

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR KENT COUNTY

SONIA L. SCOTT, :
 : C.A. No: K11A-09-002 (RBY)
 Appellant, :
 :
 v. :
 :
 PERDUE FARMS, :
 :
 Appellee. :

Submitted: March 2, 2012
Decided: May 22, 2012

Upon Consideration of Appellant's Appeal
from the Unemployment Insurance Appeals Board
REMANDED

ORDER

Sonia L. Scott, *Pro Se*.

Caroline Lee Cross, Esq., Department of Justice, Wilmington, Delaware for the
Unemployment Insurance Appeal Board.

Young, J.

SUMMARY

_____ In this administrative appeal case, Sonia Scott (Appellant) challenges the Unemployment Insurance Appeal Board's (the Board) decision not to consider the merits of her appeal of denial of benefits because it was time barred. The Board's decision considers facts that are, seemingly, from another case all together. Accordingly, it abused its discretion by failing to consider the existence of circumstances that would have warranted the exercise of jurisdiction despite the time limitation. The Board's decision is **REMANDED**.

FACTS

_____ Appellant appeals the decision of the Board affirming the Appeals Referee's affirmation of the Claim Deputy's decision denying Appellant unemployment insurance benefits. Therein, the Board affirmed the denial of benefits due to the filing of an untimely appeal. The pertinent facts are procedural and are set forth herein.

On October 31, 2010, Appellant submitted a claim for unemployment insurance benefits. On May 2, 2011, Appellant was mailed the Claims Deputy's decision that she was not entitled thereto. Pursuant to statute, Appellant had until May 12, 2011 to appeal that decision to the Appeals Referee.

Appellant filed an appeal with the Appeals Referee but failed to do so until June 13, 2011, approximately one month past the statutory deadline. After Appellant attended a July 7, 2011 hearing on the matter, the Appeals Referee affirmed the Claim Deputy's decision on the grounds that the appeal was untimely. That decision was mailed to Appellant on July 8, 2011. Pursuant to statute, Appellant had until July 18, 2011 to file an appeal of the decision with the Board.

Scott v. Perdue
C.A. No: K11A-09-002 (RBY)
May 22, 2012

Appellant filed an appeal with the Board but failed to do so until August 8, 2011, three weeks past the statutory deadline. The Board declined to consider the merits of the appeal because it was untimely. The Board decision was mailed on August 30, 2011. Soon thereafter, Appellant filed the instant appeal to this Court.

The Board's written decision summarized the evidence upon which it relied. The Board indicated that Appellant's appeal to the Appeals Referee was timely but dismissed because Appellant failed to appear at a July 11, 2011 hearing. Further, the Board stated that the Appeals Referee's decision was dated and mailed on July 12, 2011 and Appellant's last day to appeal that decision was July 22, 2011. Finally, the Board indicated, correctly, that Appellant failed to do so until August 8, 2011.

STANDARD OF REVIEW

____ "When this Court reviews a procedural decision of the Unemployment Insurance Appeal Board, it must consider whether the Board abused its discretion in rendering its decision."¹ A procedural decision by the Board is an abuse of discretion, and cannot be affirmed, if "it is based on clearly unreasonable or capricious grounds" or "exceeds the bounds of reason in view of the circumstances and ignored recognized rules of law or practice so as to produce injustice."²

DISCUSSION

¹ *Hobson v. Unemployment Ins. Appeal Bd.*, 2010 WL 4060940, at *1 (Del. Super. Sept. 13, 2010) (citing *Wilson v. Franciscan Care Ctr.*, 2006 WL 1134779 (Del. Super. Apr. 18, 2006)).

² *Id.* (quoting *K-Mart, Inc. v. Bowles*, 1995 WL 269872, at *2 (Del. Super. Mar. 23, 1995)).

_____“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.”³ Inherent in that framework is the understanding that the Board addressed the timeliness of the filing and any circumstances which may warrant the exercise of jurisdiction *sua sponte*.

_____After careful review of the Board’s decision and the record by which it is accompanied, the Court must conclude that the Board did abuse its discretion. As written, the Board’s decision is based upon the wrong set of facts. Specifically, the written decision misrepresents the dates on which Appellant’s filings were due and hearing was held. The correct dates are reflected elsewhere in the record.

Moreover, the written decision reflects that Appellant failed to appear for her hearing before the Appeals Referee. The Board found that her failure to appear led to the affirmation of the Claims Deputy’s decision. Included in the record is a transcript of the hearing which serves as evidence of Appellant’s attendance.

The record reflects that Appellant’s appeal to the Board was, in fact, untimely. The Board did not address, however, whether or not circumstances exist to warrant review outside of the statutory time period. In fact, they could not have, because they were considering a Referee Decision from a different case.

CONCLUSION

³ *Id.* (citing *Robledo v. Stratus*, 2001 WL 428684 (Del. Super. Mar. 27, 2001)).

Scott v. Perdue

C.A. No: K11A-09-002 (RBY)

May 22, 2012

The Board's decision is **REMANDED** for consideration consistent with this opinion.

SO ORDERED.

 /s/ Robert B. Young
 J.

RBY/sal