

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR KENT COUNTY

STEPHANIE A. MURRAY, :
 : C.A. No. 07A-07-007 WLW
Appellant, :
 :
v. :
 :
BEST TEMPS and DIVISION OF :
UNEMPLOYMENT INSURANCE :
APPEAL BOARD, :
 :
Appellee. :

Submitted: December 3, 2007
Decided: March 5, 2008

ORDER

Upon Appeal of a Decision of the Division
of Unemployment Insurance Appeal Board.
Affirmed.

Stephanie A. Murray, *pro se*.

Dean A. Campbell, Esquire of the Law Office of Dean A. Campbell, LLC,
Georgetown, Delaware; attorneys for Appellee Best Temps.

Mary Page Bailey, Esquire, Deputy Attorney General, Wilmington, Delaware;
attorneys for Appellee UIAB.

WITHAM, R.J.

On July 18, 2007, *pro se* Appellant Stephanie A. Murray (“Appellant”) appealed to this Court to reverse the decision of the Division of Unemployment Insurance Appeal Board (“the UIAB” or “the Board”) affirming the denial of unemployment insurance to Appellant by the Division of Unemployment Insurance (“the Division”). Since Appellant filed her appeal to the UIAB late and the time limit is jurisdictional, the Court *affirms* the UIAB decision.

BACKGROUND

On March 11, 2006, *pro se* Appellant Stephanie A. Murray filed a claim for unemployment insurance with the Division. Soon after, she accepted employment through the placement firm Career Associates, Inc. (“Career Associates”), but on March 14, 2007, the client laid off Appellant because it shut down its plant, resulting in a permanent lay off or reduction in force. They scheduled Appellant’s last day of work for March 19, 2007. Appellant did not request another assignment from Career Associates.

On March 15, 2007, another placement firm, Best Temps, offered Appellant work at Colorbox in the Finishing Department located in Harrington, Delaware, to begin on March 19, 2007. This position required transportation. Appellant’s automobile was not running and she called Best Temps on March 19, 2007 to communicate that she could not take the job due to transportation issues. She did not request other work due to her ongoing transportation issues. She claimed unemployment insurance again on April 23, 2007, at which point the Division determined that claimant had refused a reasonable offer of work and therefore was disqualified from receiving benefits.¹ Appellant had ten days from the determination

¹The Referee’s decision was based on 19 *Delaware Code* § 3314(3), which disqualifies an individual from benefits if

to file an appeal—May 3, 2007.

Appellant filed an appeal on the eleventh day—May 4, 2007, claiming that she had tried to find a job each week but failed to obtain transportation, however now she could use her friend’s vehicle. Despite filing late the Division accepted the appeal and on May 16, 2007, sent notice to Appellant that her appeal would be heard on May 30, 2007.

Appellant failed to appear and as a result, on May 31, 2007, the Division Referee dismissed the appeal due to Appellant’s failure to appear. The Referee’s Decision was sent to the Appellant’s address on record containing instructions on how to appeal and clearly stated on the front page the due date for filing an appeal (June 10, 2007). This gave Appellant ten days from the date of mailing to appeal the determination. She filed an appeal to the UIAB on June 14, 2007, explaining that she did not receive the notice of the appeal because it had been sent to her previous address.

the individual has refused to accept an offer of work for which the individual is reasonably fitted or has refused to accept a referral to a job opportunity when directed to do so by a local employment office of this State or another state, and the disqualification shall begin with the week in which the refusal occurred and shall continue 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 ...

Of interest, but because of jurisdictional limits is no longer relevant, that provision later provides that

No individual otherwise qualified to receive benefits shall lose the right to benefits by reason of a refusal to accept a referral or new work if: . . . (c) The work is at an unreasonable distance from the individual’s residence, having regard to the character of the work the individual has been accustomed to do, and travel to the place of work involves expenses substantially greater than that required for the individual’s former work

19 *Del.C.* § 3314(3)(c).

On June 20, 2007, the UIAB reviewed and affirmed the Referee's decision, citing 19 *Delaware Code* § 3318(c), which gives a time limit on jurisdiction. It explained that although § 3320 permits the Board to accept an appeal *sua sponte* in cases of severe circumstances (citing *Funk v. UIAB*,² which will be discussed below), because Appellant had neglected to notify the Division of her new address and that her appeal was untimely, it declines review of the application for appeal.

In this appeal, Appellant claims that shortly after the Division made their decision to disqualify her benefits she asked it about the procedure for an appeal. The Division allegedly explained to her that she needed to wait for a letter. She waited two weeks and never received a letter. She alleges that she then inquired again and the Division explained that they had now sent it to her old address. She alleges that during this conversation, which she claims occurred on or about May 13,³ that she changed her address with the Division. She alleges that the Division's letter was returned by the post office to the Division and that she still has not received that letter. The Division records show that she did not change her address until after they sent the notice.

STANDARD OF REVIEW

The scope of review for an appeal of an UIAB decision is limited to examining the record for errors of law and determining whether substantial evidence is present on the record to support the Board's findings of fact and conclusions of law.⁴ Substantial evidence equates to "such relevant evidence as a reasonable mind might

²591 A.2d 222 (Del. 1991).

³Appellant's Reply Brief § 2.

⁴29 *Del. C.* § 10142(d); *Histed v. E.I. DuPont de Nemours & Co.*, 621 A.2d 340, 342 (Del. 1993).

accept as adequate to support a conclusion.”⁵ On appeal, this Court will not weigh the evidence, determine questions of credibility, or make its own factual findings.⁶ Instead, this Court reviews the case to determine if the evidence is legally sufficient to support the Board’s factual findings.⁷ In reviewing the record for substantial evidence, this Court must consider the record in the light most favorable to the party prevailing below.⁸

DISCUSSION

The UIAB’s jurisdiction to hear appeals is statutory.⁹ Nineteen *Delaware Code* § 3318(c) provides

(c) Unless the appeal is withdrawn, an appeals tribunal, after affording the parties reasonable opportunity for fair hearing, shall affirm, modify or reverse the decision of the deputy. The parties shall be duly notified of the tribunal’s decision, together with its reason therefor, which shall be deemed to be final unless within 10 days after the date of notification or mailing of such decision further appeal is initiated pursuant to § 3320 of this title.¹⁰

Appellant missed the statutory deadline and therefore her appeal was rightfully dismissed.

The UIAB can skirt the jurisdictional requirements in severe cases¹¹ but this

⁵*Olney v. Cooch*, 425 A.2d 610, 614 (Del. 1981) (quoting *Consolo v. Federal Mar. Comm’n*, 383 U.S. 607, 620 (1966)).

⁶*Johnson v. Chrysler Corp.*, 213 A.2d 64, 66-67 (Del. 1965)).

⁷ *ILC of Dover, Inc. v. Kelley*, 1999 WL 1427805 *1 (Del.Super., November 22, 1999) (citing 29 *Del. C.* § 10142(d)).

⁸*Spencer v. Suddard*, 1997 Del. Super. LEXIS 519, at *6.

⁹See 19 *Del.C.* § 3318(c).

¹⁰19 *Del.C.* § 3318(c).

¹¹Nineteen *Delaware Code* § 3320 provides:

The Unemployment Insurance Appeal Board (UIAB) may on its own motion, affirm,

case does not rise to that level. In *Funk v. UIAB*,¹² a disqualified individual wanted to appeal the decision of the Division Referee but the decision with instructions for appeal, including the deadline, was sent by the U.S. Post Office to his parents' address by mistake. This mistake, appellant acknowledged, had happened in the past. He missed the appeal deadline and so the UIAB declined to accept the appeal. Ultimately, the Delaware Supreme Court reviewed appellant's case.

The Supreme Court found that (1) the ten-day appeal period runs from the date the Division mails notice unless the mailing fails to reach a party because of some mistake made by employees of the Department of Labor; (2) the UIAB has the authority to review the decision of a referee on its own motion under the provisions of 19 *Delaware Code* § 1320 but has discretion not to do so as well;¹³ (3) a party may

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. The Unemployment UIAB shall remand a case to the appeal tribunal to supplement the existing evidence when it is determined to be insufficient to form a substantial basis for a decision. Appeals to the UIAB may be made by the parties to a disputed unemployment insurance claim, as well as by the claims deputy whose decision is modified or reversed by an appeals tribunal. The UIAB shall promptly notify all interested parties of its findings and decision.

19 Del.C. § 3320(a).

¹²591 A.2d 222 (Del. 1991).

¹³In *Funk*, the Board explained its caution when exercising its power under § 3320:

... in 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. Such cases have been few and far between and involved circumstances much more severe than those in this case.

Funk at 225.

not bring an appeal under § 1320 (only the Division);¹⁴ (4) that the “Board’s strict application of the time limit in 19 *Delaware Code* § 3318(c) and its refusal to exercise its authority under § 3320 does not deprive the appellant due process of law under the Fourteenth Amendment of the United States Constitution or under Article I, Section 7 of the Delaware Constitution”;¹⁵ and (5) that the appellant must establish that he is free from fault in his failure to receive notice within the ten-day appeal period.

The Supreme Court affirmed the UIAB dismissal stating that, amongst other things, since the appellant knew that mail addressed to him had been delivered to his parents’ address in the past, “[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. There is no indication in the record that Funk ever complained to the U.S. Postal Service or made any other attempt to remedy the misdelivery of his mail.”¹⁶ As is the case here—Appellant should have checked the locations at which she could be receiving mail.

Furthermore, the Division sent notice of the date of the hearing to the address on record. The Appellant failed her burden of promptly informing the Division of her new address. The Division has met its statutory burden and Appellant has not established that she is free from fault in her failure to receive notice within the time frame.

¹⁴*Funk* at 225 (citing *Chrysler Corporation v. Dillon*, 327 A.2d 604 (Del. 1974).

¹⁵*Funk* at 225.

¹⁶*Id.* at 226.

CONCLUSION

Based on the aforementioned, the Court finds substantial evidence of the Board's conclusion of law and thereby *affirms* the UIAB's refusal to hear Appellant's appeal.

IT IS SO ORDERED.

/s/ William L. Witham, Jr.

R.J.

WLW/dmh

oc: Prothonotary

xc: Order Distribution