IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

EDWARD JACKSON,	)	
	)	
Appellant,	)	
	)	
v.	)	C.A. No. N10A-10-004 MMJ
	)	
DELAWARE SUPERMARKETS, INC., and UNEMPLOYMENT INSURANCE APPEAL BOARD,	)	
	)	
	)	
Appellees.	)	

Submitted: July 12, 2011
Decided: October 11, 2011

On Appeal from a Decision of the Unemployment Insurance Appeal Board
AFFIRMED

MEMORANDUM OPINION

Edward Jackson, Appellee, *Pro Se*

Gregory B. Williams, Esquire, Maura Burke, Esquire, Fox Rothschild LLP, Wilmington, Delaware, Attorneys for Appellee Delaware Supermarkets, Inc.

Katisha Fortune, Esquire, Department of Justice, Wilmington, Delaware, Attorney for Appellee Unemployment Insurance Appeal Board

JOHNSTON, J.

FACTUAL AND PROCEDURAL CONTEXT

Edward Jackson ("Claimant") was employed by Delaware Supermarkets ("Employer") from November 2008 to April 2010 as a night crew clerk. Claimant was compensated at a rate of $10.70 per hour.

During the week of April 11, 2010, Claimant called out twice from work – Thursday, April 15, 2010 and Friday, April 16, 2010. On Wednesday of the following week, April 21, 2010, Claimant submitted a doctor's note to Employer, indicating that he was authorized to resume full duty work status.[1] Claimant, however, called out sick the next two days – Thursday, April 22, 2010 and Friday, April 23, 2010.

The following week – April 25, 2010 to May 1, 2010 – Claimant was scheduled to work forty hours. Claimant did not show up for work the entire week. And with the exception of calling out from work on Thursday, April 29, 2010,[2] Claimant did not contact Employer during that time period. Consequently, Employer believed that Claimant had quit and no longer placed him on the schedule.

No contact was made by or on behalf of Claimant until May 11, 2010. On that date, Employer was notified by Dr. Marc Feldman that Claimant had been

[1] Evidently, Claimant suffered from an upper respiratory condition which made him unable to work in the frozen food section.

[2] The record indicates that Claimant called out at 9:44 p.m., nearly three hours after his scheduled shift ended.

admitted to the Intensive Inpatient Program at Keystone Center on May 4, 2010. According to Dr. Feldman, Claimant was expected to remain in the program for approximately 10-18 days. The following day, May 12, 2010, Employer received a call that Claimant was in the hospital.[3]

On May 13, 2010, Claimant personally called Employer and was advised to call back at another time so he could speak to a manager. On May 19, 2010, Claimant again contacted Employer, stating that he would be back to work on either May 28, 2010 or May 29, 2010. In the interim, Claimant stated that he would be on vacation. Employer advised Claimant that the status of his employment would need to be reviewed in order to determine whether he still had a job with the company. Ultimately, Employer decided to terminate Claimant's employment for job abandonment.

Claimant applied for unemployment benefits on June 6, 2010. On July 8, 2010, a Claims Deputy awarded Claimant benefits after finding that Employer did not have just cause to terminate Claimant's employment. Employer appealed the Deputy's decision to an Appeals Referee.

On August 13, 2010, after an administrative hearing was held, the Referee overturned the Deputy's decision. The Referee found that Employer had just cause to discharge Claimant "because [he] missed a significant amount of work with

[3] Because Claimant was not discharged from Keystone Center until May 17, 2010, presumably this "hospitalization" was his inpatient treatment.

inadequate communication to Employer." Claimant appealed the Referee's decision to the Unemployment Insurance Appeal Board ("Board").

On September 22, 2010, the Board held an administrative hearing. Despite notice of the time and place of the hearing being mailed to Claimant's address of record, Claimant failed to appear. Therefore, the Board dismissed Claimant's appeal. Claimant appealed the Board's decision, claiming that he mistakenly believed the hearing was scheduled for September 23, 2010. The Board, treating Claimant's appeal as a motion for rehearing, denied Claimant's request.

On October 6, 2010, Claimant filed a *pro se* appeal of the Board's decision to this Court.

STANDARD OF REVIEW

On appeal from the Unemployment Insurance Appeal Board, the Superior Court must determine if the Board's factual findings are supported by substantial evidence in the record and free from legal error.[4] "When the issues on appeal pertain to discretionary acts of the Board, the scope of review is whether the Board abused its discretion."[5] An abuse of discretion occurs when the Board "exceeds

[4] *Unemployment Ins. Appeal Bd. v. Duncan*, 621 A.2d 340, 342 (Del. 1993).
[5] *Nardi v. Lewis*, 2000 WL 303147, at *2 (Del. Super.).

the bounds of reason in view of the circumstances and has ignored recognized rules of law or practice so as to produce injustice."[6]

DISCUSSION

Delaware statutory law vests the Board with authority to promulgate rules and regulations governing the determination of parties' rights.[7] Pursuant to this authority, the Board adopted Rule 4.2, which provides:

> All parties to the appeal shall be present at the Board's hearing. Failure to appear within 10 minutes of the time indicated on the Notice may result in the Board hearing the appeal in absence of the delinquent party or, if the delinquent party is the appellant, dismissal of the appeal.[8]

Once the Board has rendered its decision, any party may request a rehearing before the Board.[9] A ruling on a motion for a rehearing is solely within the discretion of the Board.[10] Generally, though, "the Board will only grant a rehearing under severe circumstances, such as where the interests of justice would not be served by inaction."[11]

In order to show that the Board abused its discretion in denying a motion for rehearing, a claimant must establish that his failure to appear at the hearing was the

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[6] *Id*. (citing *K-Mart, Inc. v. Bowles*, 1995 WL 269872 (Del. Super.) (internal quotation marks omitted)).
[7] 19 *Del. C*. § 3321(a).
[8] UIAB Rule 4.2.
[9] UIAB Rule 7.0.
[10] UIAB Rule 7.1.
[11] *Straley v. Advance Staffing, Inc.*, 2009 WL 3451913, at *2 n.7 (Del.) (citing *Funk v. Unemployment Ins. Appeal Bd*., 591 A.2d 222, 225 (Del. 1991)).

result of excusable neglect.[12] As this Court has recognized, "[e]xcusable neglect is more than 'mere negligence or carelessness without a valid reason.'"[13] Rather, excusable neglect may be established if the claimant has a valid reason for his action or inaction, or if a reasonably prudent person might have acted similarly under the circumstances.[14]

The Court finds that the Board did not abuse its discretion in denying Claimant's motion for rehearing. The record reflects that notice of the time and place of the September 22, 2010 hearing was sent to Claimant's address of record. Claimant, however, failed to appear, and in accordance with Rule 4.2, the Board dismissed Claimant's appeal. Claimant appealed the Board's dismissal, claiming that although he received proper notice, he mistakenly believed the hearing was scheduled for September 23, 2010.

While regrettable, Claimant's error does not entitle him to a rehearing. As the Court has observed, a claimant's failure to ascertain the correct date and time of the hearing is nothing more than mere negligence.[15] Because Claimant's proffered excuse does not rise to the level of excusable neglect, the Court must

[12] *Tesla Indus., Inc. v. Bhatt*, 2007 WL 2028460, at *2 (Del. Super.).
[13] *Id.* (citing *Wright v. Quorum Litig. Serv.*, 1997 WL 524061, at *3 (Del. Super.)).
[14] *Id.* (citations omitted).
[15] *See Connors v. Mountaire Farms of Delmarva, Inc.*, 1996 WL 453327, at *3 (Del. Super.)

uphold the Board's discretionary decision to "efficiently administer its caseload by dismissing [Claimant's] appeal and denying [his] request for a rehearing."[16]

CONCLUSION

Claimant failed to establish that he acted with excusable neglect when he failed to appear before the Board on September 22, 2010. Therefore, the Board properly exercised its discretion in denying Claimant's request for a rehearing. The Court further finds that the record demonstrates that Employer had just cause to discharge Claimant for job abandonment.

THEREFORE, the Court hereby **AFFIRMS** the Board's decision in its entirety.

IT IS SO ORDERED.

/s/ *Mary M. Johnston*
The Honorable Mary M. Johnston

[16] *Tesla*, 2007 WL 2028460, at *4 (citing *Connors*, 1996 WL 453327, at *2).