

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

JASMIN WILLIAMS,)
) C.A. No. N10A-09-004
Appellant,)
)
v.)
)
CHRISTIANA SCHOOL DISTRICT)
and UNEMPLOYMENT)
INSURANCE APPEAL BOARD,)
)
Appellees.)

Submitted: May 3, 2011
Decided: August 31, 2011

Jasmin Williams, *Pro Se*.

David H. Williams, Esq., and James H. McMackin, III, Esq., Morris James, LLP,
Wilmington, Delaware. Attorney for Appellees Christiana School District.

Upon Consideration of Appellant's
Appeal From Decision of the
Unemployment Insurance Appeal Board
AFFIRMED

VAUGHN, President Judge

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ORDER

Upon consideration of both parties' briefs and the record of the case, it appears that:

1. The appellant/claimant, Jasmin Williams, was employed as a school bus driver at Christiana School District from May 15, 2004 through May 5, 2010. She was terminated on May 5, 2010 because she no longer possessed a valid driver's license. The Claims Deputy determined that the appellant was discharged for just cause and disqualified from receiving unemployment benefits.

2. On April 21, 2010, the District learned that the appellant's driver's license had been suspended due to a recent speeding ticket. The following day District administrators met with the appellant because possessing a valid driver's license was a necessary part of her job. During that meeting the appellant admitted that her license was suspended, but stated that she withheld that information out of fear that she would lose her job. The District immediately put her on administrative leave and ultimately she was terminated.

3. The Claims Deputy determined that the appellant had engaged in wanton or willful misconduct and was disqualified from receiving unemployment benefits. On May 24, 2010, the Claims Deputy's decision was mailed to the appellant. The decision stated that the last day to file an appeal was June 3, 2010. The appellant, however, did not file an appeal until June 18, 2010. The Claims Deputy determined that the appellant failed to file a timely appeal. The claimant appealed that decision. An Appeals Referee then conducted a hearing to determine the timeliness of the appeal. During that hearing, the appellant admitted that she received the Claims

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Deputy's decision. The Appeals Referee affirmed the denial of benefits. An appeal to the Unemployment Insurance Appeals Board followed, and the Board affirmed the decision of the Referee, stating that there was neither evidence of departmental error nor a reason that would excuse the untimely appeal.

4. In her opening brief, the appellant asserts four main contentions as to why the decisions below should be overturned. Those contentions are: (1) she was employed for six years without discipline; (2) her driver's license was valid; (3) fellow employees, who allegedly possessed invalid licenses, were not terminated; and (4) ultimately she was rehired.

5. The appellee contends that the Board's decision below must be affirmed because the appeal of the Claims Deputy's determination was indisputably filed too late. The District argues that there was neither a departmental error in giving the appellant proper notice of her right to appeal, nor evidence of an extraordinary circumstance which would excuse the appeal's untimeliness. Additionally, the appellee argues that the appellant failed to address, in her opening brief, the issue of her late appeal.

6. The limited function of the court in reviewing an appeal from the Board is to determine whether the Board's decision is supported by substantial evidence and free from legal error.¹ The appellate court does not weigh the evidence, determine questions of credibility of the witnesses, the weight to be given to their testimony, and

¹ *Oceanport Indus., Inc. v. Wilmington Stevedores, Inc.*, 636 A.2d 892, 899 (Del. 1994); *Battista v. Chrysler Corp.*, 517 A.2d 295, 297 (Del. Super. 1986).

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the inferences to be drawn from them.² The court merely determines if the evidence is legally adequate to support the agency's factual findings.³

7. This Court has jurisdiction to determine whether or not the Board abused its discretion by deciding not to hear the appellant's appeal.⁴ The Board in its discretion may hear an untimely appeal if "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."⁵ A late appeal, however, "may only be excused in extraordinary circumstances."⁶

8. The appellant's failure to file a timely appeal or present evidence which would excuse its lateness requires that the Board's decision be affirmed. The undisputed facts are that the appellant received notice of the Claims Deputy's final determination, but failed to file her appeal until fifteen days after the deadline. The appellant's opening brief does nothing more than recite the appellant's contentions as to why she was fired without just cause. It failed to address why her appeal was untimely. Below the appellant argued that she did not file her appeal in a timely manner because she lacked transportation and did not understand her right to appeal

² *Behr v. Unemployment Ins. Appeal Bd.*, 1995 WL 109026 (Del. Super. 1995).

³ 29 Del. C. § 10142(d).

⁴ *Finocchiaro v. Panco Mgmt.*, 2006 WL 278402, at *2 (Del. Super. Feb. 3, 2006).

⁵ 19 Del. C. § 3318 (c).

⁶ *Bailey v. MBNA Am. Bank*, 1991 WL 1304159, at *2 (Del. Super. 1991).

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the Claims Deputy's decision. There is no merit to these arguments.

9. After considering the record, I conclude that there is no persuasive basis for disturbing the Board's decision. I find that the Board below did not abuse its discretion in deciding not to hear the appellant's untimely appeal. Therefore, the decision below is *affirmed*.

IT IS SO ORDERED.

/s/ James T. Vaughn, Jr.

President Judge

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