

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

DANA WATSON,)	
Appellant,)	
)	
)	
v.)	C.A. No.: 11A-05-013 FSS
)	
)	
NEW CASTLE COUNTY VO-TECH)	
SCHOOL DISTRICT and)	
UNEMPLOYMENT INSURANCE)	
APPEAL BOARD,)	
Appellees.)	

Submitted: February 20, 2012
Decided: March 6, 2012

ORDER

**Upon Appeal From the Unemployment Insurance Appeal Board –
*AFFIRMED.***

1. A claims deputy disqualified Appellant’s receiving unemployment benefits because an audit showed she understated her income on several occasions,¹ resulting in more benefits than those to which she was entitled. Appellant was also

¹ See 19 Del. C. § 3314(6) (“If the Department determines [an] individual has made a false statement or representation knowing it to be false, . . . a disqualification issued pursuant to this subsection shall be considered a disqualification due to fraud.”).

required to repay her excess benefits.² Appellant timely appealed, claiming she did not commit fraud and “consistently reported income of same amount every week.”

2. After a full hearing, an appeals referee upheld the claims deputy’s decision, holding, “The [Appellant] did intentionally make a false statement to the Department of Labor to collect benefits to which she was not lawfully entitled.”

3. On April 15, 2011, the referee’s decision was mailed to Appellant’s record address. The decision’s front page explicitly stated Appellant’s last day to file an appeal was April 25, 2011. Appellant filed her appeal on April 26, 2011, one day late.

4. On May 11, 2011, the Board denied Appellant’s appeal as untimely.³ The Board did not find anything prevented Appellant from filing her appeal on time. Nor did it find any extenuating circumstances justifying accepting the appeal *sua sponte*.⁴ On June 1, 2011, Appellant timely appealed to this court.

5. Here, Appellant claims she “did what she was told” in reporting

² 19 Del. C. § 3325 (“Any person who has received any sum of benefits under this chapter to which it is finally determined that the person was not entitled shall be liable to repay . . . , or have such sum deducted from future benefits. . . . The person shall be so liable regardless of whether such sum was received through fraud or mistake, . . . or legally.”).

³ See 19 Del. C. § 3318(c) (“[Appeals] decision . . . shall be deemed 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.”).

⁴ See *Funk v. UIAB*, 591 A.2d 222, 225 (Del. 1991). See also 19 Del. C. § 3320 (“The [UIAB] may on its own motion, affirm, modify, or reverse any decision of an appeal tribunal.”).

her income to the Department of Labor. By that, she means a claims representative told her to report the same weekly income to “avoid being constantly called in” to explain discrepancies. Even if true, that is beside the point. It does not explain, much less justify, Appellant’s failing to meet the deadline set for her appeal to the Board. Appellant only missed the deadline by a day, but a deadline is a deadline. And, Appellant has not tried to justify missing it.

6. In upholding the Board’s refusal to consider the appeal, the court must presume that Appellant waited at least a few days to file her appeal, knowing the deadline was April 25, 2011. The court also observes that the first appeal was untimely filed, but it was accepted because a transcription error indicated the wrong date to timely appeal. Finally, the court is mindful that Appellant already has had one appeal from the initial, adverse holding.

7. Even if the court had authority here to consider Appellant’s substantive claim that she only did what a claims representative told her, it would be unavailing. As mentioned above, Appellant was disqualified from receiving benefits because she repeatedly understated her earnings, including several instances where the reported income was off by at least one-hundred dollars, and including weeks where Appellant submitted income even though she did not work. Appellant knew or should have known that her hours, and consequently her wages, varied, resulting

in differing amounts to report. That is especially so where Appellant showed income for weeks she earned none. In any event, this appeal fails because Appellant did not meet the deadline for her appeal to the Board and Appellant has not shown how the Board abused its discretion by declining to excuse her default.

For the foregoing reasons, the Board's May 11, 2011 decision is

AFFIRMED.

IT IS SO ORDERED.

/s/ Fred S. Silverman

Judge

cc: Prothonotary

Ms. Dana Watson, *Pro Se*

David H. Williams, Esquire

James H. McMackin, III, Esquire

Katisha D. Fortune, Esquire - Unemployment Insurance Appeal Board