IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

CHERYL COOPER,	)	
	)	
Appellant,	)	
	)	
v.	)	C.A. No. N11A-09-007 WCC
	)	
DIAMOND STATE PORT CORP. & UNEMPLOYMENT INSURANCE APPEAL BOARD,	)	
	)	
Appellees.	)	

Submitted: April 23, 2012
Decided: July 31, 2012

Appeal from the Unemployment Insurance Appeal Board – AFFIRMED

ORDER

Cheryl F. Cooper. 2450 N. Market Street, Apt. 1A, Wilmington, DE 19802. *Pro se*.

Michael P. Stafford, Esquire. Young Conaway Stargatt & Taylor, LLP, 1000 N. King Street, Wilmington, DE 19801. Attorney for Diamond State Port Corporation.

Caroline Lee Cross, Esquire. Department of Justice, New Castle County, 820 N. French Street, Wilmington, DE 19801. Attorney for Unemployment Insurance Appeal Board.

CARPENTER, J.

This 31st day of July, 2012, upon consideration of Cheryl F. Cooper's appeal from the Unemployment Insurance Appeal Board, it appears to the Court that:

1. Diamond State Port Corporation (Diamond State) hired Cooper as a security guard on an as-needed basis on December 17, 2010. She was considered a seasonal employee as the position was intended to supplement the union workforce during the busy fruit importing season. She had no guarantee of employment or particular hours of work, and when the fruit season ended, so did Cooper's employment. Over the course of her employment, from December 17, 2010 to May 31, 2011, Cooper worked approximately 481 hours which averages to about 20 hours per week.[1]

2. Cooper filed for unemployment benefits immediately after her employment at Diamond State ended. Her claim was referred to an Appeals Referee, who heard from the parties and mailed his decision on July 6, 2011. The Appeals Referee's decision was mailed to the address provided by Cooper and notified her of her right to appeal to the Unemployment Insurance Appeal Board by July 16, 2011.[2] Cooper filed her appeal on August 8,

[1] Of the 481 hours of employment, 467 occurred in 2011.
[2] *See* 19 *Del. C.* § 3318(c) ("The parties shall be duly notified of the tribunal's decision, together with its reason therefore, which shall be deemed to be final unless within 10 days after the date of notification or mailing of such decision further appeal is initiated pursuant to § 3320 of this title.").

2011. The Board declined to accept her appeal because it was untimely filed, and Cooper appealed the Board's decision to this Court.

3. The Court must decide whether the Board based its decision not to accept Cooper's appeal on substantial evidence and whether that decision was free from legal error. Substantial evidence is evidence from which the Board could fairly and reasonably reach its conclusions.[3] The Court will uphold a discretionary decision of the Board unless it finds there was an abuse of discretion.[4] An abuse of discretion occurs when the Board "acts arbitrarily or capriciously or exceeds the bounds of reason in view of the circumstances, and has ignored recognized rules of law or practice so as to produce injustice."[5]

4. Cooper failed to file her appeal within ten days of the mailing date of the Appeals Referee's decision as required by statute.[6] Cooper doesn't address the reason for her late appeal in her Opening Brief, but in her Reply Brief she claims she never received the Appeals Referee's decision. She provides no evidence or explanation as to why. Delaware law presumes that properly addressed mail is received by the party to whom it is addressed, and in this

[3] *Olney v. Cooch*, 425 A.2d 610, 615 (Del. 1981).
[4] *Funk v. Unemployment Ins. Appeal Bd.*, 591 A.2d 222, 225 (Del. 1991).
[5] *PAL of Wilmington v. Graham*, 2008 WL 2582986, at *4 (Del. Super. June 18, 2008) (internal quotations omitted).
[6] 19 *Del. C.* § 3318(c).

case that presumption is buttressed by the fact that the Appeals Referee mailed his decision to the same address Cooper provides on her Opening Brief.[7]

5. The Board has discretion to consider Cooper's case notwithstanding her untimely appeal if it finds there was some administrative error on the part of the Department of Labor which deprived Cooper of the opportunity to file a timely appeal, or "where the interest of justice would not be served by inaction."[8] However, Cooper hasn't alleged, and there is no evidence of, administrative error or any mark of injustice. Her sole contention on appeal to this Court is that the Appeals Referee made a poor decision on the merits of her case and she should have the opportunity to present that argument to the Board. This alone does not obligate the Board to hear her appeal.

6. The record reflects the Appeals Referee mailed his decision to the address Cooper now provides to the Court and that decision clearly indicated the date by which Cooper could appeal to the Board. There is no indication of administrative error or injustice. The Board's decision was free from legal error because mailed matter is presumed to be received absent evidence to

[7] *See State ex rel. Hall v. Camper*, 347 A.2d 137, 139 (Del. Super. 1975) ("[T]here is a presumption that mailed matter, correctly addressed, stamped and mailed, was received by the party to whom it was addressed. This presumption is rebuttable and may be overcome by evidence that the notice was never in fact received.").
[8] *Funk*, 591 A.2d at 225.

the contrary and because the Board appropriately exercised its discretion to decide whether to accept Cooper's appeal.

7. In addition, while Cooper's appeal was untimely, it also appears to be without merit. Cooper takes issue with the Appeals Referee's decision because 19 *Del. C.* § 3314(1) only denies benefits to those who "left work voluntarily without good cause." Cooper did not explicitly leave Diamond State voluntarily; she left because Diamond State had no more work for her to do. Therefore, Cooper argues, the Appeals Referee was wrong to deny her benefits. But under Delaware law, some employment is so temporary that its acceptance carries acquiescence to voluntary termination at the end of the employment term.[9] In other words, a casual employee willing to work on an as-needed basis is deemed to be willing to quit when she's no longer needed. Such was the case with Cooper, who was only employed to supplement the union work force and who was never guaranteed regular employment or income.[10]

[9] *See City of Wilmington v. Unemployment Ins. Appeals Bd.*, 516 A.2d 166, 170 (Del. 1986) (noting that claimant's 7-month employment was of sufficient regularity that its acceptance did not "carry with it an acquiescence in voluntary termination at the end of the employment term and a concomitant disqualification from benefits").
[10] *See Bey v. Murphy Marine Services, Inc.*, 2002 WL 1288731, at *3 (Del. Super. June 3, 2002) (denying unemployment benefits because "Claimant was a 'casual' worker at the Port of Wilmington who had no hiring preference and was hired on an 'as needed' basis to supplement the union work force; as such, Claimant's employment status can not provide an expectation of regular employment and income").

8. For the above reasons, the Board's decision is hereby AFFIRMED.

IT IS SO ORDERED.

/s/ William C. Carpenter, Jr.
Judge William C. Carpenter, Jr.