

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

|                        |   |                          |
|------------------------|---|--------------------------|
| FITZROY SWABY,         | ) |                          |
| Appellant,             | ) |                          |
| v.                     | ) | C.A. No.: 12A-03-002 RRC |
|                        | ) |                          |
| SEB SECURITY and       | ) |                          |
| UNEMPLOYMENT INSURANCE | ) |                          |
| APPEAL BOARD,          | ) |                          |
| Appellees.             | ) |                          |

Submitted: September 12, 2012  
Decided: December 6, 2012

Upon Appeal from the Unemployment Insurance Appeal Board.  
**AFFIRMED.**

**ORDER**

Mr. Fitzroy Swaby, Appellant, *pro se*.

Caroline L. Cross, Esquire, Deputy Attorney General, Department of Justice,  
Wilmington, Delaware, Attorney for the Unemployment Insurance Appeal Board.

SEB Security, 8 Revolutionary Road, Ossining, NY 10562

COOCH, R.J.

This 6<sup>th</sup> day of December 2012, upon consideration of Appellant's Appeal from the Unemployment Insurance Appeal Board, it appears to the Court that:

1. Appellant Fitzroy Swaby ("Appellant") worked as a security guard for Appellee SEB Security ("Appellee"). On February 18, 2011, Appellee fired Appellant because the store in which Appellant worked was robbed while he was on an extended, unapproved break.

2. On March 13, 2011, Appellant applied for unemployment benefits. A claims deputy disqualified him from receiving benefits because his firing was for “just cause.”<sup>1</sup> Appellant did not appeal this determination. On August 7, 2011, Appellant filed a new unemployment benefits claim. On September 26, 2011, a claims deputy determined Appellant did not meet the re-qualification requirements and denied his application.<sup>2</sup> Appellant timely appealed this claim.
3. On October 27, 2011, an appeals referee heard Appellant’s appeal. On October 28, 2011, the appeals referee affirmed the claims deputy’s denial of Appellant’s claim. On November 3, 2011, Appellant timely appealed to the Board. The Board scheduled Appellant’s appeal for January 11, 2012, but it was postponed at Appellant’s request. The hearing was rescheduled for February 22, 2012. Appellant received proper notice of the new hearing’s date, time, and location.
4. On February 22, 2012, the Board convened to hear Appellant’s appeal. Appellant, however, did not show up. The Board waited an appropriate amount of time and dismissed Appellant’s appeal because he did not show up.<sup>3</sup> Appellant timely appealed the Board’s decision to this Court.
5. On May 29, 2012, Appellant submitted his opening brief, which reads, in its entirety:

I Fitzroy Swaby would like to make known that I wasn’t given an opportunity to resolve my matter with [the] Unemployment Insurance Appeal Board due to the cause of SEB Security’s negligence of employment.

---

<sup>1</sup> 19 *Del. C.* § 3314(2) (“An individual shall be disqualified for benefits for the week in which the individual was discharged from the individual's work for just cause in connection with the individual's work and for each week thereafter until the individual has been employed in each of 4 subsequent weeks (whether or not consecutive) and has earned wages in covered employment equal to not less than 4 times the weekly benefit amount”).

<sup>2</sup> *Id.*

<sup>3</sup> 19 *Del. Admin. C.* § 1201-4.2 (“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.”).

6. On June 14, 2012, the Board submitted a brief defending its decision to dismiss Appellant's appeal because he "failed to avail himself of his administrative remedies."
7. Appellee has filed nothing in this case on appeal, but the Court may hear Appellant's appeal without the non-appealing party filing a brief.<sup>4</sup>
8. Dismissal is appropriate under Superior Civil Court Rule 72(i) because Appellant failed to file an appropriate opening brief.<sup>5</sup> Appellant did not cite any case law or point to anything in the record favoring reversal.
9. Assuming, *arguendo*, that Appellant's brief was satisfactory, dismissal is still appropriate. The Court must uphold the Board's decision absent an error of law or abuse of discretion.<sup>6</sup> Also, judicial review is not available until the Appellant exhausts all of his administrative remedies.<sup>7</sup> The Board dismissed Appellant's appeal because he did not show up within the required timeframe. The Court sees no abuse of discretion or error of law.

Therefore, the Board's decision is **AFFIRMED**.

**IT IS SO ORDERED.**

---

Richard R. Cooch, R.J.

cc: Prothonotary  
Unemployment Insurance Accident Board

---

<sup>4</sup> See *McIntyre v. Unemployment Insurance Appeal Board*, 962 A.2d 917, 2008 WL 4918217, at \*2 (Del. Nov. 18, 2008) (TABLE); See also Super. Ct. Civ. R. 107(e).

<sup>5</sup> Super. Ct. Civ. R. 72(i) ("The Court may order an appeal dismissed[] sua sponte . . . Dismissal may be ordered for . . . any other reason deemed by the Court to be appropriate.").

<sup>6</sup> *Funk v. Unemployment Insurance Appeal Board*, 591 A.2d 222, 225 (Del. 1991).

<sup>7</sup> See 19 Del. C. § 3322(a) ("Any decision of the Unemployment Insurance Appeal Board shall become final 10 days after the date of notification or mailing thereof, and judicial review thereof as provided in this subchapter shall be permitted only after any party claiming to be aggrieved thereby has exhausted all administrative remedies as provided by this chapter.").