

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

MICHAEL TOLSON, )  
 )  
 Appellant, )  
 )  
 v. ) C.A. No. N10A-02-004 CLS  
 )  
 SOLVAY SOLEXIS and )  
 UNEMPLOYMENT INSURANCE )  
 APPEAL BOARD, )  
 )  
 Appellees. )

Date Submitted: September 28, 2011  
Date Decided: October 25, 2011

On Appeal from the Decision of the Unemployment Insurance Appeal Board.  
**DISMISSED.**

**ORDER**

Michael Tolson, 108 Stonebridge Blvd., New Castle, DE 19720.  
*Pro Se* Appellant.

Solvay Solexis, 800 Greenbank Road, Wilmington, DE 19805.  
Appellee.

Katisha D. Fortune, Esq., 820 N. French Street, Wilmington, DE 19801.  
Attorney for Appellee Unemployment Insurance Appeal Board.

**Scott, J.**

## **Introduction**

Before this Court is the Appellant's appeal from the decision of the Unemployment Insurance Appeal Board ("Board"). The Court has reviewed the parties' submissions. For the reasons that follow, this appeal is **DISMISSED** pursuant to Superior Court Civil Rule 72(i).

## **Background**

The Appellant, Michael Tolson ("Appellant"), was employed by Solvay Solexis, Inc. ("Solvay") as a mill operator from December 19, 2005 until September 13, 2009. The Appellant was discharged from Solvay for falsifying his timecard on September 11, 2009. Appellant filed a claim for unemployment benefits with the Delaware Department of Labor. A Claims Deputy from the Department of Labor disqualified the Appellant from the receipt of unemployment benefits because he was terminated from his position with just cause. The Appellant appealed this decision to the Appeals Referee, who affirmed the Claims Deputy's decision. The Appeals Referee found that the Appellant's actions "were an intentional disregard for the employer's business interests and rose to the level of willful and wanton misconduct."<sup>1</sup>

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<sup>1</sup> R. at 11.

The Appellant then appealed the Referee’s decision to the Board on the basis that he was misunderstood and wanted to “speak again.”<sup>2</sup> Notice of the hearing before the Board was sent to the Appellant on January 12, 2010. The notice set forth that the hearing would be held on January 27, 2010 at 11:00 a.m. The notice also informed appellant that “[f]ailure to appear for your hearing in a timely manner can result in your appeal being dismissed.”<sup>3</sup> A hearing before the Board occurred on January 27, 2010. Appellant did not appear at the hearing to prosecute his appeal nor did he give a reason for his absence. The appeal before the Board was dismissed because the Appellant failed to appear. On February 8, 2010, Appellant appealed the Board’s decision to this Court arguing the merits of the case. Solvay has not responded to the appeal.

### **Discussion**

According to 19 *Del. C.* § 3322(a), judicial review of a Board decision is only permitted “after any party claiming to be aggrieved thereby has exhausted all administrative remedies as provided by this chapter.” The exhaustion of administrative remedies concept requires that where a remedy before an administrative agency is available, the Appellant must first exhaust this remedy

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<sup>2</sup> R. at 24.

<sup>3</sup> R. at 25.

before the Court will act.<sup>4</sup> Once the administrative process is completed, the Court will review the Appellant's claim.<sup>5</sup>

In *Griffin v. Daimler Chrysler*,<sup>6</sup> this Court held that it lacks jurisdiction to address the merits of the case because the Appellant failed to appear at the Board hearing and the merits were not addressed by the Board. In that case, this Court granted the Board's Motion to dismiss because the Appellant did not exhaust all of its administrative remedies. Additionally, the Appellant's grounds for appeal only concerned the merits of the case, not allegations concerning the Board's abuse of discretion for dismissing the appeal. Thus, by failing to appear at the Board hearing, he forfeited his right to appeal the merits of the case.

Similarly here, the Court similarly finds that it lacks jurisdiction to address the merits of the case. The merits of the Appellant's case were not addressed at the Board hearing because he did appear. His appeal to this Court only concerns the merits of the case. Appellant does not allege the Board's abuse of discretion in addressing the appeal for his failure to prosecute. Judicial review of the appeal is not permitted under 11 *Del. C.* § 3322(a) because by failing to present the merits of his case to the Board, the Appellant has not exhausted his administrative remedies.

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<sup>4</sup> *Griffin v. Daimler Chrysler*, 2000 WL 33309877, at \*1 (Del. Super. Apr. 27, 2001).

<sup>5</sup> *Id.*

<sup>6</sup> 2000 WL 333609877 (Del. Super. Apr. 27, 2001).

Pursuant to Super. Ct. Civ. R. 72(i), the Court may, “sua sponte, or upon a motion to dismiss by any party,” order an appeal to be dismissed. The grounds for ordering a dismissal include untimely filing of an appeal, appealing an unappealable interlocutory order, failing to diligently prosecute an appeal, failing to comply with any rule, statute or order of the Court, or for any other reason deemed by the Court to be appropriate.<sup>7</sup> If the Court concludes sua sponte that dismissal is warranted, the Prothonotary shall forward notice directing the Appellant to show cause why the appeal should not be dismissed within 10 days after receipt of the notice.<sup>8</sup>

On September 28, 2011, the Prothonotary sent notice to Appellant indicating this Court does not have jurisdiction to hear the cause pursuant to 11 *Del. C.* § 3322(a) because Appellant failed to appear to the administrative hearing. The Appellant was directed to show cause why his appeal should not be dismissed by October 14, 2011. The Appellant has failed to respond to the Court’s letter. His lack of response shall be deemed to be unopposed.<sup>9</sup> Therefore, this matter is dismissed pursuant to Super. Ct. Civ. R. 72(i).

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<sup>7</sup> Super. Ct. Civ. R. 72(i).

<sup>8</sup> *Id.* After considering Appellant’s response, the Court shall enter an order dismissing the appeal or maintaining jurisdiction of the case. If a response is not timely filed, the dismissal shall be deemed to be unopposed.

<sup>9</sup> Super. Ct. Civ. R. 72(i).

**Conclusion**

Based on the forgoing, the decision of the Unemployment Insurance Appeal Board is **DISMISSED.**

**IT IS SO ORDERED.**

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Judge Calvin L. Scott, Jr.