

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

PRUDENCE RAMEY, )  
Appellant, )  
 ) C.A. No. 08A-09-001 RRC  
v. )  
 )  
WAL-MART STORES EAST, LP, )  
Appellee, )  
 )  
and )  
 )  
UNEMPLOYMENT INSURANCE )  
APPEAL BOARD, )  
Appellee. )

Submitted: July 7, 2009  
Decided: August 13, 2009

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

**ORDER**

Prudence Ramey, Newark, Delaware, *Pro Se*, Appellant.

Sarah E. Diluzio, Esquire, Potter Anderson & Corroon, LLP, Wilmington, Delaware, Attorney for Wal-Mart Stores East, LP, Appellee.

Philip G. Johnson, Esquire, Deputy Attorney General, Department of Justice, Wilmington, Delaware, Attorney for the Unemployment Insurance Appeal Board, Appellee.

COOCH, J.

This 13th day of August, 2009, upon consideration of Appellant's appeal from a decision of the Unemployment Insurance Appeal Board, it appears to the Court that:

1) Appellant was terminated from her position as an associate in Wal-Mart Stores East, LP ("Wal-Mart") Store #2555, New Castle, Delaware in June 2008 for violating Wal-Mart's workplace policy regarding employee violence. After receiving a complaint from another employee that Appellant had pulled her hair, store management reviewed surveillance video that showed Appellant had assaulted her coworker. Wal-Mart maintained a workplace policy that forbids employees from assaulting other persons, and warns employees that any violation of the policy may result in termination. Appellant was terminated in accordance with Wal-Mart's workplace policy regarding employee violence.

2) Appellant filed a claim for unemployment benefits in June 2008. Wal-Mart contested Appellant's claim, alleging that she was terminated for just cause. The Unemployment Claims Deputy found that Wal-Mart had met its burden of proving that it had just cause to terminate Appellant's employment.<sup>1</sup> Thus, the Deputy found Appellant unqualified

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<sup>1</sup> "Just cause" is defined as a "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." *Majaya v. Sojourner's Place*, 2003 WL 21350542 (Del. Super. June 6, 2003).

for unemployment benefits pursuant to 19 Del. C. § 3314(2).<sup>2</sup> Appellant timely appealed the Deputy's decision, and a hearing was scheduled on July 24, 2008, with an Unemployment Appeals Referee. Appellant, however, did not appear or otherwise request a continuance of the hearing. Accordingly, the Referee dismissed Appellant's appeal "due to the Claimant's failure to appear and prosecute the appeal at the scheduled hearing time."<sup>3</sup>

3) The record indicates that the Referee mailed its decision to Appellant's address of record on July 25, 2008.<sup>4</sup> Properly addressed mail is presumed received,<sup>5</sup> and, notably, Appellant does not allege that she did not receive the Referee's decision after the deadline to file an appeal had expired. The Referee's decision conspicuously indicated that the last date upon which Appellant could file an appeal to the Unemployment Insurance Appeals Board ("UIAB" or "Board") was August 4, 2008.<sup>6</sup> Appellant, however, did not file an appeal until August 5, 2008. The Board reviewed Appellant's request for an appeal and denied it as untimely. Appellant then timely appealed the Board's Decision to this Court.

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<sup>2</sup> Section 3314(2) states, in relevant part, that a claimant shall be disqualified from receiving unemployment benefits when "the individual was discharged from the individual's work for just cause in connection with the individual's work..."

<sup>3</sup> Appeal's Referee Decision No. 20059667 (July 24, 2008).

<sup>4</sup> *Id.*

<sup>5</sup> *Robledo v. Stratus*, 2001 WL 428684, \*1 (Del. Super. Mar. 27, 2001).

<sup>6</sup> Appeal's Referee Decision No. 20059667 (July 24, 2008).

4) Appellant argues that the Board’s decision should be reversed because the tardiness of her appeal was due to the computer problems of her friend, Sherryann Sinnette, who assisted her in filing the appeal. Ms. Sinnette submitted an affidavit to this Court in connection with Appellant’s appeal that made the same assertion. Appellant also argues that she was not terminated for good cause because the incident she had with her coworker was nothing more than a “playful interaction between two employees.”<sup>7</sup> Appellant avers that she attempted to retain counsel to represent her during the unemployment insurance proceedings, but was unable to afford private counsel, could not secure *pro bono* counsel, and a legal clinic she visited could not represent her due to a conflict.

5) Wal-Mart argues that the Board’s decision should be affirmed because it is supported by sufficient evidence and free from legal error. Wal-Mart claims that the record shows that Appellant’s appeal was tardy and that the Board properly applied 19 Del. C. § 3318(c). Similarly, the Board argues that it was within the Board’s discretion to dismiss Appellant’s appeal as untimely instead of hearing it *sua sponte* pursuant to 19 Del. C. § 3320.

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<sup>7</sup> Appellant Opening Br. at 4.

6) This Court’s appellate review of the Board’s decision is limited. In reviewing a decision 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.”<sup>8</sup> Substantial evidence means “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.”<sup>9</sup> The Court reviews questions of law *de novo* to determine “whether the Board erred in formulating or applying legal precepts.”<sup>10</sup> If the Board renders a discretionary decision, the Court will not set aside that decision unless it is clearly unreasonable or capricious, and thus, an abuse of the Board’s discretion.<sup>11</sup>

7) A claimant who receives an adverse decision from the Referee has ten days after the decision is mailed to appeal that decision to the Board.<sup>12</sup> If the claimant fails to file an appeal within ten days, the Referee’s decision is final,<sup>13</sup> and the Court is jurisdictionally barred from considering the merits of a claimant’s appeal.<sup>14</sup> However, the Board does have the discretion to consider a late appeal *sua sponte* only “where there has been

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<sup>8</sup> *Federal Street Fin. Serv. v. Davies*, 200 WL 1211514, at \*2 (Del. Super. June 28, 2000).

<sup>9</sup> *Reeves v. Conmac Serv.*, 2006 WL 496136, at \*3 (Del. Super. Feb. 21, 2006).

<sup>10</sup> *Strazzella v. Joe Tajas, Inc.*, 2008 WL 376354, at \*2 (Del. Super. Feb. 12, 2008).

<sup>11</sup> *Id.*

<sup>12</sup> 19 Del. C. § 3318(c).

<sup>13</sup> *Id.*

<sup>14</sup> 19 Del. C. § 3318(b).

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 interest of justice would not be served by inaction.”<sup>15</sup>

8) The Board did not abuse its discretion when it denied Appellant’s appeal as untimely. The Department of Labor committed no clerical error causing Appellant’s tardy appeal. In fact, Appellant admits that her appeal was untimely but not because of any action by the Department of Labor. While the Court recognizes and is not unsympathetic to Appellant’s possible inability to retain counsel to represent her during the unemployment insurance proceedings, Appellant bears the responsibility to follow conspicuous deadlines for filing appeals.<sup>16</sup>

9) There is substantial evidence in the record demonstrating that the Referee’s decision was mailed to Appellant, that the Referee’s decision

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<sup>15</sup> *Robledo*, 2001 WL 428684, \*2.

<sup>16</sup> *See, e.g., Sheppard v. GPM Investments, LLC*, 2008 WL 193317, at \*2 (Del. Super. Jan. 23, 2008) (holding that where the appeal to the UIAB is untimely due to Claimant’s “inadvertent, unintentional, or accidental actions” the decision of the Referee becomes final, and the claim is jurisdictionally barred by 19 Del. C. § 3318(b) from further appeals); *see also Stacey v. People’s Settlement*, 2009 WL 891054 (Del. Super. Mar. 31, 2009) (affirming the Board after it denied an appeal as untimely because the Claimant neglected her responsibility to read the Notice of Determination and make herself aware of the filing deadline); (*Cooke v. Boscovs*, 2008 WL 1726053 (Del. Super. Mar. 24, 2008) (holding that a claimant has the responsibility to check the location where he regularly receives mail, and that his failure to do so did not merit a waiver of the timeliness requirements).

conspicuously indicated that the deadline for filing an appeal to the Board was August 4, 2008, and that Appellant failed timely to file an appeal.<sup>17</sup>

Further, the Board's decision to deny Appellant's appeal is free from legal error, and the Board did not otherwise abuse its discretion. Thus, the Board's Decision is **AFFIRMED**.

**IT IS SO ORDERED.**

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Richard R. Cooch

oc: Prothonotary  
Unemployment Insurance Appeal Board

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<sup>17</sup> Appellant's appeal was tardy, and the tardiness was not caused by administrative error, therefore, her claim is jurisdictionally barred from further appeal by 19 Del. C. § 3318(b). Thus, the Court cannot consider Appellant's arguments as to the merits of her claim. *See, e.g., Lively v. Dover Wipes Co.*, 2003 WL 21213415, at \*2 (Del. Super. May 16, 2003) (holding that where a claimant fails to "exhaust his administrative remedies - by failing to timely file his appeal before the UIAB – this Court has no jurisdiction to make a determination as to the merits of his case.").