SUPERIOR COURT
OF THE
STATE OF DELAWARE

E. SCOTT BRADLEY
JUDGE

SUSSEX COUNTY COURTHOUSE
1 The Circle, Suite 2
GEORGETOWN, DE 19947

March 29, 2011

Persell L. Beckett, Jr.
6471 Bayside Road
P.O. Box 223
Nassawadox, VA

Mountaire Farms of Delmarva
P.O. Box 710
Selbyville , DE 19975-0710
Attn: Roland Palmer

RE: Persell L. Beckett, Jr. v. Mountaire Farms of Delmarva
C.A. No. S10A-07-002-ESB
Letter Opinion

Date Submitted: February 8, 2011

Dear Messrs. Beckett and Palmer:

This is my decision on Persell L. Beckett, Jr.'s appeal of the Unemployment Insurance Appeal Board's dismissal of his claim for unemployment benefits for failing to appear for a hearing before the Board on his appeal of the Appeals Referee's finding that he was not entitled to unemployment benefits. Beckett worked as a line worker in a chicken processing plant for Mountaire Farms of Delmarva. He reported for work on November 11, 2009, but was not wearing company-approved safety shoes. Beckett was instructed to change into the proper safety shoes. He became argumentative with his supervisor and manager and took nearly an hour to obtain a pair of shoes and return to the processing line, after which he remained argumentative. Mountaire Farms terminated Beckett for insubordination and being disrespectful to his supervisor and manager on November 11, 2009.

Beckett filed a claim for unemployment benefits on January 24, 2010. Mountaire

Farms opposed his claim. The Claims Deputy ruled in favor of Beckett, finding that his one isolated incident of misconduct did not rise to the level of willful and wanton conduct justifying his termination. Mountaire Farms filed an appeal of the Claims Deputy's decision. The Appeals Referee reversed the Claims Deputy's decision, finding that Beckett's one isolated incident of misconduct did rise to the level of willful and wanton misconduct justifying his termination. Beckett then filed an appeal of the Appeals Referee's decision with the Board. The Board sent Beckett a written notice setting forth the date, time and location for the hearing. The written notice also told Beckett that his "failure to appear for his hearing in a timely manner could result in his appeal being dismissed." Beckett did not appear at the hearing before the Board. The Board dismissed Beckett's appeal after waiting the customary ten minute grace period. Beckett then filed an appeal of the Board's decision with this Court.

STANDARD OF REVIEW

The Supreme Court and this Court repeatedly have emphasized the limited appellate review of the factual findings of an administrative agency. On appeal from a decision of the Board, this Court is limited to a determination of whether there is substantial evidence in the record sufficient to support the Board's findings, and that such findings are free from legal error.[1] Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.[2] The Board's findings are

[1] *Unemployment Ins. Appeals Board of the Dept. of Labor v. Duncan*, 337 A.2d 308, 309 (Del. 1975).

[2] *Oceanport Ind. v. Wilmington Stevedores*, 636 A.2d 892, 899 (Del. 1994); *Battista v. Chrysler Corp.*, 517 A.2d 295, 297 (Del. Super. 1986), *app. dism.*, 515 A.2d 397 (Del. 1986).

conclusive and will be affirmed if supported by "competent evidence having probative value."[3] The appellate court does not weigh the evidence, determine questions of credibility, or make its own factual findings.[4] It merely determines if the evidence is legally adequate to support the agency's factual findings.[5] Absent an error of law, the Board's decision will not be disturbed where there is substantial evidence to support its conclusions.[6]

DISCUSSION

Beckett argues that 1) the decision for the appeal was made on bad grounds, 2) he needs a new appeal case on new grounds, and 3) he did not have transportation to the hearing before the Board. This Court's appellate review of a Board decision is limited. Since the Board did not hold a hearing on the merits of Beckett's case, the only issue this Court can properly address is whether or not the Board abused its discretion in dismissing Beckett's case. This issue has been addressed previously in *Archambault v. McDonald's Restaurant*.[7] In that case, the Court held:

> The Board maintains statutory authority to promulgate regulations designed to ensure the prompt and orderly determination of the parties' rights. In that regard, the Board has adopted Unemployment Insurance Appeals Board Rule B which provides in pertinent part, that "[a]ll parties are required to be

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[3] *Geegan v. Unemployment Compensation Commission*, 76 A.2d 116, 117 (Del. Super. 1950).

[4] *Johnson v. Chrysler Corp.*, 213 A.2d 64, 66 (Del. 1965).

[5] 29 Del.C. § 10142(d).

[6] *Dallachiesa v. General Motors Corp.*, 140 A.2d 137 (Del. Super. 1958).

[7] 1999 WL 1611337 (Del.Super. Mar. 22, 1999); See also *Strazzella v. Joe Tejas, Inc.*, 2008 WL 376354 (Del Super. Feb. 12, 2008).

> present for a hearing at the scheduled time. Any party who is not present within 10 minutes after the scheduled start time for hearing shall be deemed to waive his right to participate in said hearing." The Court cannot conclude that the Board abused its discretion by dismissing Claimant's appeal. This Court has previously recognized "the importance of adhering to a hearing schedule to efficiently manage and dispose of cases and the need to enforce rules such as Rule B to engender cooperation from the interested parties."Thus, the Court concludes that the Board did not act arbitrarily by dismissing Claimant's appeal for failure to appear.[8]

The Board did not abuse its discretion when it dismissed Beckett's appeal for not appearing on time for the hearing. Beckett was provided with notice and an opportunity to be heard. The written notice told Beckett that his "failure to appear for your hearing in a timely manner can result in your appeal being dismissed." The Board waited the customary 10 minutes after the scheduled start time before dismissing Beckett's appeal. Beckett was put on notice of the consequences of not appearing at the hearing on time and, therefore, has no reason at all to complain about the Board's dismissal of his appeal and claim for unemployment benefits.

CONCLUSION

The Unemployment Insurance Appeal Board's decision is affirmed.

IT IS SO ORDERED.

Very truly yours,

/S/ E. Scott Bradley

E. Scott Bradley

[8] *Id.* at 1999 WL 1611337, at *2.