



1. Mr. Milloway was employed by Boulden Plumbing on November 16, 2009.<sup>1</sup> After completing a single day of work, Mr. Milloway did not return to the job.<sup>2</sup>

2. On May 30, 2010 Mr. Milloway filed for unemployment benefits with Delaware's Department of Labor ("DOL").<sup>3</sup> A claims deputy with the DOL found that pursuant to 19 *Del. C.* § 3314(1), Mr. Milloway voluntarily quit his job for a personal reason rather than for "good cause" attributable to his work.<sup>4</sup> The claims deputy held that Mr. Milloway was disqualified from receiving unemployment insurance benefits.<sup>5</sup> The notice of determination dated July 12, 2010 was mailed to the parties and provided that the decision would become final on July 22, 2010 if neither party appealed.<sup>6</sup>

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<sup>1</sup>Record at 1 (hereinafter "R. at \_\_\_").

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*; 19 *Del. C.* § 3314(2): "An individual shall be disqualified for benefits (f) or the week in which the individual left work voluntarily without good cause attributable to such work and for each week thereafter until the individual has been employed in each of 4 subsequent weeks (whether or not consecutive) and has earned wages in covered employment equal to not less than 4 times the weekly benefit amount."

<sup>5</sup> R. at 1.

<sup>6</sup> *Id.*

3. Mr. Milloway appealed the claims deputy's July 2010 decision on February 3, 2012.<sup>7</sup> The DOL responded by stating that the appeal was late pursuant to 19 *Del. C.* § 3318(b), but a hearing before a referee would be scheduled to address exclusively the timeliness of the appeal.<sup>8</sup> The hearing was scheduled for February 29, 2012.<sup>9</sup>

4. Mr. Milloway attended the referee's hearing along with Ms. Marge Perry who appeared as an agency representative on behalf of the DOL.<sup>10</sup> Ms. Perry testified that the claims deputy's July 2010 decision setting forth the appeals procedure was mailed to Mr. Milloway's home address on July 12, 2010.<sup>11</sup> She further testified that the decision became final on July 22, 2010 as a claimant has ten days from the date of the decision to appeal.<sup>12</sup> The referee verified Mr. Milloway's address and Mr. Milloway confirmed that he had resided at that same

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<sup>7</sup> *Id.* at 2.

<sup>8</sup> *Id.* at 3; 19 *Del. C.* § 3318(b): "Unless a claimant or a last employer who has submitted a timely and completed separation notice in accordance with § 3317 of this title files an appeal within 10 calendar days after such claims deputy's determination was mailed to the last known addresses of the claimant and the last employer, the claims deputy's determination shall be final and benefits shall be paid or denied in accordance therewith.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.* at 5.

<sup>11</sup> *Id.* at 8.

<sup>12</sup> *Id.* at 8, 9.

address in July of 2010 when the claims deputy's decision was mailed.<sup>13</sup> Mr. Milloway testified that he had never received the claims deputy's decision in the mail, but further stated that to his knowledge he had never encountered problems with mail delivery.<sup>14</sup> Mr. Milloway also testified about an overpayment hearing held in December, 2011 alerting the referee that he did not see the disqualification document until that time.<sup>15</sup> The referee determined that Mr. Milloway was mailed the disqualifying determination to his correct address and further found no evidence that Mr. Milloway's late filing was the result of error by the DOL.<sup>16</sup> The referee affirmed the claims deputy's decision, finding that Mr. Milloway failed to file a timely appeal and the claims deputy's decision was final and binding.<sup>17</sup>

5. Mr. Milloway appealed the referee's decision on March 9, 2012.<sup>18</sup> In reviewing the evidence presented at the referee's hearing, the Board found there to be no evidence of departmental error that may have prevented Mr. Milloway from filing a timely appeal.<sup>19</sup> The Board denied Mr. Milloway's application for further

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<sup>13</sup> *Id.* at 12.

<sup>14</sup> *Id.* Mr. Milloway resides in a single family residence with his young son. *Id.*

<sup>15</sup> *Id.* at 13, 16.

<sup>16</sup> *Id.* at 16.

<sup>17</sup> *Id.* at 16, 17.

<sup>18</sup> *Id.* at 20, 21.

<sup>19</sup> *Id.* at 22, 23.

review and affirmed the determination that Mr. Milloway failed to file a timely appeal of the claims deputy's decision.<sup>20</sup> Mr. Milloway appealed the Board's decision to this Court.<sup>21</sup>

6. The Court's review of Mr. Milloway's appeal is limited to determining whether the Board's decision was supported by substantial evidence and free from legal error.<sup>22</sup> Substantial evidence is defined as "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion."<sup>23</sup> Further, the Board's decisions are reviewed for an abuse of discretion in the absence of legal error, with alleged errors of law reviewed *de novo*.<sup>24</sup> The Court will find an abuse of discretion when the Board "exceeds the bounds of reason in view of the circumstances and has ignored recognized rules of law or practice so as to produce injustice."<sup>25</sup> Ultimately, the Court "will not intrude on the [Board's]

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<sup>20</sup> *Id.*

<sup>21</sup> *Id.* at 27, 28.

<sup>22</sup> See, e.g., *Unemployment Ins. Appeal Bd. v. Duncan*, 337 A.2d 308, 309 (Del. 1975); *Meacham v. Delaware Dept. of Labor*, 2002 WL 442168 (Del. Super. Mar. 21, 2002).

<sup>23</sup> *Olney v. Cooch*, 425 A.2d 610, 614 (Del. 1981).

<sup>24</sup> *Miller v. Garda CL Atl., Inc.*, 2011 WL 1344900 at \*1 (Del. Super. Apr. 7, 2011).

<sup>25</sup> *McIntyre v. Unemployment Ins. Appeal Bd.*, 2008 WL 1886342 (Del. Super. Apr. 29, 2008) aff'd, 962 A.2d 917 (Del. 2008).

role as trier of fact by disturbing the [Board's] credibility determinations or factual findings.”<sup>26</sup>

7. The Court's function in the present appeal is to review the Board's determination as to the timeliness of Mr. Milloway's appeal. In his opening brief, Mr. Milloway addresses the merits of his case, to the exclusion of the timeliness issue.<sup>27</sup> Nevertheless, the Court has reviewed the Board's decision. The DOL through its representative testified before the referee that notice of the decision was mailed to Mr. Milloway.<sup>28</sup> Mr. Milloway maintains that he did not receive the mailed copy of the initial claims deputy's determination.<sup>29</sup> In addition to the claims deputy's findings, the determination notifies the parties of their right to appeal and the procedure by which the appeal is to be made.<sup>30</sup> In the present case, the issues of notice and timeliness are inextricably bound. Generally, notice is effective upon receipt.<sup>31</sup> The Court notes however that under Delaware law “there is a presumption that mailed matter, correctly addressed, stamped and mailed, was

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<sup>26</sup> *Toribio v. Peninsula United Methodist Homes, Inc.*, 2009 WL 153871 (Del. Super. Jan. 23, 2009).

<sup>27</sup> Appellant's Opening Brief. Boulden Plumbing and the Board separately notified the Court that they would not be participating in the present civil action through written submissions.

<sup>28</sup>R. at 8, 9.

<sup>29</sup> *Id.* at 12, 13.

<sup>30</sup>*Id.* at 3.

<sup>31</sup> *See, State ex rel. Hall v. Camper*, 347 A.2d 137, 138 (Del. Super. 1975); *Straley v. Advance Staffing, Inc.*, 984 A.2d 124, at \*2 (Del. 2009).

received by the party to whom it was addressed.”<sup>32</sup> The presumption is rebuttable, with the caveat that “[m]ere denial of receipt is insufficient to rebut the presumption.”<sup>33</sup>

8. More directly on the issue of timeliness, the Court observes that when notification of a determination is made through the mail, “the ten-day period begins to run on the date of mailing unless the mailing fails to reach a party because of some mistake made by employees of the Department of Labor.”<sup>34</sup> The Board found no evidence in the record of a departmental error that may have interfered with Mr. Milloway’s receipt of notice and ultimately his ability to file a timely appeal. Further, the Board found that Mr. Milloway had been given an opportunity to be heard as to satisfy due process. In consideration of the extensive caselaw on this subject, the Court agrees.<sup>35</sup>

8. Based on the foregoing, the Court is satisfied that the Board applied the correct legal standards and that its decision is supported by substantial

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<sup>32</sup>*Windom v. Ungerer*, 903 A.2d 276, 282 (Del. 2006).

<sup>33</sup> *Purdie-Morris v. Unemployment Ins. Appeals Bd.*, 2006 WL 1679390 at \*2 (Del. Super. Apr. 10, 2006)

<sup>34</sup> *Funk v. Unemployment Ins. Appeal Bd.*, 591 A.2d 222, 224 (Del. 1991).

<sup>35</sup> *See, Martin v. Unemployment Ins. Appeal Bd.*, 2004 WL 772073 (Del. Super. Feb. 25, 2004)(affirming the UIAB’s finding that an appeal filed after 10 days was untimely); *Stacey v. People’s Settlement*, 2009 WL 891054 (Del. Super. Mar. 31, 2009)(supporting the Board’s conclusion that the claims deputy’s decision became final when claimant did not appeal within 10 days).

evidence. Accordingly, the decision of the Board denying benefits to Mr. Milloway must be **AFFIRMED**.

**IT IS SO ORDERED.**

/s/ Charles E. Butler  
Judge Charles E. Butler

Original to Prothonotary