

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

BREIGH D. STRAZZELLA,)	
)	
Appellant,)	
)	C.A. No. 07A-04-005 PLA
v.)	
)	
JOE TEJAS, INC., and)	
UNEMPLOYMENT)	
INSURANCE APPEAL)	
BOARD,)	
)	
Appellee.)	

ON APPEAL FROM THE
UNEMPLOYMENT INSURANCE APPEAL BOARD
AFFIRMED

Submitted: February 1, 2008
Decided: February 12, 2008

This 12th day of February, 2008, upon consideration of the appeal of Breigh D. Strazzella (“Strazzella”) from the decision of the Unemployment Insurance Appeal Board (the “Board”) denying her request for a rehearing, it appears to the Court that:

1. On December 24, 2006, Strazzella filed a petition with the Board seeking unemployment benefits. She had been employed at a restaurant operated by Joe Tejas, Inc. Although not entirely clear from her brief, Strazzella appears to admit that she missed a substantial amount of work from burns on her left arm from a faulty ice machine, as well as from

three deaths in her family in August and September 2006. Strazzella claims that the absences due to the burns were excused and that she submitted obituaries to support her absences related to the deaths in her family. After these absences, her employer placed her on notice on December 19, 2006 that she would be terminated, regardless of the reason, if she did not report to work.

2. Strazzella reacted to the warning by giving her two weeks' notice to quit on December 23, 2006. She claims that her manager, Martin, told her that she was not needed for the two-week period. After she filed for unemployment benefits, according to Strazzella, Martin claimed instead that she had refused to work for those two weeks.

3. On January 17, 2007, the Claims Deputy found that Strazzella was disqualified from receiving benefits. Strazzella appealed that determination, and the Appeals Referee affirmed the Deputy's ruling but modified it to award her benefits for two weeks' pay. Strazzella then appealed to the Board, claiming this time that Joe Tejas, Inc. put her on notice of termination for no legitimate reason.

4. A hearing before the Board was scheduled for March 14, 2007. Proper notice was sent to Strazzella and to Joe Tejas, Inc. that a hearing was scheduled for that date at 1:20 p.m. The notice also informed Strazzella that

“[f]ailure to appear for your hearing in a timely manner can result in your appeal being dismissed.” Strazzella failed to appear at the hearing. As a result, the Board dismissed her appeal.

5. After receipt of the dismissal notice, Strazzella filed a request for a rehearing with the Board on March 23, 2007, claiming she failed to attend the hearing because she was “very ill.” On March 28, 2007, the Board denied her request because she provided no medical documentation, nor did she identify any such documentation. The Board also found that her failure to appear was not the fault of the Department, nor the result of extraordinary circumstances. The decision was mailed to Strazzella on April 13, 2007.

6. Strazzella filed a *pro se* appeal of the Board’s decision to this Court on April 23, 2007.¹ In her brief, Strazzella argues that she was too sick to attend the hearing. She claims that she called the Board and left a message indicating that she could not attend and that she would submit a doctor’s note. She also argues that Joe Tejas, Inc. improperly gave her notice that they would terminate her without a legitimate reason.

¹ Despite her appeal being filed on April 23, 2007, it was not until September 4, 2007 that Strazzella filed her Opening Brief, which was not mailed to the Board until September 7, 2007. Joe Tejas, Inc. did not file a brief in this matter.

7. In response, the Board submits that Board regulations permit the Board to dismiss the appeal when the appellant fails to appear. Since Strazzella was given proper notice and did not timely request a continuance, the Board appropriately dismissed her appeal. The Board also points to Strazzella's failure to include any documentation supporting her claim of being "very ill." Although she submitted a doctor's note to this Court indicating that she had a severe bacteria infection on March 15, 2007, the Board maintains that this Court cannot review evidence which was not submitted to the Board in the first instance. Finally, the Board contends that this Court should not decide the merits of Strazzella's appeal because she failed to exhaust her administrative remedies.

8. This Court's appellate review of a Board decision is limited. "In reviewing the decisions of the UIAB [Unemployment Insurance Appeal Board], this Court must determine whether the findings and conclusions of the UIAB are free from legal error and supported by substantial evidence in the record."² Substantial evidence means "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion."³ The "substantial evidence" standard means "more than a scintilla but less than a

² *Federal Street Financial Service v. Davies*, 2000 WL 1211514, at *2 (Del. Super. Ct. Jun. 28, 2000) (citing *Unemployment Insurance Appeal Board v. Martin*, 431 A.2d 1265 (Del. 1981)).

³ *Anchor Motor Freight v. Ciabottoni*, 716 A.2d 154, 156 (Del. 1998).

preponderance of the evidence.”⁴ The Court “does not weigh the evidence, determine questions of credibility, or make its own factual findings.”⁵ A discretionary decision of the Board will be upheld absent an abuse of discretion.⁶ An abuse of discretion occurs when the Board “exceeds the bounds of reason in view of the circumstances and has ignored recognized rules of law or practice so as to produce injustice.”⁷ The Court reviews questions of law *de novo* to determine “whether the Board erred in formulating or applying legal precepts.”⁸

9. 19 *Del. C.* § 3322(a) only permits judicial review of a Board decision “after any party claiming to be aggrieved thereby has exhausted all administrative remedies as provided by this chapter.”⁹ To the extent that Strazzella seeks to have this Court decide the merits of her claim for unemployment benefits, her failure to appear before the Board and present her case there precludes consideration of any evidence she offers to this

⁴ *Breeding v. Contractors-One-Inc.*, 549 A.2d 1102, 1104 (Del. 1988).

⁵ *Hall v. Rollins Leasing*, 1996 WL 659476, at *2 (Del. Super. Ct. Oct. 4, 1996) (citing *Johnson v. Chrysler Corp.*, 213 A.2d 64, 66 (Del. 1965)).

⁶ *Funk v. Unemployment Ins. Appeal Bd.*, 591 A.2d 222, 225 (Del. 1991).

⁷ *Nardi v. Lewis*, 2000 WL 303147, at *2 (Del. Super. Ct. Jan. 26, 2000) (citations omitted).

⁸ *Id.*

⁹ *See also Griffin v. Daimler Chrysler*, 2000 WL 33309877, at *1 (Del. Super. Ct. Apr. 27, 2000).

Court.¹⁰ As a result, the Court will not consider the doctor's note that should in the first instance have been presented to the Board.

10. The only issue remaining is whether the Board abused its discretion when it denied Strazzella's request for a rehearing. This same issue was addressed by the Superior Court in *Archambault v. McDonald's Restaurant*.¹¹ In that case, the Superior Court determined that the Board's decision to dismiss appellant's case for failing to appear was not an abuse of discretion:

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 present for a hearing at the scheduled time. Any party who is not present within 10 minutes after the scheduled 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.¹²

¹⁰ *See, e.g., id.* at *2 ("The Appellant failed to appear at the Board hearing, and the merits were not addressed by the Board. As such, the Court lacks jurisdiction to review the merits of the case because the Appellant did not exhaust all administrative remedies by not presenting his case to the Board.").

¹¹ 1999 WL 1611337 (Del. Super. Ct. Mar. 22, 1999).

¹² *Archambault*, 1999 WL 1611337 at *2 (citations omitted).

11. Just as in *Archambault*, the Board in this case did not abuse its discretion when it denied Strazzella's request for a rehearing. Pursuant to its authority,¹³ the Board followed its regulations, provided due notice to all parties involved, waited ten minutes after the scheduled hearing for Strazzella to appear, and then dismissed her appeal.¹⁴ Because the notice to Strazzella expressly informed her that “[f]ailure to appear for your hearing can result in your appeal being dismissed[,]” Strazzella was aware of the consequences if she chose not to appear. Strazzella also failed to seek a continuance.¹⁵ Although she claims that she called “the Court” on the date of her hearing and indicated that she would provide a doctor's note, there is no evidence in the record to substantiate that any such documentation was

¹³ See 19 *Del. C.* § 3321(a) (“The manner in which disputed claims shall be presented and the conduct of hearings and appeals shall be in accordance with regulations prescribed by the . . . Board for determining the rights of the parties, whether or not such regulations conform to common-law statutory rules of evidence and other technical rules of procedure”).

¹⁴ The Board regulations provide that “[a]ll parties are required to be present for a hearing at the scheduled time. Any party who is not present within 10 minutes after the scheduled time for hearing shall be deemed to waive his right to participate in said hearing.” *Archambault*, 1999 WL 1611337 at *2 (citing *Unemployment Ins. Appeals Bd. Reg. B* (1979)).

¹⁵ See *Griffin v. Daimler Chrysler*, 2000 WL 33309877 at *2 (considering claimant's failure to request a continuance and his failure to explain to the Board why his hearing date was inconvenient in the Board's motion to dismiss); *Gullion v. Advance Xing Pain*, 2006 WL 1067280, at *1 (Del. Super. Ct. Apr. 24, 2006) (“Failure to prosecute, as evidenced by the Claimant's absence at the hearing, provides the Board with reasonable grounds for dismissal. . . . The Board did not abuse its discretion.”) (citations omitted).

ever submitted. Strazzella did not speak with anyone on the date of the hearing, nor did she deliver a note from a physician or any other documentary evidence supporting her claim of illness. Considering these circumstances, the Board did not exceed “the bounds of reason in view of the circumstances . . . so as to produce injustice.”¹⁶ Accordingly, the Board did not abuse its discretion.

12. For the foregoing reasons, the decision of the Board is hereby

AFFIRMED.

IT IS SO ORDERED.

Peggy L. Ableman, Judge

Original to Prothonotary

cc: Breigh D. Strazzella
Joe Tejas, Inc.
Mary Page Bailey, Esq.

¹⁶ *Nardi v. Lewis*, 2000 WL 303147, at *2 (Del. Super. Ct. Jan. 26, 2000) (citations omitted).