

SUPERIOR COURT  
OF THE  
STATE OF DELAWARE

T. HENLEY GRAVES  
*RESIDENT JUDGE*

SUSSEX COUNTY COURTHOUSE  
1 THE CIRCLE, SUITE 2  
GEORGETOWN, DE 19947  
(302) 856-5257

December 20, 2012

Brian D. Hafko  
14380 Fleetwood Pond Road  
Georgetown, Delaware 19947

**Re:** *Hafko v. C&E Furniture, Inc.*  
C.A. No. S11A-04-001

On Appeal from the Unemployment Insurance Appeal Board: **AFFIRMED**

Date Submitted: December 7, 2011

Date Decided: December 20, 2011

Dear Mr. Hafko:

Brian Hafko appeals the decision of the Unemployment Insurance Appeal Board (“the Board”) to dismiss Mr. Hafko’s appeal from an Appeals Referee’s determination that Mr. Hafko left his work involuntarily for medical reasons and is disqualified from the receipt of benefits until such time as Mr. Hafko becomes able to and available for work as evidenced by a doctor’s certificate. The Board’s decision is affirmed for the reasons stated below.

**Nature and Stage of the Proceedings**

Mr. Hafko worked for C & E Furniture, Inc. (“Employer”) as a delivery driver

from approximately July 2010 until October 1, 2010. On October 1, 2010, Mr. Hafko woke up with pain and proceeded to the emergency room where he underwent surgery to address a perforated duodenal ulcer. Mr. Hafko was in the hospital for eight days. During that time, Mr. Hafko's fiancée contacted Employer and relayed to a representative thereof that it was Mr. Hafko's treating physician's opinion that Mr. Hafko would not be able to work for some time. Employer's representative advised Mr. Hafko's fiancée that Employer could not hold Mr. Hafko's job for him and would have to let him go. When Mr. Hafko was released from the hospital, his treating physician filled out a Department of Labor Doctor's Certificate that stated Mr. Hafko was unable to work. Mr. Hafko's claim for unemployment benefits was denied by a Claims Deputy. He appealed to an Appeals Referee. Before the Appeals Referee, Mr. Hafko testified that he had not yet been released to work. The Appeals Referee upheld the Claims Deputy's denial of benefits. Mr. Hafko appealed the Appeals Referee's decision to the Board. The Board dismissed Mr. Hafko's appeal because he failed to appear to prosecute his appeal at the March 2, 2011, Board hearing. Mr. Hafko now appeals the Board's decision.

### **Discussion**

When reviewing the decisions of the Board, this Court must determine whether the Board's findings and conclusions of law are free from legal error and are supported by

substantial evidence in the record.<sup>1</sup> “Substantial evidence” is “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.”<sup>2</sup> The Court’s review is limited: “It is not the appellate court’s role to weigh the evidence, determine credibility questions or make its own factual findings, but merely to decide if the evidence is legally adequate to support the agency’s factual findings.”<sup>3</sup>

Delaware law states that an individual will be disqualified from receiving unemployment benefits if “it shall be determined by the Department that total or partial unemployment is due to the individual’s inability to work.”<sup>4</sup> This disqualification expires when the individual becomes able to work again and is available for work as determined by a physician’s certificate.<sup>5</sup>

On appeal, Mr. Hafko submits a letter from his treating physician dated January 6, 2011, that states, “Recovery for [the type of operation Mr. Hafko underwent] is routinely four to six weeks, after which time the patient may return to work.” Not only

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<sup>1</sup> *Unemployment Ins. Appeal Bd. v. Martin*, 431 A.2d 1265 (Del. 1981); *Pochvatilla v. U.S. Postal Serv.*, 1997 WL 524062 (Del. Super.); 19 *Del. C.* § 3323(a) (“In any judicial proceeding under this section, the findings of the [Board] as to the facts, if supported by evidence and in the absence of fraud, shall be conclusive, and the jurisdiction of the Court shall be confined to questions of law.”).

<sup>2</sup> *Gorrell v. Division of Vocational Rehab.*, 1996 WL 453356, at \*2 (Del. Super.).

<sup>3</sup> *McManus v. Christiana Serv. Co.*, 1197 WL 127953, at \*1 (Del. Super.).

<sup>4</sup> 19 *Del. C.* § 3314(8).

<sup>5</sup> *Id.*

is it inappropriate for the reviewing court to engage in fact-finding, the Court disposes of Mr. Hafko's appeal for procedural reasons.

Section 3322 of Title 19 of the Delaware Code provides, "[J]udicial review [of a Board decision] ... shall be permitted only after any party claiming to be aggrieved thereby has exhausted all administrative remedies as provided by this chapter."<sup>6</sup> This Court is without jurisdiction to hear the merits of a case where a party has not exhausted his administrative

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<sup>6</sup> 19 *Del. C.* § 3322(a).

remedies because he failed to appear at a Board hearing that he requested.<sup>7</sup> Because Mr. Hafko does not appeal the Board's exercise of discretion in dismissing his appeal thereto, there is no issue properly before the Court at this time.

### Conclusion

In light of the foregoing, the Board's dismissal of Mr. Hafko's appeal from the Appeals Referee's decision is AFFIRMED.

IT IS SO ORDERED.

Very truly yours,

/s/ T. Henley Graves

oc: Prothonotary  
cc: Unemployment Insurance Appeal Board  
C & E Furniture, Inc.

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<sup>7</sup> *Jackson v. Murphy Marine Servs., Inc.*, 2002 WL 1288791, at \*1 (Del. Super.); compare *Filanowski v. Port Contractors, Inc.*, 2007 WL 64758 (Del. Super.) (finding the appeal not procedurally barred because (a) the party who failed to appear at the Board hearing was not the party aggrieved by the Appeals Referee's decision and (b) the Board did not dismiss the appeal but heard evidence and decided the matter on the merits).