

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

JACQUELINE MORGAN,)	
)	
Appellant,)	
)	C.A. No. 08A-06-003 MJB
)	
v.)	
)	
J & J STAFFING and)	
UNEMPLOYMENT)	
INSURANCE APPEAL BOARD)	
)	
Appellees.)	

Submitted: January 8, 2009

Decided: April 24, 2009

*Upon Appeal of the Decision of the Unemployment Insurance Appeal Board.
REMDANDED to the Unemployment Insurance Appeal Board.*

OPINION AND ORDER

Jacqueline R. Morgan, Newark, DE, pro se.

Ralph Durstein, III, Deputy Attorney General, Wilmington, DE, for Appellee
Unemployment Insurance Appeal Board.

J & J Staffing, c/o Talx UC Express, P.O. Box 66864, St Louis, MO 63166.

BRADY, J.

INTRODUCTION

Before the Court is the appeal of Jacqueline R. Morgan (the “Appellant”) from a decision of the Unemployment Insurance Appeal Board (the “Board”), affirming the Claims Deputy’s determination that Appellant’s appeal was untimely. Citing 19 *Del. C.* §3320, the Board declined to exercise jurisdiction *sua sponte* to hear the merits of Appellant’s claim because there was no evidence of administrative error on the part of the Department of Labor (“DOL”).¹ However, the Board failed to consider whether the interests of justice would be served by allowing the appeal. Therefore the Court **REMANDS** this case to the Board with instructions to consider this issue and to make explicit findings for the record.

FACTUAL AND PROCEDURAL BACKGROUND

On January 9, 2007, Appellant filed an Original Claim for unemployment benefits effective January 7, 2007. Appellant later filed additional Claims effective July 1, 2007, and November 4, 2007. A Claims Deputy determined that Appellant was disqualified from the receipt of benefits by decision dated February 29, 2008. That decision was mailed on that date to Appellant’s address of record, 86 Freedom Trail, New Castle, Delaware 19720. The last day to file an appeal of that

¹ Nineteen *Del. C.* §3320 empowers the Board to exercise, *sua sponte*, its power to hear a case on the merits despite its untimeliness “where there has been some administrative error on the part of the Department of Labor which deprived the claimant of some opportunity to file a timely appeal, or in those cases where the interest of justice would not be served by inaction.” *Funk v. Unemployment Ins. Appeal Bd.*, 591 A.2d 222, 225 (Del. 1991).

determination was March 10, 2008.² Appellant filed an appeal on April 3, 2008. Appellant contends that she was unable to file her appeal in a timely fashion because she had a Protection from Abuse (“PFA”) order in place and was not staying at the address of record at the time the determination was sent and, therefore, did not receive it. Appellant submits that some of her mail was on hold due to the PFA.

A late appeal determination was rendered on April 7, 2008, and mailed to the aforesaid address of record.³ This determination was returned to the DOL. After the determination was returned, the Appellant contacted the DOL and informed them that her new address was 1124 Vinings Way, Newark, Delaware.

Appellant testified before the DOL Appeals Referee on May 5, 2008, at which time Appellant provided another address, 1012 Vinings Way, and indicated 1124 Vinings Way, as then reflected in the DOL records, was not her address. The Referee affirmed the decision of the Claims Deputy and denied Appellant’s appeal. The basis for the Referee’s decision was that there was no evidence to suggest that the Appellant’s late filing of her appeal was the result of any mistake or error made by the DOL. The Appeals Referee held that there was no jurisdiction to entertain the merits of Appellant’s appeal, given the late filing.

² See 19 Del. C. § 3318 (b).

³ Appellant did not file a change of address when she filed the appeal.

Appellant filed a timely appeal to the Board on May 14, 2008. Following a review of the record, the Board issued a decision on May 28, 2008. The Board holding held that Appellant's appeal to the Referee was not timely because Appellant did not appeal the Claims Deputy's determination within ten days as required by 19 *Del. C.* §3318 (b), and there was no evidence of error on the part of the DOL that delayed Appellant's appeal. Therefore, the Board refused to assert jurisdiction and affirmed the decision of the Appeals Referee.

STANDARD OF REVIEW

The Court's review of the Board's decision is two-fold. First, the Court must determine whether substantial evidence supports the Board's finding that Morgan filed an untimely appeal and whether the Board's proceedings were free from legal error.⁴ Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.⁵ It is the responsibility of the Board to resolve questions of credibility and conflicts in the evidence; the Court may determine only whether there is satisfactory proof to support a factual finding.⁶ When the Board affirms a referee's decision after

⁴ *Ingram v. Barrett's Business Service, Inc.*, 794 A.2d 1160 (Del. 2007).

⁵ *Breeding v. Contractors-One-Inc.*, 549 A.2d 1102, 1104 (Del. 1988).

⁶ *Abex Corp. v. Todd*, 235 A.2d 271, 273 (Del. Super. Oct. 24, 1967).

taking additional evidence, the Court relies upon the referee's determinations of fact and conclusions of law.⁷

ANALYSIS

The Court must determine whether the Board abused its discretion by not exercising, *sua sponte*, its power to hear the case on the merits despite the untimeliness of Appellant's appeal. The Delaware Supreme Court has interpreted 19 *Del. C.* §3320 as providing the Board with the authority to act *sua sponte* beyond the ten-day appeal period to consider a case where no valid appeal has been filed by the parties under certain limited and severe circumstances.⁸ Cases in which the Board assumes jurisdiction *sua sponte* to consider an untimely appeal are "few and far between" and involve "severe" circumstances.⁹

However, Appellant was entitled to have her untimely appeal considered under both prongs of 19 *Del. C.* §3320. While she never contended the DOL staff erred in their conduct of this matter, she clearly pled circumstances that her personal safety was at risk at the address originally given the DOL,¹⁰ and that her failure to receive the mail was due to those safety concerns. The Board should

⁷ *Sanders v. Department of Labor*, 1994 WL 89028 (Del. Super. Feb. 22, 1994) (citing *Boughton v. Division of Unemployment Ins., Dept. of Labor*, 300 A.2d 25, 26 (Del. Super. Nov. 21, 1972).

⁸ *Funk v. Unemployment Ins. Appeal Bd.*, 591 A.2d 222, 225 (Del. 1991).

⁹ *Id.*

¹⁰ As evidenced by the PFA.

have considered whether her reasons were sufficient to support a finding that the “interest of justice would not be served by inaction.”¹¹

CONCLUSION

The Court finds that the Board failed to consider the second prong of the standard of review set forth in *Funk*, i.e. whether the interest of justice would not be served by inaction.¹² Therefore, the Court remands this case back to the Board. On remand, the Board is instructed to consider whether the interest of justice would not be served by inaction in this case. The Board is also instructed to set forth its reasoning in the record with regard to whether the facts presented in this case warrant the exercise of jurisdiction *sua sponte*.

Therefore, this case is **REMANDED** back to the Board with instructions to consider whether the facts presented in this case warrant the exercise of jurisdiction *sua sponte*.

IT IS SO ORDERED.

_____/s/_____

M. Jane Brady
Superior Court Judge

¹¹ *Id.*

¹² *Id.*