

SUPERIOR COURT  
OF THE  
STATE OF DELAWARE

JOHN A. PARKINS, JR.  
*JUDGE*

NEW CASTLE COUNTY COURTHOUSE  
500 NORTH KING STREET, SUITE 10400  
WILMINGTON, DELAWARE 19801-3733  
TELEPHONE: (302) 255-2584

George A. Prentice  
2 Malvern Road  
Newark, Delaware 19713  
Employee Below/ Appellant

Jennifer Kate Aaronson, Esquire  
Law Office of Jennifer Kate Aaronson, LLC  
8 East 13<sup>th</sup> Street  
P.O. Box 2865  
Wilmington, Delaware 19805  
Attorney for Employer Below/ Appellant

**Re: George A. Prentice v. Albright & Son and the  
Unemployment Insurance Appeal Board  
C.A. No. 08A-06-010 JAP**

Submitted: March 27, 2009  
Decided: April 8, 2009

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

Dear Mr. Prentice and Ms. Aaronson,

Before the Court is the appeal of George A. Prentice from a decision of the Unemployment Insurance Appeal Board (the "Board"), which denied his appeal from the Appeals Referee as untimely. The record shows that Mr.

Prentice 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**

Albright & Son employed Mr. Prentice as a mechanic for one and a half years until he quit on March 14, 2008. Mr. Prentice filed a claim for unemployment benefits with the Division of Unemployment Insurance on March 19, 2008. The Claims Deputy determined that Mr. Prentice voluntarily quit without good cause as provided in 19 *Del. C.* § 3314(1), and therefore, that he was disqualified from the receipt of unemployment benefits.<sup>1</sup>

Mr. Prentice filed a timely appeal to the Appeal's Referee, who affirmed the decision of the Claims Deputy. The Referee's decision was mailed to Mr. Prentice's address of record on May 9, 2008. The front page of the decision contained instructions on how to appeal the

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<sup>1</sup> 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.

Referee's decision and clearly stated that the last day to file such an appeal was May 19, 2008.

On May 21, 2008, Mr. Prenticee filed an appeal from the Referee's decision to the Board. The Board held that Mr. Prentice'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."<sup>2</sup> Mr. Prentice filed the present appeal *pro se* in this Court on June 23, 2008.

## **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 support the Board's findings, and that such findings are free from legal error.<sup>3</sup> The reviewing court does not weigh the evidence,

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<sup>2</sup> *Prentice v. Albright & Son*, UIAB Appeal Docket No. 20051115 (June 11, 2008).

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

determine questions of credibility, or make its own factual findings.<sup>4</sup> Absent any legal error, the standard of review is abuse of discretion.<sup>5</sup>

### 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.<sup>6</sup> If a claimant fails to file within the statutory time frame, the Referee's determination is final.<sup>7</sup> 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.<sup>8</sup>

The record clearly supports the Board's conclusion that Mr. Prentice's appeal was untimely. The Referee mailed her decision to Mr. Prentice's address of record on May 9, 2008. As indicated on the front page of the decision, Mr. Prentice had until May 19, 2008 to

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

<sup>5</sup> *Snyder v. Wyoming Concrete*, 2007 WL 1153057 (Del. Super.).

<sup>6</sup> 19 Del. C. § 3318(c).

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

appeal the decision; however, he did not file an appeal until May 21, 2008.

Furthermore, the Board did not abuse its discretion by refusing to hear the appeal *sua sponte*. In extreme circumstances, the Board may *sua sponte* hear an appeal pursuant to 19 *Del. C.* § 3320.<sup>9</sup> 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.”<sup>10</sup>

There is no evidence, nor has Mr. Prentice asserted, that there was any error on the part of the Department of Labor in mailing the Appeals Referee’s decision. Furthermore, there are no circumstances that would 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*.

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<sup>9</sup> 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.”).

<sup>10</sup> *Id.*

#### **IV. CONCLUSION**

Mr. Prentice'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,

oc: Prothonotary  
cc: Ralph K. Dirstein, III, Esquire  
Tom Ellis, Esquire