

SUPERIOR COURT  
OF THE  
STATE OF DELAWARE

E. SCOTT BRADLEY  
JUDGE

1 The Circle, Suite 2  
GEORGETOWN, DE 19947

December 18, 2012

Otelia M. Risper  
36151 Jones Church Road  
Frankford, DE 19945

***RE: Otelia M. Risper v. Delaware River & Bay Authority and Unemployment  
Insurance Appeal Board  
C.A. No. S12A-07-002 - ESB***

Date Submitted: October 10, 2012

Dear Ms. Risper:

This is my decision on your appeal of the Unemployment Insurance Appeal Board's denial of your claim for unemployment benefits. You were employed as a customer service representative by the Delaware River & Bay Authority for three months in 2009. Your job entailed working in the toll booth or in the ticket center in the ferry terminal and involved handling large amounts of money. Your employer had a policy that dictated the manner in which the money was to be handled and stored. You were terminated for violating the employer's policy regarding money handling. Specifically, you were terminated for having money shortages that you could not or would not explain. You filed a claim for unemployment benefits after you were terminated.

The Claims Deputy disqualified you from the receipt of unemployment benefits, finding that your employer had met its burden in proving that you were terminated for "just cause." You appealed the decision of the Claims Deputy to the Appeals Referee. The Appeals Referee reversed the decision of the Claims Deputy, finding that your employer did not meet its burden of proving that

you had been terminated for “just cause.” Your employer appealed. The Board held a hearing on May 4, 2010. Your employer presented additional evidence concerning the reasons for your termination and the investigation that it had conducted. The Board also took judicial notice of the fact that a grand jury had issued an indictment charging you with felony theft. In a decision dated June 14, 2010, the Board reversed the decision of the Appeals Referee, finding that your employer had met its burden of proving that you were terminated for “just cause.” You filed an appeal of the Board’s decision with this Court on July 30, 2012.

You filed your appeal too late. You had 10 days to file your appeal with this Court. 19 *Del.C.* § 3323(a) states that “[w]ithin 10 days after the decision of the Unemployment Insurance Appeal Board has become final, any party aggrieved thereby may secure judicial review thereof by commencing an action in the Superior Court...” The 10 day time period for filing an appeal is jurisdictional. The Board mailed its written decision to you on June 14, 2010. The decision became final on June 24, 2010. You had until July 6, 2010 to file an appeal with this Court.<sup>1</sup> You filed your appeal with this Court on July 30, 2012, or over two years past the cutoff date. Your failure to file your appeal within the mandatory time period not only acted as a waiver of your right to appeal the Board’s decision, but it also divested this Court of its jurisdiction to hear your appeal.<sup>2</sup> Therefore, I have dismissed your appeal of the Unemployment Insurance Appeal Board’s denial of your claim

---

<sup>1</sup> The 10 day time period to file an appeal would have ended on July 4, 2010. However, that was a Sunday. July 5, 2010 was the recognized holiday for July 4, 2010, which meant the Court would have been closed. Therefore, July 6, 2010 would have been the next and final available day to file an appeal of the Board’s decision.

<sup>2</sup> See *Draper King Cole v. Malave*, 743 A.2d 672, 673 (Del. 1999)(“The timely filing of an appeal is mandatory and jurisdictional. The appellate jurisdiction of a court cannot be invoked or properly exercised unless an appeal is perfected within the time period fixed by law.”)(citations omitted).

for unemployment benefits as untimely.

You have also asked this Court to order the Department of Labor to return to you the money you have paid back to it in the form of an overpayment of benefits. Since you were ineligible for unemployment benefits, you have a statutory obligation to repay all of the unemployment benefits that you received.<sup>3</sup> However, the issue of overpayment of benefits is not properly before this Court since it was not addressed by the Board.

The Unemployment Insurance Appeal Board's decision is **AFFIRMED**.

**IT IS SO ORDERED.**

Very truly yours,

/s/ E. Scott Bradley  
E. Scott Bradley

ESB/sal

---

<sup>3</sup> See 19 *Del.C.* § 3325.