

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

DANIEL M. MYERS,)	
)	
Appellant,)	
)	C.A. No. 08A-11-004-JRJ
v.)	
)	
BRANDYWINE BODY SHOP, and)	
UNEMPLOYMENT INSURANCE)	
APPEAL BOARD,)	
)	
Appellees)	

Date Submitted: June 29, 2009
Date Decided: August 26, 2009

ORDER

Upon Appeal of the Decision of the Unemployment Insurance Appeal Board:
AFFIRMED.

Daniel Myers (“Myers”) seeks the reversal of the Unemployment Insurance Appeal Board’s (“UIAB”) denial of unemployment benefits after the UIAB refused to hear his untimely appeal *sua sponte*. For the following reasons, the Court affirms the UIAB’s decision.

1. On June 26, 2006, Myers was employed full-time as an automotive painter at Brandywine Body Shop (“Brandywine”). Over two years later, on July

7, 2008, Myers claims he was terminated without cause. Myers immediately sought unemployment benefits.

2. On August 13, 2008, a Department of Labor claims deputy granted Myers unemployment benefits. The deputy found that “[Myers had] messed up on a few paint jobs, but never received any warnings” about his poor work product or that his job was in jeopardy.¹ The deputy’s findings also acknowledge that the Department of Labor did not receive any documents from Brandywine to support the employer’s position that Myers was terminated for cause. Because Brandywine failed to overcome the burden of proof that Myers was terminated with cause, the deputy found Myers qualified for unemployment benefits.

3. On August 20, 2008, Brandywine appealed. A hearing was held September 10, 2008, before an Appeal Referee. The Referee heard testimony from Myers, Gary Louth (“Louth”) (Brandywine’s owner and manager), and Brent Logullo (“Logullo”) (Myers’ supervisor).

4. Louth claimed that Myers was ultimately terminated due to poor work product.² Louth testified that Brandywine suffered losses on numerous occasions after re-painting vehicles initially completed by Myers.³ Both Louth and Logullo

¹ Record on Appeal (“R”) at 2.

² R. at 20, 23.

³ R. at 20.

testified that Myers had an alcohol problem which interfered with his work.⁴ Brandywine's management discussed Myers' alcohol problem with him on numerous occasions, to no avail.⁵ Myers acknowledged that he would arrive to work "hung over," but denied ever drinking on the job or during breaks.⁶

5. The Referee determined Myers was terminated with just cause based upon his "substandard" performance and failure to improve after a sufficient warning. The Referee's decision was mailed on September 23, 2008, conspicuously listing October 3, 2008 as the last day to appeal.⁷

6. Myers appealed the referee's decision to the UIAB on October 6, 2008 – three days late. Aware that his appeal was untimely, Myers indicated on his appeal notice that his sister died on September 20, 2008; his father was hospitalized; Myers, himself, was hospitalized; his 18 year-old cat "Sparkle" died; his dog died; and his other cat was killed by a car.⁸ Myers attached a copy of his sister's published obituary and the receipt from Delaware Pet Crematorium dated October 3, 2008 for Sparkle's private cremation.⁹ The UIAB reviewed Myers' file and dismissed his appeal as untimely on October 31, 2008.

⁴ R. at 20, 23.

⁵ R. at 19-20.

⁶ R. at 25.

⁷ R. at 8.

⁸ R. at 34.

⁹ R. at 35-37.

7. Myers timely appealed the UIAB's decision on November 12, 2008. Myers' appeal's sole claim is that the UIAB "did not adequately allow proper time as required by Rule 6 of the Superior Court Rules" by not counting weekends and allowing an additional three days for service by mail. Myers claims that if the "3-day rule" had been applied, his appeal would be timely.

8. This Court's review of UIAB appeals is limited.¹⁰ Appellate review on a UIAB decision is limited to "whether its findings and conclusion are 'free from legal error and supported by substantial evidence in the record.'"¹¹ Absent an abuse of discretion, UIAB discretionary decisions will be upheld.¹² Abuse of discretion occurs where the UIAB "acts arbitrarily or capriciously 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."¹³

9. Under 19 *Del. C.* § 3318(c), a Referee's decision is considered final "unless within 10 days after the date of notification or mailing of such decision, further appeal to the [UIAB] is initiated." However, the UIAB has discretion to hear an untimely appeal *sua sponte*.¹⁴ The UIAB's ability to hear untimely appeals is warranted in instances where "there has been some administrative error on the

¹⁰ See *Pal of Wilmington v. Graham*, 2008 WL 2582986, *3 (Del. Super. June 18, 2008).

¹¹ *Id.* (quoting *Fed. St. Fin. Serv. v. Davies*, 2000 WL 1211514, *2 (Del. Super. June 28, 2000)).

¹² *Funk v. Unemployment Ins. Appeal Bd.*, 591 A.2d 222, 225 (Del. 1991).

¹³ *Graham*, 2008 WL 2582986, *4 (internal citations omitted).

¹⁴ See 19 *Del. C.* § 3320(a); *Funk*, 591 A.2d at 225.

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.”¹⁵

10. Initially, the Court notes that the UIAB is not bound by the Superior Court procedural rules for the purpose asserted by Myers. The UIAB is held to legislatively created jurisdictional limits. Those limits include a statutory time period in which to file an appeal.¹⁶ If court procedural rules controlled the UIAB, the statute would say it and the case law would support it – neither does.¹⁷

11. Despite Myers’ unfortunate losses, the UIAB did not abuse its discretion by refusing to hear his appeal. The UIAB found, and Myers has not rebutted, that the untimely filed appeal was not the result of an administrative error. Furthermore, the list of deaths and illnesses supporting Myers’ justification for an untimely appeal, though unfortunate, are not such that would require a review “in the interest of justice.” For instance, Myers’ sister’s death preceded the appeal deadline by two weeks. As for Myers’ and his father’s hospitalization, Myers offers nothing, apart from a room number, to support that assertion. Myers also fails to include his and his father’s hospital stay time periods.

¹⁵ *Id.* at 225 (finding that such cases are “few and far between”).

¹⁶ 19 *Del. C.* § 3318(c).

¹⁷ *See* 19 *Del. C.* § 3304, *et seq.*

For the foregoing reasons, the Court finds the UIAB did not abuse its discretion by refusing to hear Appellant's appeal *sua sponte*. The decision of the Unemployment Insurance Appeal Board is **AFFIRMED**.

IT IS SO ORDERED.

Jan R. Jurden, Judge

cc: Prothonotary
Leo John Ramunno, Esquire
Philip Johnson, Esquire