

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

DAWN G. TUCKER, )  
 )  
 Appellant, )  
 )  
 V. )  
 )  
 WILLIAMSON HOSPITALITY and )  
 DELAWARE UNEMPLOYMENT )  
 INSURANCE APPEALS BOARD, )  
 )  
 Appellees. )

C.A. No. N14A-07-005 CEB

Date Submitted: February 5, 2015  
Date Decided: March 17, 2015

*Upon Consideration of*  
*Appeal From the Unemployment Insurance Appeal Board.*  
**AFFIRMED.**

This 17th day of March, 2015, upon consideration of the *pro se* appeal of Dawn Tucker from the decision of the Unemployment Insurance Appeal Board (the “Board”), disqualifying her from the receipt of unemployment benefits, it appears to the Court that:

1. Ms. Tucker was employed by Williamson Hospitality (“Employer”) until her employment was terminated on March 10, 2014.<sup>1</sup>

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<sup>1</sup> Record at 13 (hereinafter “R. at \_”).

2. A Claims Deputy with the Department of Labor (“DOL”) found that the Employer met its burden of showing that Ms. Tucker was discharged from employment for just cause. As a result of this determination, the Claims Deputy found, in a decision dated April 10, 2014, that Ms. Tucker was disqualified from receiving unemployment insurance benefits pursuant to 19 *Del. C.* § 3314(2).<sup>2</sup> That decision was mailed to Ms. Tucker’s address on April 10, 2014 and was not returned. That decision explicitly stated that it would become final on April 20, 2014, unless a written appeal was filed on or before that date.<sup>3</sup> Ms. Tucker filed an appeal on April 28, 2014. In a decision dated April 29, 2014, a Claims Deputy for the DOL found that the decision dated April 10, 2014 became final and binding on April 21, 2014 due to Ms. Tucker’s failure to file an appeal on or before that date.<sup>4</sup>

3. An administrative hearing was held before Appeals Referee Jacqueline C. Richmond on May 14, 2014.<sup>5</sup> The only issue before the Appeals Referee was the timeliness of Ms. Tucker’s Appeal. At the hearing, Ms. Tucker testified that she did not realize that there was a deadline to appeal because she was

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

<sup>3</sup> Because April 20, 2014 fell on a Sunday, Ms. Tucker actually had until April 21, 2014 to file her appeal.

<sup>4</sup> R. at 17.

<sup>5</sup> R. at 13.

dealing with two deaths in her family and had a lot on her mind at the time.<sup>6</sup> A representative from the Delaware Division of Unemployment Insurance produced an affidavit of mailing which showed that the April 10, 2014 decision was mailed to Ms. Tucker at her address. The Appeals Referee affirmed the Claims Deputy's decision, ultimately finding that Ms. Tucker did not file a timely appeal pursuant to 19 *Del. C.* § 3318(b).<sup>7</sup> Ms. Tucker timely appealed the Referee's decision.

4. The Board found no error in the Referee's determination and adopted that determination as its own.<sup>8</sup> Ms. Tucker appealed the Board's decision to the Superior Court.

5. This Court's review of Ms. Tucker's appeal is limited to a review of legal error and a determination of whether "substantial evidence exists to support the Board's findings of fact and conclusions of law."<sup>9</sup> "Substantial evidence is that relevant evidence that a reasonable mind might accept as adequate to support a conclusion."<sup>10</sup> The Board's decision is reviewed *de novo* for errors of law.<sup>11</sup> In the absence of legal error, the Board's decision is reviewed for abuse of

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<sup>6</sup> R. at 27, 28.

<sup>7</sup> R. at 36.

<sup>8</sup> R. at 47.

<sup>9</sup> *Arrants v. Home Depot*, 65 A.3d 601, 604 (Del. 2013).

<sup>10</sup> *Wyatt v. Rescare Home Care*, 81 A.3d 1253, 1258-59 (Del. 2013) (internal citations omitted).

<sup>11</sup> *Arrants*, 65 A.3d at 604.

discretion.<sup>12</sup> The Court will find an abuse of discretion when the Board’s decision “exceeds the bounds of reason in view of the circumstances and has ignored recognized rules of law or practice so as to produce injustice.”<sup>13</sup> On appeal, the Court will not “weigh the evidence, determine questions of credibility, or make its own factual findings.”<sup>14</sup>

6. In her filings with this Court, Ms. Tucker discusses the events that led to the termination of her employment, acknowledges that her appeal was not timely, and writes that she did not notice the deadline because she was preoccupied with taking care of her aunts who passed away.

7. 19 *Del. C.* § 3318(b) provides that “[u]nless 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 . . . , the Claims Deputy's determination shall be final and benefits shall be paid or denied in accordance therewith.”<sup>15</sup> The Claims Deputy’s original decision was mailed to Ms. Tucker on April 10, 2014. That decision became final and binding on April 21, 2014. Ms.

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<sup>12</sup> *Id.*

<sup>13</sup> *McIntyre v. Unemployment Ins. Appeal Bd.*, 2008 WL 1886342, at \*1 (Del. Super. Apr. 29, 2008) *aff'd*, 962 A.2d 917 (Del. 2008).

<sup>14</sup> *Person-Gaines v. Pepco Holdings, Inc.*, 981 A.2d 1159, 1161 (Del. 2009).

<sup>15</sup> 19 *Del. C.* § 3318(b)

Tucker admits, and there is substantial evidence in the Record to show, that she did not file an appeal until April 28, 2014.

8. Based on the foregoing, the Court is satisfied that the Board applied the correct legal standards and that its decision is supported by substantial evidence. Accordingly, the decision of the Board determining that Ms. Tucker's appeal was untimely filed and thus not reviewable is **AFFIRMED**.

**IT IS SO ORDERED.**

**/s/ Charles E. Butler**  
Judge Charles E. Butler

Original to Prothonotary