

SUPERIOR COURT
OF THE
STATE OF DELAWARE

JOHN A. PARKINS, JR.
JUDGE

NEW CASTLE COUNTY COURTHOUSE
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WILMINGTON, DELAWARE 19801-3733
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Olubunmi B. Obazee
30 Lake Tahoe Circle
Bear, Delaware 19701

**Re: Olubunmi B. Obazee v. St. Francis Hospital and
Unemployment Insurance Appeal Board
C.A. No. 07A-07-006 JAP**

Submitted: October 10, 2008
Decided: November 12, 2008

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

Dear Ms. Obazee:

Currently before the Court is the appeal of Olubunmi B. Obazee (“Ms. Obazee”) from a decision of the Unemployment Insurance Appeal Board (the “Board”), which denied her appeal from the Appeals Referee as untimely. The record shows that Ms. Obazee failed to file a timely appeal to the Board pursuant to 19 *Del. C.* § 3318(c). Furthermore, the Board did not abuse its discretion by refusing to consider the appeal *sua sponte*. Therefore, the decision of the Board is **AFFIRMED**.

I. FACTS AND PROCEDURAL HISTORY

St. Francis Hospital employed Ms. Obazee as a certified nurse assistant from March 22, 2004 until August 23, 2007. On August 23, 2007, Ms. Obazee was suspended for three days following an incident that occurred on August 22 with her supervisor. Ms. Obazee anticipated that St. Francis would fire her upon return from her suspension, and therefore she tendered her resignation letter on August 23, 2007. She filed a claim for unemployment benefits with the Division of Unemployment Insurance on September 12, 2007. The Claims Deputy determined that Ms. Obazee voluntarily quit without good cause attributable to the work as provided in 19 *Del. C.* § 3314(1). As a consequence Ms. Obazee was disqualified from the receipt of unemployment benefits.¹

Ms. Obazee filed a timely appeal to the Appeal's Referee, who affirmed the decision of the Claims Deputy. The Referee's decision was mailed to Ms. Obazee's address of record on November 15, 2007. The front page of the decision contained instructions on how to appeal the Referee's decision and clearly stated that the last day to file such an appeal was November 25, 2007. However, November 25, 2007 was a

¹ 19 *Del. C.* 3314(1) states that "[a]n individual shall be disqualified from benefits: (1) For the week in which the individual left work voluntarily without good cause attributable to such work and 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.

Sunday, and therefore, the last day to file an appeal was Monday, November 26.

On December 6, 2007, Ms. Obazee filed an appeal from the Referee's decision to the Board, explaining that she did not receive the Referee's decision due to a change of address. The Board held that Ms. Obazee's appeal was not filed within the ten-day limit set by 19 *Del. C.* § 3318(c). The Board explained that it had discretion to hear an appeal *sua sponte* in extreme circumstances; however, the Board declined to accept the late appeal. The Board found "no evidence of any error on the part of the Department which might have delayed the Claimant's appeal."²

Ms. Obazee filed the present appeal *pro se* in this Court on January 15, 2007. Neither St. Francis Hospital nor the Board filed a response.

II. STANDARD OF REVIEW

The Supreme Court and this Court have repeatedly emphasized the limited appellate review of the factual findings of an administrative agency. On appeal from a decision of the UIAB, the appellate court is limited to a determination of whether there is substantial evidence in the record sufficient to

² *Obazee v. St. Francis Hospital*, UIAB Appeal Docket No. 20035707 (Dec. 12, 2007).

support the Board's findings, and that such findings are free from legal error.³

The reviewing court does not weigh the evidence, determine questions of credibility, or make its own factual findings.⁴ Absent any legal error, the standard of review is abuse of discretion.⁵

III. DISCUSSION

Section 3318(c) provides that a claimant has ten days to file an appeal from an adverse decision of the Appeals Referee to the Board.⁶ If a claimant fails to file within the statutory time frame, the Referee's determination is final.⁷

Specifically, § 3318(c) states:

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 therefore, 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.⁸

The record clearly supports the Board's conclusion that Ms.

Obazee's appeal was untimely. The Referee mailed its decision to Ms.

Obazee's address of record on November 15, 2007. Ms. Obazee had until

³ *Ingram v. Barrett's Business Service, Inc.*, 794 A.2d 1160 (Del. 2007).

⁴ *Unemployment Ins. Appeal Bd. v. Division of Unemployment Ins.*, 803 A.2d 931, 937 (Del. 2002).

⁵ *Snyder v. Wyoming Concrete*, 2007 WL 1153057 (Del. Super.).

⁶ 19 Del. C. § 3318(c).

⁷ *Id.*

⁸ *Id.*

November 26 to appeal the decision. The claimant having failed to appeal on or before that deadline, the plain language of section 3318(c) requires this Court to find that the decision of the Referee is final.

In extreme circumstances, the Board may *sua sponte* hear an appeal pursuant to 19 *Del. C.* § 3320.⁹ The Board, however, exercises this authority “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.”¹⁰

Ms. Obazee has failed to point to any evidence that there was any error on the part of the Department of Labor in mailing the Appeals Referee’s decision. The decision was mailed to her address of record. It was Ms. Obazee’s burden to inform the Department of her new address when she moved.¹¹ Furthermore, there are no circumstances that would

⁹ 19 *Del. C.* § 3320 provides that the UIAB “may on its own motion, affirm, modify, or reverse any decision of an appeal tribunal.” *See also Funk v. UIAB*, 591 A.2d 222 (Del. Supr. 1991) (“Section 3320 grants the Board wide discretion over the unemployment insurance benefits appeal process.”).

¹⁰ *Id.*

¹¹ *Murray v. Best Temps*, 2008 WL 2409838 (Del. Super.) (affirming the Board’s decision to refuse to hear a late filed appeal where the appellant “failed her burden of promptly informing the Division of her new address”).

require the Board to act in the “interests of justice.” Therefore, the Board did not abuse its discretion by refusing to hear the appeal *sua sponte*.¹²

IV. CONCLUSION

Ms. Obazee’s appeal to the Board was untimely filed and the Board did not abuse its discretion by refusing to consider the appeal *sua sponte*.

Therefore, the decision of the Board is **AFFIRMED**.

IT IS SO ORDERED.

Very truly yours,

cc: Prothonotary
cc: St. Francis Hospital
Ralph K. Dirstein, III, Esquire

¹² See *Funk*, 591 A.2d at 225 (finding the Board did not abuse its discretion by refusing to *sua sponte* consider a late filed appeal where claimant’s mail was accidentally delivered to the wrong address); *Murray*, 2008 WL 2409838, at *3 (affirming the Board’s refusal to hear a late filed appeal where the claimant did not update her address with the Department).