

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

MICHELLE STACEY)	
)	
Appellant,)	
)	
v.)	
)	C.A. No. 08A-06-011 PLA
PEOPLE’S SETTLEMENT,)	
and UNEMPLOYMENT)	
INSURANCE APPEAL)	
BOARD,)	
)	
Appellees.)	

**ON APPEAL FROM THE
UNEMPLOYMENT INSURANCE APPEAL BOARD
AFFIRMED**

Submitted: January 21, 2009
Decided: March 31, 2009

This 31st day of March, 2009, upon consideration of the appeal of Michelle Stacey (“Stacey”) from the decision of the Unemployment Insurance Appeal Board (“the UIAB”), it appears to the Court that:

1. Stacey was separated from her employment as a kindergarten teacher with People’s Settlement in February 2008. She subsequently filed a claim for unemployment insurance benefits. A Department of Labor (DOL) Claims Deputy determined that Stacey was disqualified from receiving

benefits. Accordingly, on April 4, 2008 a Notice of Determination was dated and mailed to Stacey's address of record. Under a heading marked "Claimant and Employer Appeal Rights," the Notice of Determination clearly stated as follows: "This determination becomes final on 04/14/2008 unless a written appeal is filed. Your appeal must be received or postmarked on or before the date indicated."¹

2. Stacey contends that she received the Notice of Determination on April 7, and called the DOL regarding the appeal deadline. DOL personnel informed Stacey that she had ten days to appeal the Claims Deputy's determination.

3. Apparently acting on the belief that her appeal could be filed ten days from the date she received the Notice, Stacey did not file an appeal from the Claims Deputy's determination until April 15, one day after the appeal deadline. A hearing was held before an Appeals Referee to address the issue of timeliness. At the hearing, Stacey testified that she misconstrued the information conveyed to her by DOL personnel when she called and "didn't read all the way down at the bottom [of the Notice] where it also says . . . I had until the fourteenth [of April to appeal]."²

¹ Docket 4, at 18 (UC-409 Notice of Determination (April 4, 2008)).

² *Id.* at 29 (Tr. of Hr'g Before Appeals Referee (May 6, 2008)).

4. The Referee found that Stacey's appeal had been untimely and affirmed the Claims Deputy's determination. Because Stacey did not timely appeal the Notice, the Claims Deputy's decision became final on April 14, 2008, pursuant to 19 *Del. C.* § 3318. Stacey appealed the Referee's decision to the Unemployment Insurance Appeal Board, which again affirmed. The UIAB declined to exercise jurisdiction *sua sponte* to hear the merits of Stacey's claim because there was no evidence of administrative error and Stacey had conceded responsibility for neglecting to read the Notice, despite having received it at her proper address.³

5. Stacey filed this *pro se* appeal from UIAB's decision on June 24, 2008. Her appeal reiterates arguments previously raised before the Referee and the UIAB that she "was not given a fair deal" and received incorrect information from the DOL regarding the time she had to appeal the Claims Deputy's determination.⁴

6. This Court's appellate review of decisions of the UIAB is limited. The Court's function is to determine whether the UIAB's findings and conclusions are supported by substantial evidence and free from legal

³ *Id.* at 35-36 (Decision of Unemployment Insurance Appeal Board (June 13, 2008)).

⁴ *Id.* at 42 (Notice of Appeal (June 24, 2008)).

error.⁵ The substantial evidence standard is satisfied if the UIAB's ruling is supported by "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion."⁶ Where the UIAB has made a discretionary decision, the scope of the Court's inquiry includes examining the UIAB's action for abuse of discretion.⁷ A discretionary decision will be upheld absent an abuse of discretion⁸ in which the UIAB "exceeds the bounds of reason in view of the circumstances and has ignored recognized rules of law or practice so as to produce injustice."⁹

7. Under 19 *Del. C.* § 3318(b), a Claims Deputy's determination that an individual is disqualified from receiving unemployment benefits becomes final if no appeal is filed within ten days.¹⁰ This ten-day period is "an express statutory condition of jurisdiction that is both mandatory and

⁵ *Stoltz Mgmt. Co. v. Consumer Affairs Bd.*, 616 A.2d 1205, 1208 (Del. 1992); *see also Lively v. Dover Wipes Co.*, 2003 WL 21213415, at *1 (Del. Super. May 16, 2003).

⁶ *Anchor Motor Freight v. Ciabottoni*, 716 A.2d 154, 156 (Del. 1998) (citation omitted).

⁷ *See, e.g., Funk v. Unemployment Ins. Appeal Bd.*, 591 A.2d 222, 225 (Del. 1991); *Meacham v. Del. Dep't of Labor*, 2002 WL 442168, at * 1 (Del. Super. Mar. 21, 2002).

⁸ *Funk*, 591 A.2d at 225.

⁹ *Nardi v. Lewis*, 2000 WL 303147, at *2 (Del. Super. Jan. 26, 2000) (citation omitted).

¹⁰ 19 *Del. C.* § 3318(b) ("Unless a claimant . . . files an appeal within 10 calendar days after such Claims Deputy's determination was mailed . . . the Claims Deputy's determination shall be final and benefits shall be paid or denied in accordance therewith.").

dispositive.”¹¹ Where a failure to timely appeal is due to “unintentional or accidental actions” by the claimant, and was not caused by administrative error, the disqualification becomes final after the running of the ten days, and 19 *Del. C.* § 3318(b) operates as a jurisdictional bar to further appeal.¹²

8. In this case, substantial evidence supports the UIAB’s conclusion that Stacey’s appeal from the Claims Deputy’s disqualification was untimely. Stacey herself concedes that the Notice stated that her appeal deadline was April 14, 2008, and that she is responsible for failing to read the Notice. Moreover, there is no merit to her allegation that the DOL provided her with inaccurate information when she called to ask about the time to appeal. The DOL correctly informed her that she had “ten days” to appeal the Claims Deputy’s determination. If Stacey was unclear as to whether that ten-day period ran from the date the determination was issued or the date she received it, she had only to read the Notice itself or seek further clarification from the DOL.

9. The UIAB’s refusal to assume jurisdiction *sua sponte* to consider the merits of the disqualification determination was not an abuse of

¹¹ *Lively*, 2003 WL 21213415, at *1 (quoting *Duncan v. Del. Dep’t of Labor*, 2002 WL 31160324, at *2 (Del. Super. Sept. 2, 2002)).

¹² *Meacham*, 2002 WL 442168, at * 2; *Hartman v. Unemployment Ins. Appeal Bd.*, 2004 WL 772067, at *2 (Del. Super. Apr. 5, 2004).

discretion. The UIAB lacks authority to hear an appeal brought by a party after the ten-day appeals period under 19 *Del. C.* § 3318(b).¹³ Where no valid timely appeal has been filed, however, the UIAB possesses discretion under § 3320 to review the record *sua sponte* if the failure to timely appeal was caused by administrative error or if “the interests of justice would not be served by inaction.”¹⁴ Cases in which the UIAB assumes jurisdiction *sua sponte* to consider an untimely appeal are “few and far between” and involve “severe” circumstances.¹⁵

10. Here, the UIAB’s refusal to consider the merits of Stacey’s disqualification *sua sponte* was within its discretion. Stacey’s failure to timely appeal the Claims Deputy’s determination was not caused by administrative error, nor does this case involve extraordinary or “severe” circumstance such that the UIAB was required to act in the interests of justice.¹⁶ Stacey’s failure to timely appeal her disqualification was the result of her own “unintentional or accidental actions” in failing to read the Notice,

¹³ See *Chrysler Corp. v. Dillon*, 327 A.2d 604, 605 (Del. 1974).

¹⁴ See 19 *Del. C.* § 3320(a) (“The Unemployment Insurance Appeal Board [UIAB] may on its own motion, affirm, 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.”); *Funk*, 591 A.2d at 225.

¹⁵ *Funk*, 591 A.2d at 225.

¹⁶ See *Funk*, 591 A.2d at 225.

and the Claims Deputy's determination therefore became final after the expiration of the appeal period on April 14, 2008.

11. For the foregoing reasons, the decision of the UIAB is hereby **AFFIRMED.**

IT IS SO ORDERED.

Peggy L. Ableman, Judge

Original to Prothonotary

cc: Michelle Stacey
People's Settlement
Ralph K. Durstein, III, Esq.
Tom Ellis, Esq.