

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

MICHAEL AIKENS,)	
Appellant,)	
v.)	C.A. No.: 12A-03-013 RRC
)	
CAREERS USA and)	
UNEMPLOYMENT INSURANCE)	
APPEAL BOARD,)	
Appellees.)	

Submitted: October 1, 2012
Decided: December 26, 2012

Upon Appeal from the Unemployment Insurance Appeal Board.
AFFIRMED.

ORDER

Mr. Michael Aikens, Appellant, *pro se*.

Caroline L. Cross, Esquire, Deputy Attorney General, Department of Justice,
Wilmington, Delaware, Attorney for the Unemployment Insurance Appeal Board.

Careers USA, 6501 Congress Avenue, Suite 200, Boca Raton, FL 33487

COOCH, R.J.

This 26th day of December 2012, upon consideration of Appellant’s Appeal from the Unemployment Insurance Appeal Board, it appears to the Court that:

1. Appellant Michael Aikens (“Appellant”) worked for Appellee Careers USA (“Appellee”), a staffing agency, from September 9, 2009 to November 5, 2011. Appellee’s application included the question, “Have you ever been convicted of any criminal offense.” Appellant responded “no.” Appellee assigned Appellant to work for BJ’s, a wholesale grocery

store. Appellant did a favorable job for BJ's, which wanted to hire him full-time. So, BJ's ran a background check on Appellant.

2. Appellant's background check revealed he had several prior criminal convictions. As a result, BJ's did not hire him and recommended that Appellee terminate him. Appellee terminated Appellant because he did not initially disclose that he had a criminal conviction. Thus, Appellee could not properly place him in another temporary assignment. On November 9, 2011, Appellant applied for unemployment benefits. A claims deputy disqualified him from receiving benefits because his firing was for "just cause."¹ Appellant timely appealed this claim.
3. On January 9, 2012, an appeals referee heard Appellant's appeal. Appellant testified that he responded "no" on his application because he thought responding "yes" would bar him from being employed. On January 12, 2012, the appeals referee affirmed the claims deputy's denial of Appellant's claim, holding "[Appellant] knew what he was doing was wrong when he filled out the application and did it anyway. This tribunal view [Appellant's] actions to be willful and wanton misconduct. [Appellant] is disqualified from receiving unemployment benefits." On January 18, 2012, Appellant timely appealed to the Board. The Board scheduled Appellant's appeal for March 14, 2012. Appellant received proper notice of the hearing's date, time, and location.
4. On March 14, 2012, the Board convened to hear Appellant's appeal. Appellant, however, did not show up. The Board waited an appropriate amount of time and dismissed Appellant's appeal because he did not show up.² Appellant timely appealed the Board's decision to this Court.
5. On August 23, 2012, Appellant submitted his opening brief, which reads, in its entirety:

¹ 19 *Del. C.* § 3314(2) ("An individual shall be disqualified for benefits for the week in which the individual was discharged from the individual's work for just cause in connection with the individual's work . . .").

² 19 *Del. Admin. C.* § 1201-4.2 ("All parties to the appeal shall be present at the Board's hearing. Failure to appear within 10 minutes of the time indicated on the Notice may result in the Board hearing the appeal in absence of the delinquent party or, if the delinquent party is the appellant, dismissal of the appeal.").

I (Michael Aikens) was employed by Career USA to temp to work for BJ from September 2009 to November 2011. I was given a starting rate of \$9.50 and in my annual review I received a .50 cent increase to \$10.00. During my two years there I had a good track record with attendance and great work ethic, it was also noted that Careers USA stated in my unemployment hearing that “I was a great employee.” Career USA pay rate stopped at the \$10.00 per hour for the position that I was hired for, so I decided to apply internally for BJ’s. When BJ’s ran a background check on me they found some criminal history that did not belong to me, there for it resulted in me being terminated with no questions asked. On Careers USA application I did not check mark off the criminal background and Careers USA never ran my background for two years, they didn’t find out about the past history until BJ’s ran their own background check. There is a copy of my criminal history report showing my past history.

I feel that I should receive my benefits because I put in two good years with BJ’s with no complaints. My past is my past and it never affects the way I perform on the job, past or current employment. I have always been a hard working employee at every job since 1999. Since I was let go I lost my home (still with no permanent resident) and car and I’m behind on bills.

6. On September 10, 2012, the Board submitted a letter defending its decision to dismiss Appellant’s appeal because he “failed to avail himself of his administrative remedies.”
7. On September 11, 2012, Appellee wrote to this Court, asking that it uphold the Board’s decision and that Appellee will “rest[] on the record of the [UIAB] and will not file an answering brief.” The Court may hear Appellant’s appeal without the non-appealing party filing a brief.³
8. Dismissal is appropriate under Superior Civil Court Rule 72(i) because Appellant failed to file an appropriate opening brief.⁴ Appellant did not cite any case law or point to anything in the record favoring reversal.

³ See *McIntyre v. Unemployment Insurance Appeal Board*, 962 A.2d 917, 2008 WL 4918217, at *2 (Del. Nov. 18, 2008) (TABLE); See also Super. Ct. Civ. R. 107(e).

⁴ Super. Ct. Civ. R. 72(i) (“The Court may order an appeal dismissed[] sua sponte . . . Dismissal may be ordered for . . . any other reason deemed by the Court to be appropriate.”).

9. Assuming, *arguendo*, that Appellant's brief was satisfactory, dismissal is still appropriate. The Court must uphold the Board's decision absent an error of law or abuse of discretion.⁵ Also, judicial review is not available until the Appellant exhausts all of his administrative remedies.⁶ The Board dismissed Appellant's appeal because he did not show up within the required timeframe. The Court sees no abuse of discretion or error of law.

Therefore, the Board's decision is **AFFIRMED**.

IT IS SO ORDERED.

Richard R. Cooch, R.J.

cc: Prothonotary
Unemployment Insurance Accident Board

⁵ *Funk v. Unemployment Insurance Appeal Board*, 591 A.2d 222, 225 (Del. 1991).

⁶ *See* 19 *Del. C.* § 3322(a) ("Any decision of the Unemployment Insurance Appeal Board shall become final 10 days after the date of notification or mailing thereof, and judicial review thereof as provided in this subchapter shall be permitted only after any party claiming to be aggrieved thereby has exhausted all administrative remedies as provided by this chapter.").