

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

PATRICIA WALTON,)	
)	
Appellant,)	
)	
v.)	C.A. No. N12A-12-009 CLS
)	
UNEMPLOYMENT)	
INSURANCE APPEAL)	
BOARD,)	
)	
Appellee.)	
)	

Date Submitted: April 29, 2013

Date Decided: July 26, 2013

On Appeal from the Decision of the Unemployment Insurance Appeal
Board. **AFFIRMED.**

ORDER

Patricia R. Walton, Harrington, Delaware, 19982. *Pro Se* Appellant.

Lynn Kelly, Esquire, Delaware Department of Justice, 820 North French
Street, Wilmington, Delaware 19801. Attorney for Appellee,
Unemployment Insurance Appeal Board.

Scott, J.

Introduction

Before the Court is Appellant Patricia R. Walton's ("Appellant") appeal from the decision of the Unemployment Insurance Appeal Board (the "Board").¹ The Court has reviewed Appellant's submission and the record below. For the following reasons, the Board's decision is **AFFIRMED**.

Background

Plaintiff was employed with Community Systems from March 24, 2006 to July 2, 2012.² Plaintiff voluntarily resigned in order to relocate to care for her mother due to her mother's health issues.³ Plaintiff sought unemployment benefits and, on October 5, 2012, the Claims Deputy found, that Appellant failed to show good cause for voluntarily leaving her employment.⁴ On October 16, 2012, eleven days after the Claims Deputy's decision, Appellant appealed the Deputy's decision and explained that she did not receive the decision until October 15, 2012.⁵

On October 18, 2012, the Claims Deputy stated that the final date to file the appeal was on October 15th and that the decision, "based on the merits of the case, is final and binding due to the claimants failure to file a

¹ The Court notes that, although the Board is named as the "Appellee," it has no interest in this appeal. *Wilmington Trust Co. v. Barron*, 40 A.2d 257, 261 (Del. 1983).

² Record at 5.

³ *Id.*

⁴ *Id.*

⁵ *Id.* at 3.

timely appeal.”⁶ The Deputy further stated that an appeal could be filed and a hearing would be scheduled only for the issue of timeliness.⁷

On November 8, 2012, a hearing was held by the Appeals Referee. Appellant and Leann Austin (“Ms. Austin”), a representative for the Wilmington office of the Department of Labor, were present.⁸ Ms. Austin explained that the Department mailed the decision to Appellant’s address of record and that the Department received Plaintiff’s appeal via fax on October 16th.⁹ Appellant testified she had mistakenly indicated that she received the decision on the 15th, but she had actually received it on the 16th.¹⁰ She also stated that the mail was late due to the Columbus Day holiday.¹¹

The Referee determined that there was no evidence of administrative error and that Appellant did not file a timely appeal. Therefore, the Referee affirmed the decision of the Claims Deputy.¹² Thereafter, Appellant appealed the Referee’s decision to the Board.¹³ The Board affirmed the decision of the Appeals Referee after finding no evidence of departmental administrative error which caused the untimely appeal and that “Claimant

⁶ *Id.* at 1.

⁷ *Id.*

⁸ *Id.* at 14.

⁹ *Id.* at 16.

¹⁰ *Id.* at 18-19.

¹¹ *Id.* at 19.

¹² *Id.* at 27.

¹³ *Id.* at 30-41.

ha[d] been given notice and opportunity to be heard sufficient to satisfy the requirements of due process.”¹⁴

Issues on Appeal

Appellant appeals the decision of the Board by explaining that she did not receive the notice until after the final date to appeal the Claims Deputy’s decision. Appellant also asks this Court to review the decision based on the fact that she had to leave her employment to care for her mother.

Standard of Review

The Court’s review of a Board decision is limited to whether the Board’s findings were supported by substantial evidence and whether the decision is free from legal error.¹⁵ The Court does not weigh evidence, determine questions of credibility or make its own factual findings.¹⁶ “If the Board renders a discretionary decision, the Court will not set aside that decision unless it is clearly unreasonable or capricious, and thus, an abuse of the Board's discretion.”¹⁷

Discussion

Under 19 *Del. C.* § 3318(b), “[u]nless a claimant or a last employer who has submitted a timely and completed separation notice in accordance with § 3317 of

¹⁴ Record at 42.

¹⁵ *Thompson v. Christiana Care Health Sys.*, 25 A.3d 778, 781-82 (Del. 2011).

¹⁶ *Id.* at 782 (quoting *Falconi v. Coombs & Coombs, Inc.*, 902 A.2d 1094, 1098 (Del.2006)).

¹⁷ *Ramey v. Wal-Mart Stores E., LP*, 2009 WL 2507173, at *2 (Del. Super. Aug. 13, 2009).

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..." The effect of § 3318(b) is that the decision of a Claims Deputy will become final "[w]here the lateness of an appeal is due to the claimant's inadvertent, unintentional or accidental actions and not due to an administrative error."¹⁸

In Delaware, it is "presume[d] that a mailing properly addressed has been received by the intended claimant."¹⁹ In addition, a claimant's mere assertion that he or she did not receive the decision,²⁰ "without supporting evidence is not sufficient to rebut this presumption."²¹ In *Cherazard v. Perdue Farms*, 2011 WL 1886885 (Del. Super. Apr. 28, 2011), a claimant asserted that he did not timely receive the decision of an Appeals Referee.²² This Court affirmed the decision of the Board because the claimant's assertion was "unsupported and uncorroborated by evidence."²³

The Board's decision was supported by substantial evidence and free from legal error. The Claims Deputy's determination was dated October 5, 2012. Based

¹⁸ *Sheppard v. GPM Investments, LLC*, 2008 WL 193317, at *2 (Del. Super. Jan. 23, 2008)(citing *Meacham v. UIAB*, 2002 WL 442168 (Del. Super. Mar. 21, 2002)).

¹⁹ *Cassello v. News Journal Co.*, 2010 WL 5825342, at *3 (Del. Super. Dec. 29, 2010) (citing *Lively v. Dover Wipes Co.*, 2003 WL 21213415, at *1 (Del. Super.)).

²⁰ *Cassello*, 2010 WL 5825342 at *3 (citing *Funk v. UIAB*, 591 A.2d 222, 225 (Del. 1991)).

²¹ *Id.* (citing *Martin v. Unemployment Ins. Appeal Bd.*, 2004 WL 772073, at *3 (Del. Super.)).

²² *Cherazard*, 2011 WL 1886885 at *2.

²³ *Id.* at *3.

on § 3318(b), Appellant had ten calendar days to file her appeal. Appellant's mere assertion that she did not receive the decision until the 16th, without any supporting evidence, is not sufficient to rebut the presumption that it was received. The Board noted that Appellant confirmed her address of record.²⁴ Furthermore, there was no evidence in the record to suggest that there was a departmental error which caused the appeal to be untimely.²⁵

Conclusion

For the reasons stated above, the decision of the Board is

AFFIRMED.

IT IS SO ORDERED.

/S/CALVIN L. SCOTT
Judge Calvin L. Scott, Jr.

²⁴ See *Ezekielokorie v. Brandywine Nursing Home*, 2011 WL 6034784 (Del. Super. Dec. 2, 2011).

²⁵ The only issue before the Appeals Referee and the Board was the timeliness of the appeal of the Claim's Deputy's initial decision. Therefore, the only subject that the Court can consider is the Board's decision regarding the timeliness of that appeal. The Court cannot consider the facts relating to Appellant's reasons for leaving her job because those facts relate to the issue of "good cause" and not timeliness.