

SUPERIOR COURT  
OF THE  
STATE OF DELAWARE

RICHARD F. STOKES  
JUDGE

1 THE CIRCLE, SUITE 2  
SUSSEX COUNTY COURTHOUSE  
GEORGETOWN, DE 19947

October 14, 2009

Cherilyn West  
306 Atlantic Avenue  
Salisbury, MD 21804

Q & D Trucking  
Quenton Wilkerson  
Attn: Personnel  
321 E. 6<sup>th</sup> Street  
Laurel, DE 19956

RE: *West v. Q & D Trucking and the Unemployment Ins. Appeals Board*  
C. A. No. 09A-02-002-RFS

Dear Ms. West and Mr. Wilkerson:

Pending before me is Claimant Cherilyn West's appeal of a decision of the Unemployment Insurance Appeals Board ("Board") affirming a referee's decision finding Claimant to be ineligible for unemployment benefits. The Board determined that Claimant's appeal was untimely filed pursuant to the ten-day limit set forth in 19 *Del. C.* § 3318( c ).<sup>1</sup>

The Board has discretion to enforce the ten-day time limit when a claimant fails to file her appeal within the statutory time frame, fails to show evidence of an error by the Department of Labor regarding the mailing, and does not present evidence of any severe

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<sup>1</sup>Section 3318( c ) states in part:

The parties shall be duly notified of the tribunal's decision, together with its reason therefor, which shall be deemed to be final unless within 10 days after the date of notification or mailing of such decision further appeal is initiated pursuant to § 3320 of this title.

circumstance which would have prevented docketing a timely appeal,<sup>2</sup> The Board also has discretion to hear an untimely appeal *sua sponte* pursuant to 19 *Del. C.* § 3320. This is warranted if the lateness of the filing can be traced to an error on the part of the Board or if the claimant offers a serious and credible excuse for the late filing.<sup>3</sup>

In this situation, the Court's scope of review is limited to determining whether the Board abused its discretion in refusing to hear the untimely appeal rather than reaching the merits of the underlying decision.<sup>4</sup>

The referee's decision plainly states on the cover page that the last day to file an appeal was December 19, 2008. Ms. West's appeal was postmarked December 31, 2008. She does not dispute these facts or attempt to explain them in any way. She has not attributed her lateness to an error on the part of the Department of Labor. She has not offered an excuse sufficient to warrant a *sua sponte* exercise of the Board's jurisdiction. On these facts, I find that the Board did not abuse its discretion in adhering to the ten-day deadline for filing an appeal of a referee's decision.

For these reasons, the Board's decision is *Affirmed*.

***IT IS SO ORDERED.***

Sincerely,

Richard F. Stokes

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<sup>2</sup>*Morra v. Unemployment Ins. Appeal Bd.*, 2004 WL 1965825 (Del. Super.).

<sup>3</sup>*Lively v. Dover Wipes Co.*, 2003 WL 21213415 (Del. Super.).

<sup>4</sup>*Cooke v. Boscovs*, 2008 WL 1726053 (Del. Super.)(citing *Funk v. Unemployment Ins. Appeal Bd.*, 591 A.2d 222, 225 (Del. 1991)).

cc: Prothonotary