

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

MONICA TAYLOR,)
)
Appellant,)
)
v.) C.A. No. 06A-06-008 MMJ
)
ARDEN COURT and)
UNEMPLOYMENT INSURANCE)
APPEAL BOARD,)
)
Appellees.)

Submitted: November 21, 2006
Decided: February 28, 2007

ORDER

*Upon Appeal From a Decision of the
Unemployment Insurance Appeal Board*

AFFIRMED

Having reviewed the parties' submissions in this appeal of a decision of the Unemployment Insurance Appeal Board ("Board"), affirming the decision of the Appeals Referee ("Referee"), affirming the decision of the Claims Deputy, and denying Monica Taylor's ("Claimant") appeal pursuant to 19 *Del. C.* § 3318(c), the Court concludes as follows:

1. Claimant was employed by Arden Court (“Employer”) from September 27, 2005 through February 11, 2006. Immediately before her termination, Claimant was employed as a caregiver. On February 22, 2006, Claimant was terminated by Arden Court for failing to comply with health and safety rules prohibiting unsafe conduct and unsafe acts.

2. On February 16, 2006, Claimant filed an application for unemployment benefits, which Employer opposed. The Employer Fact-Finding Statement was sent by the Department of Labor to Employer on February 16, 2006, and a response was requested by February 23, 2006. Employer complied with the fact-finding request and sent the Employer Fact-Finding Statement to the Department of Labor on February 22, 2006.

3. On March 8, 2006, the Claims Deputy determined that Employer demonstrated that Claimant engaged in wanton or willful misconduct. The Claims Deputy determined that Claimant was therefore disqualified from receiving employment benefits under 19 *Del. C.* § 3314(2).

4. On March 16, 2006, Claimant appealed the Decision of the Claims Deputy to the Appeals Referee. A hearing was scheduled for March 30, 2006. Claimant failed to appear, despite having been notified to attend. The decision of the Claims Deputy was affirmed by the Appeals Referee. The Appeals Referee’s

decision was mailed to Appellant on March 31, 2006. The decision included written notice that the last day to appeal the Appeals Referee's decision was April 10, 2006.

5. On May 22, 2006, Claimant appealed the decision of the Appeals Referee to the Board. In her Appeal Request Notification, Claimant stated: "I was sick and had to see the doctor. Then I was emotionally depressed about the situation." The Board reviewed and considered the evidence presented to the Appeals Referee, the Appeals Referee's decision and Appellant's submission. The Board affirmed the decision of the Appeals Referee.

6. On June 16, 2006, Claimant filed a Notice of Appeal with this Court, and, on September 12, 2006, submitted her "Opening Brief."

7. Claimant denies that she engaged in the conduct for which she was terminated.

8. In its Answering Brief, Employer argues that the Board's decision affirming denial of Claimant's benefits must be affirmed because the appeal was not timely filed. The Appeals Referee's decision was mailed to Claimant on March 31, 2006, and the last day to appeal the Appeals Referee's decision was April 10, 2006. Claimant appealed the decision of the Appeals Referee to the Board on May 22, 2006.

9. Claimant contends in her reply that she did not respond to the Department of Labor's appeal hearing notice in a timely manner because she had a doctor's appointment on April 10, 2006, which could not be cancelled due to health issues. Additionally, Claimant states that she did not receive her mail in a timely manner because she had just moved from her previous address to her new address about three months before her claim was filed.

10. Claimant again argues that the decision was not justified.

11. Further, she states that she did not show up at the Hearing because the "state" found her "not guilty" a couple of days after the Department of Labor's decision was issued.

12. The Delaware Supreme Court and this Court repeatedly have emphasized the limited appellate review of the factual findings of an administrative agency. In reviewing the decisions of the agency, this Court must determine whether the findings and conclusions of the Board are free from legal error and supported by substantial evidence in the record.¹ Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to

¹*General Motors v. Freeman*, 164 A.2d 686, 688 (Del. 1960); *Johnson v. Chrysler Corporation*, 213 A.2d 64, 66-67 (Del. 1965).

support a conclusion.² The appellate court does not weigh the evidence, determine questions of credibility, or make its own factual findings.³ It merely determines if the evidence is legally adequate to support the agency's factual findings.⁴

13. The Court's review of the Board's decision is twofold. First, the Court must determine if there are facts to support the finding that the appeal was untimely. Second, the Court must determine whether the Board abused its discretion by not exercising, *sua sponte*, its power to review the record for an injustice despite the untimely appeal.⁵

14. Claimant asserts that she was justified in filing her appeal late on the following grounds: (1) she had a doctor's appointment on April 10, 2006, which could not be cancelled due to health issues; (2) she was "emotionally depressed" about the situation; (3) she did not receive her mail in a timely manner because she had just moved from her previous address to her new address about three months before her claim was filed; (4) the State found her "not guilty" after the decision

²*Oceanport Ind. v. Wilmington Stevedores*, 636 A.2d 892, 899 (Del. 1994); *Battisa v. Chrysler Corp.*, 517 A.2d 295, 297 (Del. Super. 1986), *app. disp.*, 515 A.2d 397 (Del. 1986).

³*Johnson v. Chrysler*, 213 A.2d at 66.

⁴29 Del. C. § 10142(d).

⁵*Robledo v. Stratus and the Unemployment Ins. Appeal Bd.*, 2001 WL 428684, at *1 (Del. Super.) (citing *Brown v. City of Wilmington*, Del. Super., C.A. No. 95A-01-007, Silverman, J. (Sept. 21, 1995)).

was made; and (5) she felt “intimidated” about facing Arden Court without legal guidance.

15. As for grounds 1, 2 and 4, there is nothing in the record regarding an April 10, 2006 doctor’s appointment, emotional depression, or the “State” having found claimant “not guilty.” With regard to ground 5, Claimant could have taken steps to acquire legal guidance.

16. With regard to ground 3, properly addressed mail is presumed to be received by the addressee. The addressee’s mere denial of receipt of the notice is insufficient to rebut this presumption. It is reasonable to expect that a claimant awaiting an important decision from an appellate tribunal would regularly check the locations at which she receives mail.⁶

17. The decision was properly mailed to Claimant’s home address of record. It was not returned as “undeliverable.” Moreover, as stated by the Appeals Referee as well as the Board, there is no evidence of error by an employee of the Department of Labor.

18. Based on the above findings, the Board’s determination that the notice was properly mailed to the Claimant, and that the subsequent appeal was untimely filed, were based on substantial evidence. Therefore, the Board properly

⁶*Id.*

held that 19 *Del. C.* § 3318(c) created a jurisdictional bar to its consideration of the Claimant's untimely appeal.

19. The Board does have authority under 19 *Del. C.* § 3320 to “act *sua sponte* beyond the ten-day appeal period to consider a case where no valid appeal has been filed by the parties.”⁷ However, this authority is used only 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.⁸ Absent an abuse of discretion, this Court must uphold the Board's decision.

20. The Court finds that the decision of the Claims Deputy took into account not only the record of the case, but also the testimony of Claimant, the Arden Court resident in question, and the resident's caregiver and witness.

21. The Claims Deputy clearly stated the relevant law and facts on the issue of whether Employer had just cause for discharging Claimant, and what constituted just cause. The Claims Deputy stated that in a discharge situation, the employer must prove just cause for discharge. Just cause for discharge is defined as misconduct in connection with the work and must be established by the

⁷*Funk v. Unemployment Ins. App. Bd.*, 591 A.2d 222, 225 (Del. 1991).

⁸*Id.*

employer. Misconduct refers to a wilful or wanton act in violation of the employer's interest or the employee's duties and expected standard of conduct. Based upon the fact-finding information, the Claims Deputy determined that the burden had been met, and therefore, Claimant is disqualified from receipt of benefits.

22. In the March 31, 2006 decision, the Appeals Referee dismissed Claimant's appeal for failure to prosecute, noting that Claimant, although duly notified, did not appear for the March 30, 2006 hearing to prosecute her appeal.

23. A review was held by the Board and a decision rendered on May 31, 2006. The Board considered the record, consisting of evidence presented to the Appeals Referee, the Referee's decision, and Claimant's notice of appeal. The Board determined that Claimant's appeal to the Board was not timely. The Board found that the facts in this case do not involve circumstances so severe as to require that it assume jurisdiction in this case. On the basis of 19 *Del. C.* § 3318(c), the Board declined to accept the late appeal.

24. The Court finds that in denying Claimant's untimely appeal, the Board took into consideration the jurisdictional time limit of the appeal period, as well as the lack of evidence of any error on the part of the Department which

might have delayed Claimant's appeal. Therefore, there was no abuse of discretion by the Board.

25. The Board's decision denying Claimant's appeal for further review because of lack of timeliness, and holding the decision of the Appeals Referee to be final and binding, is hereby **AFFIRMED**.

IT IS SO ORDERED.

The Honorable Mary M. Johnston