

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

LUANN STRALEY, Claimant,)	
)	
Appellant,)	
)	C.A. No. 08A-05-005-JRJ
v.)	
)	
ADVANCED STAFFING, INC. and)	
UNEMPLOYMENT INSURANCE)	
APPEAL BOARD,)	
)	
Appellees.)	

Date Submitted: November 12, 2008
Date Decided: April 30, 2009

OPINION

Upon Appeal of the Decision of the Unemployment Insurance Appeal Board -
AFFIRMED

Jeffrey K. Martin, Esquire, Timothy J. Wilson, Esquire, Attorneys for Appellant,
LuAnn Straley.

G. Kevin Fasic, Esquire, Attorney for Appellee, Advanced Staffing, Inc.

Ralph Durstein, III, Esquire, Attorney for appellee, Unemployment Insurance
Appeal Board.

Jurden, J.

I. INTRODUCTION

LuAnn Straley (“Claimant”) appeals the decision of the Unemployment Insurance Appeal Board (“the Board”) denying her requests for a rehearing and unemployment benefits. For the reasons set forth below, the Court finds that the Board’s decision to deny Claimant unemployment benefits is supported by substantial evidence and that the Board did not abuse its discretion when it denied Plaintiff’s request for a rehearing. Accordingly, the Board’s decision is **AFFIRMED.**

II. STATEMENT OF FACTS

Claimant began working for Advanced Staffing, Inc. (“Employer”) as its Financial Services Manager on September 11, 2006.¹ On the same date, Claimant signed her Employment Agreement, in which Claimant agreed not to “disclose to any person any of employer’s Confidential Information . . . without the prior written permission of Employer.”² On October 26, 2007, Employer discharged Claimant from employment for an alleged breach of employer confidentiality.³

On November 5, 2007, Claimant applied for unemployment insurance benefits.⁴ The Claims Deputy for the Delaware Department of Labor found that Claimant was ineligible for unemployment benefits because she was discharged for

¹ Appellant’s Opening Br. in Support of Reversal and Remand to the Unemployment Insurance Appeal Board (“Appellant’s Br.”) at 2, Docket Item (“D.I.”) 7.

² Staff Employment Agreement at § 7; Record (“R.”) at 11.

³ R. at 15; *see* Appellant’s Br. at 2 ¶3.

⁴ Appellant’s Br. at 2 ¶3.

“just cause” from her employment.⁵ After receiving notice of the denial of her benefits, Claimant filed an appeal seeking a hearing before an Appeals Referee.⁶ Claimant appeared before an Appeals Referee on December 19, 2007. Following the hearing, the Appeals Referee reversed the decision of the Claims Deputy, finding that Claimant was eligible for unemployment benefits because she was not terminated for just cause.⁷

On February 6, 2008, Employer appealed the decision of the Appeals Referee to the Unemployment Insurance Appeal Board. On the same date, the Department of Labor allegedly mailed notice of the appeal to Claimant at her address on record:

227 Rice Dr
Bear, DE 19701⁸

Claimant alleges that she did not receive the notice for the February 20, 2008 hearing. The Board went forward with the hearing despite Claimant’s absence. The Board reversed the ruling of the Appeals Referee, finding that Claimant was ineligible for unemployment benefits. The Board mailed its decision to Claimant at her 227 Rice Drive address. Claimant received the Board’s decision by U.S.

⁵ *Id.* at ¶4; Appellees’ Br. in Resp. to Pl.’s Request for Reversal and Remand to the Unemployment Insurance Appeal Board (“Employer’s Reply Br.”) at 1 ¶4, D.I. 8.

⁶ Appellant’s Br. at 2 ¶5.

⁷ *Id.* at ¶7.

⁸ R. at 15, 63.

Mail on April 16, 2008.⁹ The following day, Claimant responded to the decision with the following letter sent via facsimile to the Board:

April 16, 2008 I received notification of decision of the Appeal Board regarding a hearing which supposedly took place on February 20, 2008. It stated that I failed to appear. I DID NOT receive notification of the hearing date and time. I would have definitely been there had I known about it, especially since I was the one who initiated the original appeal.

I was told the notification was sent to my address at
227 Rice Drive
Bear, DE 19701

For whatever reason, I did not receive it and neither you nor I can control the actions of the USPS.

I AM REQUESTING A RE-HEARING BEFORE THE BOARD WHO HEARD THE CASE IN MY ABSENCE.¹⁰

Claimant did not allege or produce any evidence to the Board, aside from this letter.

On April 30, 2008, the Board considered and denied Claimant's request for a re-hearing because:

The Board's decision was sent to the Claimant at the address listed on her request for rehearing. The notice of hearing was sent to the same address. There was no Department error which could have caused the notice to be misdirected. Therefore, the Board does not find that there is a basis upon which to exercise its discretion and permit further hearing in this matter. 19 *Del. C.* §3320. The Board declines to re-open the matter at this point.¹¹

⁹ Claimant received approximately \$5,600.00 in retroactive unemployment benefits, from November 2007 until the benefits were terminated on April 16, 2008. Appellant's Br. at 2 ¶8.

¹⁰ R. at 83; Appellant's Br. at 3 ¶15.

¹¹ Decision of the Board on Appeal from Decision of Dina M. Burge (April 30, 2008); R. at 86.

Claimant subsequently filed a timely appeal to this Court. Claimant argues that she did not have sufficient notice or an opportunity to heard by the Board, and by denying Claimant’s request for a re-hearing, the Board violated her due process rights.¹² Claimant submits that the Board has not met its burden of explaining, via testimony or otherwise, its “procedure for sending notices.”¹³ Claimant further argues that the Board abused its discretion by “failing to follow up with Claimant seeking to elicit any factual basis for her non-receipt of notice.” On the contrary, Employer argues that the Board satisfied its notice requirement under Delaware law by mailing the notice to the proper address.¹⁴ Employer further counters that the Board did not abuse its discretion in denying Claimant’s request for a re-hearing based on the only evidence that was before it: Claimant’s letter to the Board on April 17, 2008.¹⁵

STANDARD OF REVIEW

This Court’s appellate review of a Board decision is limited. In reviewing the decisions of the Board, this Court must determine whether its findings and conclusions are “free from legal error and supported by substantial evidence in the record.”¹⁶ Substantial evidence means “such relevant evidence as a reasonable

¹² Appellant’s Br. at 7.

¹³ *Id.* at 8.

¹⁴ Employer’s Reply Br. at 3.

¹⁵ *Id.* at 4.

¹⁶ *PAL of Wilmington v. Graham*, 2008 WL 258986, at *3 (Del. Super. June 18, 2008).

mind might accept as adequate to support a conclusion.”¹⁷ The “substantial evidence” standard means “more than a scintilla but less than a preponderance of the evidence.”¹⁸ The Court “does not weigh the evidence, determine questions of credibility, or make its own factual findings.”¹⁹

A discretionary decision of the Board will be upheld absent an abuse of discretion.²⁰ An abuse of discretion occurs when the Board “acts arbitrarily or capriciously”²¹ or “exceeds the bounds of reason in view of the circumstances and has ignored recognized rules of law or practice so as to produce injustice.”²² The Court reviews questions of law *de novo* to determine “whether the Board erred in formulating or applying legal precepts.”²³

III. ANALYSIS

A. The Board Did Not Abuse Its Discretion When it Refused to Hold A Rehearing

Due process requires that a party have a full and fair opportunity to be heard in its own defense.²⁴ The procedural requirements and formality of that opportunity vary depending on the circumstances.²⁵ In the context of a hearing before the Board, the party whose rights may be affected is entitled to notice and a

¹⁷ *Anchor Motor Freight v. Ciabottoni*, 716 A.2d 154, 156 (Del. 1998).

¹⁸ *Breeding v. Contractors-One-Inc.*, 549 A.2d 1102, 1104 (Del. 1988).

¹⁹ *Johnson v. Chrysler Corp.*, 213 A.2d 64, 66 (Del. 1965).

²⁰ *Funk v. Unemployment Ins. Appeal Bd.*, 591 A.2d 222, 225 (Del. 1991).

²¹ *Kreshool v. Delmarva Power & Light Co.*, 310 A.2d 649, 652 (Del. Super. 1973) (Quillen, J.).

²² *Nardi v. Lewis*, 2000 WL 303147, at *2 (Del. Super. Jan. 26, 2000) (citations omitted).

²³ *Id.*

²⁴ *Morris v. S. Metals Processing Co.*, 530 A.2d 673, (Del. 1987) (TABLE).

²⁵ *Id.*

hearing.²⁶ Proper notice requires that the party receive an adequate, proper and lawful notification of the agency action that will affect its right in a meaningful time and manner.²⁷ Stated another way, due process requires that “the notice inform the party of the time, place, and date of the hearing and the subject matter of the proceedings.”²⁸ To effectuate proper notice for a hearing before the Board, the Board must mail notice to the parties at least five days before the hearing.²⁹

Due process requirements are fulfilled when they are “accomplished by a method reasonably calculated to afford the party an opportunity to be heard.”³⁰ Generally, for notice to be effective it must be received.³¹ However, in Delaware there is a rebuttable presumption that mail has been received by the party to whom it was addressed if it is correctly addressed, stamped, and mailed.³² This presumption may be rebutted by evidence that notice was never received.³³ Lack of evidence of any mailing error by the Department of Labor supports the presumption that properly mailed and addressed mail was received.³⁴ Only where there is evidence that the Board was at fault for a misdelivery will a party’s right to

²⁶ *Hunter v. First USA/Bank One*, 2004 WL 838715, at *6 (Del. Super. April 15, 2004)(citing *Tsipouras v. Tsipouras*, 677 A.2d 493, 496 (Del. 1996)).

²⁷ *Id.* (citing *Fuentes v. Shevin*, 407 U.S. 67, 80 (1972)).

²⁸ *Phillips v. Delhaize Am., Inc.*, 2007 WL 2122139, at *2 (Del. Super. Jul. 20, 2007) (citations omitted).

²⁹ *PAL of Wilmington*, 2008 WL 258986, at *4; *Hennig v. Unemployment Ins. Appeal Bd.*, 1989 WL 89605, at *1 (Del. Super. Jul. 10, 1989).

³⁰ *Reagan Nat’l Adver., Inc. v. Unemployment Ins. Appeal Bd.*, 1990 WL 105632, at *2 (Del. Super. Jul. 19, 1990).

³¹ *State ex rel. Hall v. Camper*, 347 A.2d 137, 138 (Del. Super. Ct. 1975).

³² *Id.* at 139.

³³ *Camper*, 347 A.2d at 139 (citing *Jewell v. Unemployment Compensation Commission*, 183 A.2d 585, 587 (Del. 1962)).

³⁴ *Funk*, 591 A.2d at 226.

due process be violated.³⁵ If notice is properly addressed by the agency and not received because of some fault of the party to whom it was addressed, the notice may still be deemed sufficient *even if the party did not receive it*.³⁶ For example, there was no violation of due process “where the claimant had notice through prior experience of the possible misdelivery of his mail and where the misdelivery was made through no fault of the Department of Labor.”³⁷

In this case, the Board did not abuse its discretion in refusing to grant Claimant a rehearing. The Board sent notice of its scheduled hearing to the same address Claimant used to file her original appeal, as well as the address Claimant used to request a rehearing.³⁸ Claimant “acknowledges problems with the receipt of her mail both as a result of children tampering in her mailbox and also because confusion by the mail carriers who often left mail for other residence of their community in her mailbox.”³⁹ Due process only requires that the party in interest receive notice by “a method reasonably calculated to afford the party an opportunity to be heard.”⁴⁰ Here, a method reasonably calculated to afford Claimant a chance to appear before the Board was employed. The agency mailed notice to Claimant’s address on file fourteen days prior to the hearing date, noting

³⁵ *Funk v. Unemployment Ins. Appeal Bd.*, 1989 WL 158472, at *4 (Del. Super. Dec. 13, 1989).

³⁶ *See Funk*, 591 A.2d at 226 (emphasis added).

³⁷ *Id.*

³⁸ R. at 16, 86. There is no dispute that the address on file with the Board is Claimant’s proper address.

³⁹ Appellant’s Br. at 5.

⁴⁰ *Reagan Nat’l Adver., Inc.*, 1990 WL 105632 at *2.

the time, date, and place of the scheduled hearing.⁴¹ That was sufficient to afford claimant due process.

Unlike the Department of Labor, Claimant was aware that the address she had on file with the Department was problematic. Plaintiff also received a copy of the Referee's decision, which included a section noting that Employer has a "right to further appeal" to the Board.⁴² Given these circumstances, Claimant was in a position to prevent a "misdelivery" of her mail, but failed to take such action. Claimant therefore bears the responsibility for her failure to receive notice; her failure to receive notice was not the fault of the Department of Labor.⁴³ The Board had substantial evidence to determine that Claimant was sent notice. Under these circumstances the Board acted reasonably and within the confines of Delaware law in deciding that a rehearing was not warranted. As a result, the Board's decision to deny Claimant's request for a rehearing was not an abuse of discretion.

B. The Board's Decision is Supported by Substantial Evidence

There was substantial evidence in the Record for the Board to find that Employer discharged Claimant for just cause. The Delaware Code states that individuals are disqualified from receiving unemployment compensation benefits when "the individual was discharged from the individual's work for just cause in

⁴¹ R. at 63.

⁴² Referee's Decision (Jan. 15, 2008) (citing 19 *Del. C.* § 3318); R. at 21.

⁴³ See *Wright v. Quorum Litigation Service*, 1997 WL 524061 (Del. Super. April 4, 1997) and *Camper*, 347 A.2d 137 at 139.

connection with the individual's work...."⁴⁴ Employer bears the burden of proving by a preponderance of the evidence at the hearing that Claimant was discharged for just cause.⁴⁵ "Just cause" is defined as "willful or wanton act or pattern of conduct in violation of the employer's interest, the employee's duties, or the employee's expected standard of conduct."⁴⁶ Termination for one's failure to follow an office policy or code of conduct will constitute just cause if: (1) the employee violated an existing office policy, and (2) the employee was aware of the policy in question.⁴⁷

Here, Employer established that Claimant signed an Employment Agreement, in which Claimant agreed not to "disclose to any person any of employer's Confidential Information . . . without the prior written permission of Employer."⁴⁸ The Claimant's signature evidences her knowledge of the Agreement. Claimant was the Financial Services Manager with access to Employer's sensitive information as well personal records of her co-workers.⁴⁹ At the hearing before the Board, three of Claimant's former co-workers testified that Claimant had discussed confidential salary information with other co-workers in violation of her position of trust within Employer.⁵⁰ The Court defers to the

⁴⁴ 19 Del. C. § 3314 (2).

⁴⁵ *Country Life Homes, Inc. v. Unemployment Ins. Appeal Bd.*, 2007 WL 1519520, at *3 (Del. Super. May 8, 2007).

⁴⁶ *Majaya v. Sojourner's Place*, 2003 WL 21350542 (Del. Super. June 6, 2003).

⁴⁷ *McCoy v. Occidental Chemical Corp.*, 1996 WL 111126 (Del. Super. Feb. 7, 1996); *Meyers v. Wildflowers Quality Wholesale*, 1996 WL 111124 (Del. Super. Feb. 29, 1996).

⁴⁸ Staff Employment Agreement at § 7; R. at 11.

⁴⁹ R. at 78.

⁵⁰ R. at 72-79.

Board's assessment of credibility of its witnesses.⁵¹ Claimant was warned, placed on a probationary period, and subsequently violated the conditions of her probation.⁵² There is substantial evidence in the Record to support the Board's findings that Claimant violated a known office policy and was terminated for just cause.

IV. CONCLUSION

The Court finds that the Board did not abuse its discretion when it refused to reopen its April 16, 2008 decision because there was sufficient evidence in the record to demonstrate that Claimant was sent proper notice. The Court also concludes that the Board's decision to deny Claimant unemployment benefits was supported by substantial evidence. According, the Board's decision is **AFFIRMED.**

IT IS SO ORDERED.

Jan R. Jurden, Judge

⁵¹ *Chrysler Corp.*, 213 A.2d at 66.

⁵² R. at 79.