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

KRISTEENA M. FLOWERS-NICHOLS,	)	
Appellant,	)	
v.	)	
TRI-STATE WASTE SOLUTIONS, and the UNEMPLOYMENT INSURANCE APPEAL BOARD	)	C.A. No. N10A-01-016 JAP
Appellees.	)	

Submitted: February 14, 2011
Decided: May 31, 2011

Appeal of a Decision of the Unemployment Insurance Appeal Board
*Decision **AFFIRMED.***

MEMORANDUM OPINION

Appearances:

Kristeena M. Flowers-Nichols, Pro Se Appellant

Barry M. Willoughby, Esquire and Lauren, E. Moak, Esquire, Wilmington Delaware, Attorneys for Appellee Tri-State Waste Solutions

Philip G. Johnson, Esquire, Wilmington, Delaware, Attorney for U.I.A.B.

JOHN A. PARKINS, JR., JUDGE

Factual and Procedural Background

The primary issue here is whether an unemployment insurance claimant is barred from challenging in a later petition an earlier adverse ruling from a claims deputy from which she took no appeal.

Claimant Kristeena M. Flowers-Nichols, (the "Claimant"), was employed as a customer service representative by Tri-State Waste Solutions, ("Tri-State"), from October 1, 2007 to August 22, 2008.[1] On her last day, the Claimant was disciplined and "written-up" by her supervisor, Kevin Beane, who allegedly screamed at her and demanded that she sign her "write-ups."[2] Claimant asserts that she refused to sign the documents because she did not agree with their contents. She alleges that as a result of her refusal to sign the write-ups, her supervisor told her that if she was going to be defiant she should "pack her shit" and "fucking leave."[3] The Claimant took this to mean that she was fired, and, consequently, she retrieved her personal belongings and left the job.[4] While she did so, her supervisor followed her and watched her until she left.[5] Tri-

[1] Record of the Appeal, 2, 15 (Sept. 2, 2010) (hereinafter "R").
[2] R at 2; Claimant's Opening Brief, 1 (Nov. 12, 2010).
[3] R at 2; Claimant's Opening Brief at 1. The Court takes note that in Claimant's notice of appeal and opening brief, in addition to discussing her last day on the job, Claimant alleges in detail several incidents of abusive and/or illegal behavior occurring at Tri-State including: racism, sexual harassment, blackmail, verbal abuse, work-place bullying, and false accusations. *See* R at 40; Claimant's Opening Brief at 4-10. Although the Court has no reason to address any of these extraneous contentions at this time, the Court finds it extremely disturbing that such alleged abuses are potentially occurring at Tri-State, a Delaware employer.
[4] Claimant's Opening Brief at 1.
[5] Claimant's Opening Brief at 1.

State contends that Claimant chose to be defiant by not signing her "write-ups" and voluntarily walked off the job.[6]

On September 17, 2008, a claims deputy with the Department of Labor reviewed Claimant's first claim for unemployment insurance benefits and determined that she was disqualified under 19 *Del.C.* § 3314(1) due to her voluntary separation from Tri-State.[7] Section 3314(1) provides:

> An individual shall be disqualified for benefits: (1) For the week in which the individual left work voluntarily without good cause attributable to such 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.[8]

Since Claimant had neither returned to work for at least four weeks after voluntarily leaving Tri-State nor earned the appropriate amount of wages as required by the statute, the claims deputy deemed her disqualified for benefits.[9] Claimant did not appeal the deputy's decision.[10] She seeks to excuse her failure to timely appeal on the basis that she was out of the country when she received her initial denial of benefits in the mail.[11]

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[6] Tri-State's Answering Brief at 3.
[7] R at 5.
[8] 19 *Del.C.* § 3314(1).
[9] R at 5.
[10] R at 10, 20.
[11] R at 1, 20.

Since she could not find work, Claimant began attending school full time in June 2009.[12] She was referred by school personnel to the Department of Labor in order to obtain grant money.[13] Department of Labor personnel questioned her status as to unemployment benefits and suggested that she re-file.[14] So, on June 19, 2009, approximately ten months after the deputy denied her initial claim for benefits, Claimant filed a second claim in the hope of having her case reconsidered.[15] Since nothing had changed as to Claimant's employment situation—she still had not returned to work for four weeks or earned the requisite wages as required by the statute—the claims deputy again found her to be disqualified for benefits.[16]

Claimant appealed this determination on July 13, 2009, and a hearing was held August 10, 2009.[17] At the hearing, Claimant did not present any evidence that she had returned to work or earned any monies; in fact, she testified that she was attending school full-time.[18] Claimant did, however, attempt to argue that she did not voluntarily separate from Tri-State, she was fired, and, thus, she was qualified for unemployment benefits.[19] The appeals referee would not allow testimony as to whether Claimant's separation was a

[12] R at 3, 17-18, 23.
[13] R at 10, 19.
[14] R at 10, 19.
[15] R at 1, 5, 10, 17.
[16] R at 5.
[17] R at 6-9.
[18] R at 10-11, 17-18.
[19] R at 20.

resignation or a fire because she did not appeal the initial decision (dated September 17, 2008) finding her to be disqualified because her separation was voluntary.[20] Therefore, without evidence demonstrating that Claimant had worked the required four weeks or met the income requirement of 19 *Del.C.* § 3314(1), the appeals referee found that she was still disqualified for benefits.[21]

Claimant again appealed.[22] The Board heard the matter on November 10, 2009, during which Claimant presented testimony that she returned to school full-time because she was unable to find employment.[23] She also again attempted to argue that she had been harassed at work and urged the Board to "read [her] claim from the beginning . . . [and take] a second look . . . ."[24] On December 29, 2009, the Board affirmed the decision of the appeals referee, finding that Claimant continues to be disqualified for benefits because she fails to meet the employment or income requirements for qualification.[25] The Board further found that Claimant had not rebutted the presumption that she is unavailable for work because she is a full-time student.[26]

The Board mailed its decision to Claimant on December 29, 2009;[27] but, as noted on page two of the decision, it did not become final until January 10,

[20] R at 20.
[21] R at 11.
[22] R at 23.
[23] R at 33-34.
[24] R at 35.
[25] R at 27.
[26] R at 27.
[27] R at 27.

2010.[28] The Board informed Claimant that she had ten days from the date that the decision becomes final to appeal the decision to Superior Court.[29] On January 14, 2010, Claimant filed a *pro se* letter of appeal with this Court.[30] She, then, filed the appropriate documents including the Notice of Appeal on January 20, 2010.[31]

Contentions of the Parties

Claimant contends that she did not voluntarily separate from employment with Tri-State but was verbally abused and told to leave and, consequently, should qualify for benefits.[32] Tri-State asserts that Claimant's appeal is untimely, and, therefore, the Court does not have jurisdiction over the matter.[33] Tri-State argues that, even if timely, Claimant's appeal fails because her argument applies to the initial denial of benefits dated September 17, 2008, in which the claims deputy determined that she voluntarily quit.[34] Tri-State contends that because Claimant did not appeal that initial denial but, instead, initiated a new claim some ten months later, she cannot now go back in time

[28] R at 27.
[29] R at 29.
[30] Correspondence from Claimant, 1 (Jan. 14, 2010).
[31] R at 39-40.
[32] Claimant's Opening Brief at 1.
[33] Tri-State's Answering Brief at 6.
[34] Tri-State's Answering Brief at 7.

and present argument apropos of the initial denial.[35] Tri-State further claims that the Board's decision should be upheld because Claimant has presented no evidence demonstrating that she is qualified for benefits.[36]

[35] Tri-State's Answering Brief at 8.
[36] Tri-State's Answering Brief at 8-10.

Jurisdiction

"Within 10 days after the decision of the Unemployment Insurance Appeal Board *has become final*, any party aggrieved thereby may secure judicial review thereof by commencing an action in the Superior Court . . . ."[37] With regard to an appeal to the Board from a decision of an appeals referee or an appeal from a claims deputy, the ten-day period begins to run on the date the decision *is mailed*.[38] Failing to file an appeal within the statutory time period divests this Court of jurisdiction to hear the matter.[39]

Here, the Board mailed its decision regarding Claimant's second claim for benefits on December 29, 2009. The decision, however, did not become final until January 10, 2010.[40] Thus, a timely appeal would have to be made within ten days after January 10, 2010. Claimant filed a letter asking for an appeal with the Court on January 14, and she followed up by filing a notice of appeal on January 20, 2010, both of which are within the statutory limit of ten days after the date of finality.

Relying on 19 *Del.C.* § 3323(a), Tri-State attempts to argue that since the Board's decision was mailed on December 29, 2009, any appeal would have to be filed by January 10, 2010, or within ten days of the mailing date. Yet, the

[37] 19 *Del.C.* § 3323(a) (emphasis added).
[38] 19 *Del.C.* § 3318(b)(c); *Funk v. Unemployment Ins. Appeal Bd.*, 591 A.2d 222, 224 (Del. 1991) (emphasis added).
[39] *Draper King Cole v. Malave*, 743 A.2d 672, 673 (Del. 1999) (stating that the timely filing of an appeal is mandatory); *Boone v. Lewes Auto Mall*, 2010 WL 5313474, *1, Bradley, J. (Del. Super. Nov. 22, 2010).
[40] R at 27.

statute that Tri-State relies on clearly states that the ten-day period begins to run, not on the mailing date, but on the date the decision "has become final."[41] Tri-State appears to be confusing the time limitations of an appeal to the Board—10 days from mailing—with the time limitations of an appeal to the Court—10 days from finality. The limitations for an appeal to either an appeals referee or to the Board are laid out under 19 *Del.C.* § 3318(b)-(c) whereas the parameters for an appeal to this Court are mandated by 19 *Del.C.* § 3323(a). The Court, therefore, rejects Tri-State's argument. Claimant's appeal of the Board's decision is timely, and, thus, this Court has jurisdiction to hear it.

Standard of Review

The Court reviews the Board's decision to determine if substantial evidence exists in the record to support the Board's findings and to determine if the Board committed legal error.[42] Substantial evidence is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion."[43] The Court reviews for an abuse of discretion a Board's decision

[41] 19 *Del.C.* § 3323(a).
[42] *Unemployment Ins. Appeal Bd. v. Martin*, 431 A.2d 1265, 1266 (Del. 1981); *Hubble v. Delmarva Temporary Staffing, Inc.*, 2003 WL 1980811, *2, Graves, J. (Del. Super. April 28, 2003).
[43] *Hubble*, 2003 WL 1980811 at *2 (quoting from *Gorrell v. Div. of Vocational Rehab. and Unemployment Ins. Appeal Bd.,* C.A. No. 96A-01-001, Graves, J. (Del. Super. July 31, 1996) Letter Op. at 4.).

on whether to hear an appeal on its own motion.[44] The Board abuses it discretion where it surpasses reason, ignores the law, and causes injustice.[45]

Discussion

The Board's Discretion

The Board may only hear "cases properly before it in compliance with the statutory law."[46] The Board does not have the power to hear an untimely appeal brought by a party.[47] On the other hand, even without a timely appeal, the Board has discretion under 19 *Del.C.* § 3320 to review a case *sua sponte* "if the failure to timely appeal was caused by administrative error or if the interests of justice would not be served by inaction."[48] Yet, such cases would be rare.[49]

In *Funk v. Unemployment Ins. Appeal Bd*., the Supreme Court determined that the Board did not abuse its discretion in refusing to *sua sponte* consider a claimant's untimely appeal where the decision on which the appeal was based was mailed to the correct address but delivered to the wrong house on claimant's road.[50] The *Funk* claimant knew that his mail was commonly

[44] *Funk*, 591 A.2d at 225; *George v. Unemployment Ins. Appeal Bd.*, 2008 WL 4147350, *2, Ableman, J. (Del. Super. Sept. 9, 2008).
[45] *George*, 2008 WL 4147350 at *2.
[46] *Chrysler Corp. v. Dillon*, 327 A.2d 604, 605 (Del. 1974).
[47] *Dillon*, 327 A.2d at 605.
[48] *Funk,* 591 A.2d at 225; *George,* 2008 WL 4147350 at *3.
[49] *George*, 2008 WL 4147350 at *3.
[50] *Funk*, 591 A.2d at 223, 225-6.

misdelivered, and, the Court stated that such circumstances "did not call for the unusual action of the Board taking an appeal upon its own motion."[51]

In this matter, Claimant timely appealed the denial of her second claim for benefits. This second claim was denied because (1) Claimant did not fulfill the employment and earning requirements of 19 *Del.C*. 3314(1) which apply to an employee who is determined to have voluntarily left a job and (2) Claimant was unavailable for work. Claimant has not challenged the finding that she has not met the employment and earnings requirement in order to re-qualify for benefits. Likewise, she has not challenged the finding that she became unavailable for work because she began attending school full time; she argues for unemployment benefits only from the date she claims she was fired from Tri-State (August 22, 2008) to the date she began school (June 2009).[52] Claimant simply challenges the voluntariness of her separation from Tri-State—throughout this entire appellate process and in her testimony and briefing,[53] Claimant continually pleads for a review not of her second claim for benefits, but of her initial claim which was denied because a claims deputy determined that she was not fired but left Tri-State voluntarily and was, therefore,

[51] *Funk*, 591 A.2d at 225.
[52] Claimant's Reply Brief at 1.
[53] R at 1, 5, 10, 17, 20, 35; Claimant's Opening Brief at 1.

disqualified for benefits.[54] Nevertheless, although Claimant has persistently argued the substantive merits of her disqualification, the appellate officers did not consider the issue.[55] Accordingly, the Court infers that Claimant's contention is that the Board abused its discretion by declining to *sua sponte* consider the merits of her initial claim in the interests of justice.[56]

Claimant's failure to timely appeal from the ruling of the claims deputy that she voluntarily left her employment rests squarely on her shoulders. She left the country voluntarily shortly after the hearing before the deputy, knowing that a ruling from the deputy would likely be forthcoming in the near future. Claimant is charged with knowledge that in the event she was aggrieved by the deputy's ruling, a short deadline limited the time in which she could appeal. Yet she made no arrangements to have her mail checked or otherwise assure herself she would receive prompt notice of any ruling. The UIAB (and other administrative agencies, for that matter) cannot function if inattention by a claimant is allowed to frustrate the board's administrative processes (which in this case are statutorily mandated).

The facts here are similar to those in *Funk* where the claimant knew that his mail was commonly misdelivered and, therefore, could have made

[54] R at 5.
[55] *See e.g.* R at 20.
[56] *See* R at 35; *see e.g. George*, 2008 WL 4147350.

arrangements to receive notice. The *Funk* Court stated that "a claimant awaiting an important decision from an appeal tribunal would regularly check the locations at which he receives mail."[57] That Court ultimately found no abuse of discretion on the part of the Board in failing to *sua sponte* take up the appeal.[58]

Accordingly, since the Board acted within in its discretion in refusing to hear argument on the substantive issues related to Claimant's initial claim and since the Claimant did not challenge the Board's findings that she has not been employed since her separation from Tri-State and that she was unavailable for work, the Board's decision is ***AFFIRMED.***

It Is So ORDERED.

_____/s/_____
Judge John A. Parkins, Jr.

[57] *Funk*, 591 A.2d at 226.
[58] *Funk*, 591 A.2d at 223, 225-6.