

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

JUAN TRINIDAD HENIQUEZ,)	
)	
Appellant,)	C.A. No. N10A-08-016 DCS
)	
v.)	
)	
PAOLI SERVICES, INC.)	
and the UNEMPLOYMENT)	
INSURANCE APPEAL BOARD,)	
)	
Appellees.)	
)	

Submitted: March 14, 2011
Decided: June 21, 2011

On Appeal from a Decision of the Unemployment Insurance Appeal Board.
AFFIRMED.

ORDER

Juan Trinidad Heniquez, *pro se*, Appellant.

G. Kevin Fasic, Esquire, Cooch and Taylor P.A., Wilmington, Delaware,
Attorney for Appellee, Paoli Services, Inc.

Katisha D. Fortune, Esquire, Deputy Attorney General, Department of Justice,
Wilmington, Delaware, Attorney for Appellee, the Unemployment Insurance Appeal
Board.

STREETT, J.

This 21st day of June, 2011 upon consideration of Appellant's appeal from a decision on the Unemployment Insurance Appeal Board ("UIAB"), it appears to the Court that:

FACTS

Appellant Juan Trinidad Heniquez¹ ("Appellant") was employed as a cement finisher by Appellee Paoli Services, Inc. ("Paoli") for approximately four years until February 6, 2010.² There is some dispute as to what occurred on Appellant's last day of work. According to Appellant, he was assigned to a sidewalk shoveling crew during a severe, ongoing snowstorm.³ Appellant alleges that his supervisor gave him permission to leave the shoveling site and return to finish shoveling when the storm had subsided.⁴ Appellant contends that, after unsuccessful attempts to contact his supervisor by phone, he returned to the shoveling site and was told that he had been terminated.⁵

However, other documents within the record show inconsistencies in Appellant's account of the events on his last day. A Department of Labor document signed by Appellant states that Appellant's supervisor told him that he was terminated and should file for unemployment benefits after Appellant told his supervisor that he could not do the shoveling job by himself.⁶ Another document bearing Appellant's name and social

¹ Record at *passim*, Appellant's Opening Brief, Paoli's Answering Brief. Appellant's correct name is unclear. He is referenced as Juan Trinidad Heniquez, Juan Trinidad Henriquez, Juan Trinidad Hernandez, and Juan Trinidad.

² Record at 13. The exact start date of Appellant's employment is unclear, but the record indicates that he worked for Paoli for approximately four years.

³ Record at 15.

⁴ Record at 15.

⁵ Record at 16.

⁶ Record at 6.

security number states that Appellant did not shovel the snow because his hands would be cold.⁷

According to Paoli, Appellant refused to fulfill his shoveling duties during a major snow storm and never returned to work thereafter.⁸ Paoli further states that there were other employees on site to assist with the shoveling and denies instructing Appellant to file for unemployment benefits.⁹

PROCEDURAL HISTORY

On February 14, 2010, Appellant filed a claim for unemployment benefits indicating that he had been terminated by his employer.¹⁰ Following an investigation, the Claims Deputy issued a determination on June 1, 2010 that Appellant was disqualified from receiving benefits because Appellant voluntarily left his job.¹¹ That same day, the determination was mailed to Appellant's last known address via first class mail.¹² The determination stated that the deadline to appeal was June 11, 2010 in accordance with 19 *Del. C.* § 3318(b).¹³ The United States Postal Service never returned the determination to the Department of Labor as undeliverable.¹⁴ Appellant filed his appeal on June 14, 2010.¹⁵

⁷ Record at 1.

⁸ Record at 2, 8; Paoli's Ans. Br. at 1.

⁹ Record at 7.

¹⁰ Record at 8.

¹¹ Record at 8.

¹² Record at 9, 13, 20.

¹³ Record at 9, 13. 19 *Del. C.* § 3318(b) states, in pertinent part, "Unless a claimant or a last employer ... files an appeal within 10 calendar days after such Claims Deputy's determination was mailed to the last known addresses of the claimant and the last employer, the Claims Deputy's determination shall be final."

¹⁴ Record at 20.

¹⁵ Record at 10.

On July 20, 2010, a hearing was held before the Appeals Referee to address the timeliness of Appellant's appeal.¹⁶ Appellant attended the hearing and testified through an interpreter.¹⁷ Paoli did not attend the hearing.¹⁸ Appellant confirmed that the Claims Deputy's determination had been addressed to the correct mailing address but could not recall when he had received it.¹⁹ Appellant also stated that he checked his mail every day and that he filed his appeal the day after he received the determination.²⁰ At the conclusion of the July 20, 2010 hearing, the Referee upheld the decision of the Claims Deputy based on the Referee's finding that Appellant had failed to file a timely appeal pursuant to 19 *Del. C.* § 3318(b), there was no evidence of administrative error, the determination had been mailed to the correct mailing address, and there were no mitigating circumstances that would allow a waiver of the timeliness requirement.²¹

On July 26, 2010, Appellant filed a timely appeal of the Referee's decision with the UIAB.²² The UIAB reviewed Appellant's appeal on August 11, 2010 and denied further review.²³ The UIAB found that Appellant did not allege any departmental error that would have hindered his ability to file a timely appeal and that there were not

¹⁶ Record at 11.

¹⁷ Record at 12.

¹⁸ Record at 12. Paoli was not required to attend the hearing because the merits of Appellant's claim for unemployment benefits were not being addressed.

¹⁹ Record at 13. "The claimant confirmed 617 Robinson Lane, Wilmington, Delaware 19805 as his correct mailing address."

²⁰ Record at 13. Paoli claims that Appellant gave wavering testimony as to whether or not he checked his mail every day. Paoli's Ans. Br. at 5.

²¹ Record at 13-14.

²² Record at 20-21.

²³ Record at 20-21.

adequate grounds to exercise its discretion to consider untimely appeals under 19 *Del. C.* § 3320.²⁴

On August 31, 2010, Appellant filed his appeal with this court.²⁵ Appellant's notice of appeal states only one ground: "because they stop the check [sic]."²⁶ In his opening brief filed February 21, 2011, Appellant further argues that he is a good worker, that he has a family to take care of, that he never missed a day of work, and that Paoli paid him only \$11.00 per hour during his four years as an employee despite promising to pay him \$25.00 per hour when he was hired.²⁷ For these reasons, Appellant asks that the UIAB's decision be reversed.

Paoli filed an answering brief on March 14, 2011.²⁸ Paoli contends that it is undisputed that Appellant's appeal of the Claims Deputy's determination was filed on June 14, 2010, after the ten day appeal period to appeal had expired.²⁹ Additionally, Paoli notes that Appellant cannot confirm when he received the determination and gave inconsistent testimony about how often he checked his mail.³⁰ Paoli further asserts that Appellant's timely appeal of the Referee's decision suggests that Appellant could have timely appealed the Claims Deputy's determination.³¹ Paoli argues that there are no mitigating circumstances or evidence of administrative error which would warrant the

²⁴ Record at 21.

²⁵ Record at 25-26.

²⁶ Record at 26.

²⁷ Appellant's Op. Br. at 1-2.

²⁸ Paoli's Ans. Br. at 1.

²⁹ Paoli's Ans. Br. at 5.

³⁰ Paoli's Ans. Br. at 5.

³¹ Paoli's Ans. Br. at 6.

UIAB's exercise of discretion to accept untimely appeals pursuant to 19 *Del. C.* § 3320.³²

Finally, Paoli contends that Appellant's appeal to this Court makes no reference to the timeliness issue.³³ For these reasons, Paoli asks that the UIAB's decision be upheld.³⁴

STANDARD OF REVIEW

The Superior Court's review of UIAB decisions is limited to determining whether the UIAB's decision is supported by substantial evidence and free from legal error.³⁵

“When reviewing a decision on appeal from an agency, the Superior Court does not weigh the evidence, determine questions of credibility, or make its own factual findings.”³⁶

In determining whether substantial evidence exists to support the UIAB's decision, this Court must view the record in the light most favorable to the prevailing party.³⁷ If the UIAB's decision is supported by “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion,” then the substantial evidence standard is satisfied.³⁸ “Even if this Court might have reached a different conclusion than

³² Paoli's Ans. Br. at 6.

³³ Paoli's Ans. Br. at 7.

³⁴ Paoli's Ans. Br. at 6.

³⁵ *Broadnax v. West End Neighborhood House*, 2010 WL 740523, at *2 (Del. Super. March 2, 2010)(citing *Starkey v. Unemployment Ins. Appeal Bd.*, 340 A.2d 165, 166 (Del. Super. 1975)).

³⁶ *Id.* (citing *Holowka v. New Castle County Bd. of Adjustment*, 2003 WL 21001026, at *3 (Del. Super. April 15, 2003)).

³⁷ *Bromwell v. Chrysler LLC*, 2001 WL 4513086, at *3 (Del. Super. Oct. 28, 2010)(citing *E.I. DuPont De Nemours & Co. v. Faupel*, 859 A.2d 1042, 1046-47 (Del. Super. 2004)).

³⁸ *Milnamow v. E.F. Technologies, Inc.*, 2011 WL 1102977, at *2 (Del. Super. March 24, 2011)(citing *Anchor Motor Freight v. Ciabattoni*, 716 A.2d 154, 156 (Del. 1998)).

the [UIAB] in the first instance, a decision of the [UIAB] must be affirmed if it is supported by substantial evidence and is free from legal error.”³⁹

The Court reviews the UIAB’s discretionary decisions under 19 Del. C. § 3320 for abuse of discretion.⁴⁰ Absent an abuse of discretion in which the UIAB “exceeds the bounds of reason in view of the circumstances and has ignored recognized rules of law or practice so as to produce injustice,” the UIAB’s discretionary decision will be upheld.⁴¹

DISCUSSION

The sole issue on appeal is whether the UIAB’s decision declining to accept Appellant’s untimely appeal is supported by substantial evidence, is free from legal error, and is not an abuse of discretion. Pursuant to 19 *Del. C.* § 3318(b), a claimant must make an appeal of the denial of benefits within ten calendar days after such determination is mailed to the claimant.⁴² Unless the claimant never received the mailing because of a Department of Labor error, the ten day period begins running on the date of the mailing.⁴³ If the appeal is not made within ten days of the mailing, the denial of benefits is final.⁴⁴

³⁹ *Bromwell*, 2001 WL 4513086, at *2 (citing *Brogan v. Value City Furniture*, 2002 WL 499721, at *2 (Del. Super. March 27, 2002)).

⁴⁰ *Milnamow*, 2011 WL 1102977, at * 2. See also *Funk v. UIAB*, 591 A.2d 222, 225 (Del. 1991); *Meacham v. Del. Dep’t of Labor*, 2002 WL 442168, at *1 (Del. Super. March 21, 2002).

⁴¹ *Milnamow*, 2011 WL 1102977, at *2 (citing *Nardi v. Lewis*, 2000 WL 303147, at *2 (Del. Super. Jan. 26, 2000)).

⁴² 19 *Del. C.* § 3318(b) states, in pertinent part, “Unless a claimant ... files an appeal within 10 calendar days after such Claims Deputy’s determination was mailed to the last known addresses of the claimant and the last employer, the Claim’s Deputy’s determination shall be final.”

⁴³ *Lively v. Dover Wipes Co.*, 2011 WL 21213415, at *1 (Del. Super. May 16, 2003)(citing *Bowers v. Unemp’t. Ins. App. Bd.*, 1998 WL 283401, at *4 (Del. Super. Jan. 12, 1998)).

⁴⁴ *Funk v. UIAB*, 591 A.2d 222, 224 (Del. 1991).

In the present case it is clear that the appeal was filed in an untimely manner. The Claims Deputy's determination was mailed on June 1, 2010 via first class mail and was never returned to the Department of Labor as undeliverable.⁴⁵ The determination stated on its face that the deadline to appeal was June 11, 2010.⁴⁶ It is undisputed that Appellant filed his appeal on June 14, 2010, more than ten days after the original mailing date.⁴⁷

Appellant could not recall when he received the determination, but confirmed his address and acknowledged that he did, in fact, receive it.⁴⁸ Furthermore, Appellant's appeal of the Referee's decision within six days of the mailing date tends to support the fact that the original determination was sent to the proper address and suggest that Appellant had the ability to file the first appeal before the deadline.⁴⁹ Though it is unclear how often Appellant checked his mail, the Delaware Supreme Court has held that "[i]t is reasonable to expect that a claimant awaiting an important decision from an appeal tribunal would regularly check the locations at which he receives mail."⁵⁰ The law is clear that the UIAB's administrative process should not be circumvented by a claimant's lack of diligence concerning the mail.⁵¹

⁴⁵ Record at 13, 20.

⁴⁶ Record at 9, 13. 19 *Del. C.* § 3318(b) states, in pertinent part, "Unless a claimant or a last employer ... files an appeal within 10 calendar days after such Claims Deputy's determination was mailed to the last known addresses of the claimant and the last employer, the Claims Deputy's determination shall be final."

⁴⁷ Record at 9.

⁴⁸ Record at 13.

⁴⁹ Record at 20.

⁵⁰ See *Funk*, 591 A.2d at 226. See also *Lively v. Dover Wipes Co.*, 2003 WL 21213415, at * 1 (Del. Super. March 13, 2003) ("Delaware law presumes that a notice of hearing which is mailed to the claimant with the proper address and postage, has been received by the claimant.")

⁵¹ *Flowers-Nichols v. Tri-State Waste Solutions*, 2011 WL 2176515, at *4 (Del. Super May 31, 2011)("Claimant is charged with knowledge that in the event [the claimant] was aggrieved by the deputy's

Finally, Appellant did not dispute that the initial appeal was untimely and offered no explanation for his lateness.⁵² Rather, Appellant simply reiterates the underlying merits of his claim for unemployment benefits. Because Appellant has failed to exhaust his administrative remedies by filing a timely appeal, this Court has no jurisdiction to consider the merits of his claim.⁵³

In rare instances,⁵⁴ the UIAB may exercise its discretionary power and accept appeals *sua sponte* after the ten day period pursuant 19 *Del. C.* § 3320.⁵⁵ However, the UIAB generally exercises this discretion only where there has been some administrative error by the Department of Labor or where “the interests of justice would not be served by inaction.”⁵⁶ Here, there is no evidence of any administrative error by the Department of Labor. In addition, Appellant did not argue that there was any error on the part of the department that impeded his ability to file an appeal.⁵⁷ Thus, there is no basis for the UIAB to accept Appellant’s untimely appeal based on error.

ruling, a short deadline limited the time in which [the claimant] could appeal. Yet [the claimant] made no arrangements to have her mail checked or otherwise assure herself she would receive prompt notice of any ruling. The UIAB ... cannot function if inattention by a claimant is allowed to frustrate the board’s administrative process.”).

⁵² Appellant’s Op. Br. at 1. Record at 21.

⁵³ *Lively*, 2011 WL 21213415, at *2 (citations omitted).

⁵⁴ *George v. Unemployment Ins. Appeal Bd.*, 2008 WL 4147350, at *3 (Del. Super. Sept. 9, 2008).

⁵⁵ 19 *Del. C.* § 3320 states: “The Unemployment Insurance Appeal Board [UIAB] may on its own motion, affirm, modify, or reverse any decision of an appeal tribunal on the basis of the evidence previously submitted to the appeal tribunal or it may permit any of the parties to such decision to initiate further appeal before it.”

⁵⁶ Record at 21. See *Funk*, 591 A.2d at 225 (“[I]n a situation where a party has filed a late appeal from an administrative decision, the Board is extremely cautious in assuming jurisdiction over the matter. It does so only in those cases where there has been some administrative error on the part of the Department of Labor which deprived the claimant of the opportunity to file a timely appeal or in those cases where the interests of justice would not be served by inaction.”) See also *Milnamow*, 2011 WL 1102977, at *3.

⁵⁷ Record at 21.

Moreover, Appellant did not allege any compelling reason for the UIAB to accept his untimely appeal in “the interests of justice.”⁵⁸ In *Milnamow v. E.F. Technologies, Inc.*, the Delaware Superior Court found that it was possible that “the interests of justice” would warrant the UIAB’s exercise of its 19 *Del. C.* § 3320 discretionary power and remanded the UIAB’s decision to deny review of an untimely appeal.⁵⁹ In that case, where the claimant had presented doctors certificates stating that he could work and had testified that he was willing to work, the court found that the UIAB lacked sufficient evidence to support its finding that the claimant, who had been injured on the job, was unable to work.⁶⁰

In the instant case, no such extreme circumstances exist which would, in “the interests of justice,” merit the UIAB’s acceptance of Appellant’s untimely appeal. Here, the record shows conflicting accounts of the events on February 6, 2010 which brought about the end of Appellant’s employment with Paoli. Appellant offered no evidence to corroborate his allegation that he was terminated and gave inconsistent statements about his last day of work. The UIAB assessed the credibility of the parties’ statements and upheld the Claims Deputy’s determination that Appellant had left his job voluntarily. “It is the sole province of the [UIAB] to resolve questions of credibility and such

⁵⁸ *George*, 2008 WL 4147360, at * 3. See also *Funk*, 591 A.2d at 225 (Board is extremely cautious when exercising discretion when a party has filed a late appeal and will only do so when there has been administrative error and in very rare cases where injustice would be served by inaction); *Bruner v. Unemployment Insurance Appeal Board*, 2009 WL 5177164, at *2 (Del. Super. Nov. 2, 2009) (Hospitalization and subsequent recovery is not a circumstance that rises to a level where the Board is required to act in the interest of justice.).

⁵⁹ 2011 WL 1102977, at *4.

⁶⁰ *Id.*

determinations are conclusive.”⁶¹ The UIAB found Paoli’s testimony to be more credible, and this Court will not disturb the UIAB’s finding on that matter.⁶²

Moreover, the Court finds that the UIAB did not exceed the bounds of reason, ignore any recognized rules of law or practice, or in any way abuse its discretion so as to produce injustice. Absent such evidence of abuse, the Court’s must uphold the UIAB’s discretionary decision under 19 *Del. C.* § 3320.⁶³

CONCLUSION

Upon review of the record, the Court finds that the UIAB’s decision to affirm the Claim’s Deputy’s determination and to decline to accept Appellant’s untimely appeal is supported by substantial evidence, is free from legal error, and involved no abuse of discretion.

For the forgoing reasons, this Court hereby affirms the decision of the UIAB.

IT IS SO ORDERED.

/s/ Diane Clarke Streett
Diane Clarke Streett
Judge

⁶¹ *Weikel v. Village Printing, Inc.*, 1995 WL 862124, at *2 (Del. Super. Aug. 17, 1995)(citing *Morgan v. Anchor Motor Freight, Inc.*, 506 A.2d 185, 188 (Del. Super. 1986)).

⁶² See *Weikel*, 1995 WL 862124.

⁶³ *Milnamow*, 2011 WL 1102977, at *2 (citing *Nardi v. Lewis*, 2000 WL 303147, at *2 (Del. Super. Jan. 26, 2000)).