

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

DEBRA L. RAMPULLA,)	
Appellant)	
)	
v.)	
)	CA No. 08A-03-006 FSS
JIMMY’S GRILLE & CATERING,)	
and UNEMPLOYMENT INSURANCE)	
APPEAL BOARD,)	
Appellees)	

Submitted: March 11, 2009
Decided: June 5, 2009

ORDER

**Upon Appeal from the Unemployment Insurance Appeal Board–
*AFFIRMED***

After less than two months working part-time for Jimmy’s Grille, Rampulla quit and sought unemployment benefits. Rampulla was disqualified because she voluntarily terminated her employment. Rampulla appealed and, ultimately, the disqualification was affirmed based on her failure to appear at the hearing. The Unemployment Insurance Appeal Board (the “UIAB”) denied a rehearing and she has appealed the denial.

1. Rampulla began waitressing part-time for Jimmy’s Grille on July 15, 2007. On September 5, 2007, she completed her shift and left work without telling anyone she was not coming back, and she never did.

2. In October 2007, Rampulla filed for unemployment benefits. She claimed Jimmy's Grille changed her work schedule, fostered a hostile work environment, and that the income was poor. On October 19, 2007, a claims deputy disqualified Rampulla from unemployment benefits. Rampulla appealed, and an appeals referee affirmed the disqualification, finding "claimant voluntarily quit without good cause."

3. On November 30, 2007, Rampulla filed an appeal with the UIAB, listing "191 Cook Road . . ." as her new address. On December 26, 2007, the UIAB mailed a notice requiring Rampulla's attendance at a January 9, 2008 appeal hearing. That notice was addressed to ". . . 191 Cook Road . . ." She did not appear for that hearing.

4. On January 10, 2008, the UIAB mailed its decision affirming the benefit disqualification based upon Rampulla's failure to appear and prosecute her claim. That decision was addressed to, ". . . 191 Cook Road . . ."

5. Rampulla wrote to the UIAB on January 12, 2008 – the date Rampulla admittedly received the January 10, 2008 UIAB decision – claiming she did not receive the earlier notice to appear and requested an "appeal." The UIAB considered Rampulla's letter as a request for a rehearing. On January 13, 2008, the UIAB reviewed Rampulla's file and decided that "there was no Department error

which could have caused the notice to be received untimely.” As a result, the UIAB denied Rampulla’s request to rehear her claim. That decision was mailed to, “. . . 194 Cook Road . . .,” on January 23, 2008.

6. On March 27, 2008, Rampulla filed this appeal. The appeal recapitulates Rampulla’s claim and defends her failure to appear on the basis that she never received notice. Rampulla claims the notice was mailed to the wrong address: 194 Cook Road, rather than the correct address, 191 Cook Road. Rampulla claims she received the rehearing denial after she went to the post office to complain about not receiving mail.

7. Jimmy’s Grille filed its answering brief on December 28, 2008. Rampulla failed to file a reply brief and the record closed on March 11, 2009.

8. This court’s review of UIAB appeals is limited.¹ 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.’”² Absent an abuse of discretion, discretionary decisions by the UIAB will be upheld.³ Abuse of discretion occurs where the UIAB “acts arbitrarily or capriciously or exceeds the

¹ See *Pal of Wilmington v. Graham*, 2008 WL 2582986, *3 (Del. Super. June 18, 2008).

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

³ *Funk v. Unemployment Ins. Appeal Bd.*, 591 A.2d 222, 225 (Del. 1991).

bounds of reason in view of the circumstances, and has ignored recognized rules of law or practice so as to produce injustice.”⁴ According to 19 *Del. C.* § 3321(a), “the Board’s power to rule on a motion for a rehearing is entirely within its discretion.”⁵ Moreover, “the grant or denial of a motion for rehearing is solely within the discretion of the Board.”⁶

9. Rampulla has failed to show that the UIAB acted “arbitrarily or capriciously” when it denied her rehearing. Rampulla’s justification that she failed to appear due to a mailing error is shaky, at best. There is a rebuttable presumption that a correctly addressed, stamped, and mailed notice is received by the party to whom it is addressed.⁷ Other than her word, Rampulla has offered nothing to rebut that presumption. Rampulla also fails to explain how she received the UIAB’s January 10, 2008 decision, but not the hearing notice, even though both documents were addressed the same. There is no evidence that Rampulla previously attempted to remedy mail delivery issues.⁸ That and the fact that she admittedly received the

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

⁵ *Tesla Indus. v. Bhatt*, 2007 WL 2028460, *2 (Del. Super. June 28, 2007).

⁶ Unemployment Insurance Appeal Board Regulation 7.1. *See also Clemmons v. Lifecare at Lofland Park*, 2003 WL 21090169, *2 (Del. Super. Apr. 25, 2003).

⁷ *Rodney Square Bldg. Restorations, Inc. v. Noel*, 2008 WL 2943376, *4 (Del. Super. July 22, 2008) (internal citations omitted).

⁸ *See Funk*, 591 A.2d at 226.

UIAB January 10, 2008 decision creates doubt as to any delivery problems.

10. The only mistake on the UIAB's part was that it misaddressed its denial of the rehearing request. As to that, Rampulla has suffered no harm. The uncontested fact remains that Rampulla failed to appear for the hearing without an excuse. Hence, the denial of another hearing was justified. The UIAB decision is, therefore, **AFFIRMED**.

IT IS SO ORDERED.

/s/ Fred S. Silverman
Judge

cc: Prothonotary
Stephen W. Spence, Esquire
Debra L. Rampulla