whether Mr. Spence had timely filed his appeal.⁸ Mr. Spence failed to appear on time for the hearing. Consequently, the Referee dismissed the appeal.⁹

3. On September 15, 2008, Mr. Spence filed a second Appeal Request Notification requesting a new hearing date. His request indicated that he was unable to appear on time for the original hearing date because he did not have transportation to the hearing location.¹⁰ A review of the Referee's decision was conducted on October 8, 2008, by a five-member panel of the Board. The Board refused to exercise jurisdiction over Mr. Spence's late appeal because Mr. Spence failed to demonstrate that "the interests of justice would not be served by inaction."¹¹ Accordingly, the Board denied Mr. Spence's application for further review. The Board mailed a copy of its decision to Mr. Spence on November 3, 2008, and the decision became final on November 13, 2008.¹²

⁷ *Id.* at 12.

⁸ *Id.* at 13.

⁹ *Id.* at 14.

¹⁰ *Id.* at 15.

¹¹ *Id.* at 17.

¹² *Id.* at 16-17.

4. On November 13, 2008, Mr. Spence filed a Notice of Appeal in this Court. Mr. Spence's Notice of Appeal set forth four grounds, which he restated in his Opening Brief: (1) that he was laid off for lack of work and never informed of any safety violation; (2) that on July 5, 2008, he was told by a Furness employee that he would be fired; (3) that he arrived eighteen minutes late for his hearing date and was told that he would not be able to have a hearing; and (4) that he feels his rights have been violated because he was never able to state his case against Furness during the Administrative appeals process.¹³ Mr. Spence's Notice of Appeal also indicated that he would like an opportunity to be heard by the Board.¹⁴ Not surprisingly, Furness argued that the Court should affirm the Board's decision because it is supported by substantial evidence, free from legal error, and not an abuse of discretion.¹⁵ Further, Furness emphasized that the sole issue before the Court on appeal is the timeliness of Mr. Spence's Administrative appeal, not the substance of his underlying claim.¹⁶

5. The Court's standard of review of the Board's decision is well settled. The Court must determine whether the Board's factual findings are supported by

¹³ *Id.* at 21.

¹⁴ *Id.* See also Appellant's Opening Br.

¹⁵ Appellee's Answering Br. 3-5.

¹⁶ *Id.* at 1.

substantial evidence and free from legal error.¹⁷ Substantial evidence is “relevant evidence as a reasonable mind might accept as adequate to support a conclusion.”¹⁸ It requires “more than a scintilla but less than a preponderance” of the evidence.¹⁹ The Court does not weigh evidence, assess credibility, or make independent factual findings.²⁰ The Court reviews a legal determination by the Board for abuse of discretion.²¹ As the Board’s decision was based on the timeliness of Mr. Spence’s appeal, and not on the substance of his underlying claim, the Court’s review will be limited to the issues of whether Mr. Spence filed a timely appeal and, if not, whether his failure to do so justified dismissal of the appeal by the Board.

6. Mr. Spence clearly had notice of the deadline for filing his appeal of the Claims Deputy’s decision, and he has not argued at any stage of these proceedings that he was unaware of the deadline. The record clearly reflects that he did not meet his appeal deadline. The only explanation he provided for his late appeal was “financial problems.” He gave no indication of how the interests of justice would be served if the Board exercised jurisdiction over his late appeal. Given the uncontested

¹⁷*Morgan v. Anchor Motor Freight, Inc.*, 506 A.2d 185, 188 (Del. Super. 1986).

¹⁸*Oceanport Indus. v. Wilmington Stevedores*, 636 A.2d 892, 899 (Del. 1994).

¹⁹*Hundley v. Riverside Hosp.*, 1993 WL 542026, at *5 (Del. Super. Sept. 27, 1993).

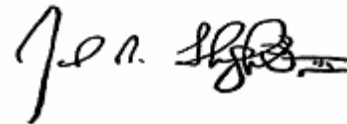
²⁰*Johnson v. Chrysler Corp.*, 213 A.2d 64, 66 (Del. 1965).

²¹*Funk v. Unemployment Ins. Appeal Bd.*, 591 A.2d 222, 225 (Del. 1991).

evidence that Mr. Spence failed to file a timely appeal, and the fact that he has offered no adequate reason to excuse that failure, the Court must conclude that there is substantial evidence in the record to support the Board's decision not to exercise jurisdiction over Mr. Spence's appeal, and that the decision reflected a proper application of the law.²²

7. Based on the foregoing, the decision of the Board to deny further review of Mr. Spence's claim is **AFFIRMED**.

IT IS SO ORDERED.

A handwritten signature in black ink, appearing to read "J. R. Slights, III". The signature is written in a cursive, somewhat stylized font.

Judge Joseph R. Slights, III

²² 19 Del. C. § 3318(b) (“Unless a claimant . . . 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 Claims Deputy’s determination shall be final and benefits shall be paid or denied in accordance therewith.”). *See also Duncan v. DE Dept. of Labor, Div. Of Unemployment Ins.*, 2002 WL 31160324, at *2 (Del. Super. Sept. 10, 2002) (“The time for filing an appeal is an express statutory condition of jurisdiction that is both mandatory and dispositive Therefore, Petitioners failure to timely appeal the Claims Deputy decision regarding eligibility for unemployment insurance necessarily precludes review of the underlying merits of that decision. As a matter of law, the Referee properly excluded such evidence, as did the UIAB, and such evidence has no relevance to this Court’s review.”).