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

PRINCE C. DAVIS,	)	
	)	
Appellant,	)	
	)	
v.	)	C.A. No. N10A-09-017 JAP
	)	
STARVING STUDENTS and UNEMPLOYMENT INS APPEAL BOARD,	)	
	)	
Appellees.	)	

Submitted: June 17, 2011
Decided: July 20, 2011

MEMORANDUM OPINION

Prince C. Davis, Wilmington, Delaware
Pro Se Appellant

Starving Students, Wilmington, Delaware
Pro Se Appellee

Katisha D. Fortune, Esquire, Department of Justice,
Wilmington, Delaware
Attorney for Appellee U.I.A.B

JUDGE JOHN A. PARKINS, JR.

The issue in this appeal is whether the Unemployment Insurance Appeals Board properly dismissed this matter because the employee failed to timely file an appeal from the decision of the determination of the Claims Deputy.

Employee was working as a driver for Starving Students when, on January 31, 2010, he lost his job because his driver's license was suspended. He timely filed for benefits and his employer responded that it had offered him another position which Mr. Davis refused. Mr. Davis did nothing to contest Starving Students' submission, so, as a result, the Claims Deputy found that he was disqualified from benefits.[1]

The Claims Deputy's ruling was mailed to Mr. Davis on June 3, 2010. Under the statutory scheme governing unemployment claims, Mr. Davis was obligated to file any appeal on or before June 14, 2010 (June 13 was a Sunday). Section 3318(b) of title 19 provides that "[u]nless a claimant or a last employer ... files an appeal within 10 calendar days after such Claims Deputy's determination was mailed to the last address of the claimant ... the Claims Deputy's determination *shall be final.*"[2] The language of the statute is clear and leaves no room for interpretation – an appeal must be filed within ten days of mailing (not receipt) or the

[1] 19 *Del. C.* § 331 (3) (claimant disqualified from benefits if he or she refuses to accept an offer of work which he or she is qualified to perform.

[2] 19 *Del. C.* § 3318(b) (emphasis added).

Deputy's determination is final. Not surprisingly, therefore, section 3318(b) has been interpreted as jurisdictional.[3]

Mr. Davis contends that he never received the letter, thus presumably raising the question whether it was ever mailed. The U.I.A.B. found that the letter was mailed and received by Mr. Davis. That finding is supported by more than adequate evidence. At the hearing conducted by the U.I.A.B., Mr. Davis testified on several occasions that he received the Claims Deputy's determination and did not read it. According to Mr. Davis:

> "I probably received it in the mail, but I didn't actually look at the document."[4]
>
> * * *
>
> "I probably received it, but I never looked at it."[5]
>
> "**REFEREE**: You didn't open your mail then?
>
> "**MR. DAVIS**: Right, no. I didn't see that document until the day that I came in to put the appeal in and that was after I got home.
>
> "**REFEREE**: Put the appeal in and then you came in and then opened some mail up and there it is?
>
> "**MR. DAVIS**: Okay yeah."[6]

The factual findings of the U.I.A.B. are conclusive if they are supported by evidence and are not the product of fraud.[7] Mr. Davis's testimony provides evidence supporting the conclusion that he received the determination and simply did not open it. There is no contention that

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[3] *Funk v. U.I.A.B.*, 591 A.2d 222, 225 (Del. 1991).
[4] Record, 24.
[5] *Id.* 27.
[6] *Id.* at 27.
[7] *Unemployment Ins. Appeals Bd. V. Duncan*, 337 A.2d 308, 309 (Del. 1975); *Crews v. Sears Roebuck & Co.*, 2011 WL 2083880 (Del. Super.).

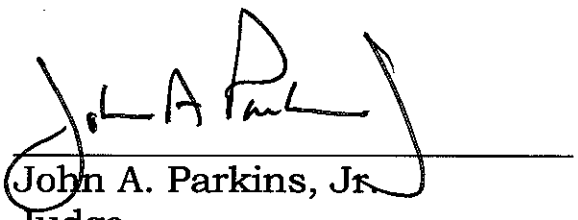
the Board's finding that Mr. Davis received the letter is the product of fraud. Although Mr. Davis contends that Starving Students "lied" about offering him a new position, this alleged misrepresentation has nothing to do with the question whether the Deputy's determination was mailed to Mr. Davis. For these reasons, this court will not disturb the factual findings of the U.I.A.B.

Even though Mr. Davis's appeal was filed late, the U.I.A.B. has discretion to act *sua sponte* to consider the merits of his claim.[8] The exercise of this discretion in favor of review on the merits is rare, and is generally confined to where an act of an agent of the Board prevented the claimant from filing a timely appeal or in other extreme circumstances. In this matter, the Board exercised its discretion against considering the merits. There is no contention that an agent of the Board impeded Mr. Davis's ability to file a timely appeal. Nor are there any extreme circumstances here. It is unfortunate that review of the merits is foreclosed because Mr. Davis's appeal was filed one day late. But holding that the Board abused its discretion here would start the Board and the courts on a slippery slope. If declining to hear an appeal which is one day late is an abuse of discretion, what about an appeal two days late or perhaps three days? There would simply be no end to the abuse of discretion argument. In the process, the clear mandate of section 3318

[8] *Funk v. Unemployment Ins. Appeal Bd.*, 591 A.2d 222 (Del. 1991).

would lose any meaning whatsoever. The court therefore finds that the Board did not abuse its discretion.

The decision of the Unemployment Insurance Appeals Board is therefore **AFFIRMED.**



John A. Parkins, Jr.
Judge