

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR KENT COUNTY

RYAN BRUNER,	:	
	:	C.A. No. 08A-11-001 WLW
Appellant,	:	
	:	
v.	:	
	:	
UNEMPLOYMENT INSURANCE	:	
APPEALS BOARD,	:	
	:	
Appellee.	:	

Submitted: July 13, 2009
Decided: November 2, 2009

ORDER

Upon Appeal from a Decision of the
Unemployment Insurance Appeal Board.
Affirmed.

Ryan Bruner, *pro se.*

Thomas H. Ellis, Esquire, Department of Justice, Wilmington, Delaware; attorneys
for the Appellee.

WITHAM, R.J.

Bruner v. UIAB
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This is a *pro se* appeal by Ryan Bruner (“Bruner”) from the November 10, 2008 decision of the Unemployment Insurance Appeals Board (“the Board” or “UIAB”). The Board affirmed a determination by the Appeals Referee (“the Referee”) that Bruner failed to file a timely appeal, pursuant to 19 *Del. C.* § 3318(b). The Board also denied Bruner’s request for a further hearing.

Decision of the UIAB

On June 25, 2008, a Notice of Determination was mailed to Bruner’s address of record in Rehoboth Beach. The Claims Deputy determined that an overpayment of benefits had been issued in the amount of \$3,410 for 22 weeks. The Notice of Determination advised Bruner that the last day to appeal the overpayment of benefits decision was July 5, 2008. Bruner did not mail his appeal until August 27, 2008.

The Referee held a hearing on September 16, 2008 to address the issue of timeliness. On September 18, 2008, the Referee determined that Bruner failed to file a timely appeal from the overpayment determination. Consequently, the Referee concluded that the Claims Deputy’s determination was final and binding.

Bruner appealed the Referee’s decision and a hearing was held before the Board on October 22, 2008. Bruner testified that he was assaulted on June 22, 2008 and subsequently hospitalized until July 4, 2008. After being released from the hospital, Bruner testified that he lived with his parents until July 15, 2008. Bruner did not see the Notice of Determination until he returned to his home in Rehoboth Beach on July 15th. He then mailed his appeal on August 27, 2008.

The Board affirmed the Referee’s decision that Bruner’s late appeal constitutes

a jurisdictional bar to further proceedings pursuant to 19 *Del. C.* § 3318(b). The Board noted that Bruner failed to notify the Department of Labor (“the Department”) that he would not be living at his normal address. Moreover, the Board noted that the Department properly fulfilled its responsibility by mailing the determination to Bruner’s address of record. Bruner filed this appeal on November 10, 2008.

Standard of Review

This Court’s review of a decision of the Unemployment Insurance Appeals Board is limited to a determination of whether there is sufficient substantial evidence in the record to support the Board’s findings, and that such findings are free from legal error.¹ Substantial evidence is relevant evidence that a reasonable mind might accept as adequate to support a conclusion.² The Board’s findings are conclusive and will be affirmed if supported by “competent evidence having probative value.”³ An appellate court does not weigh the evidence, determine questions of credibility, or make its own factual findings.⁴

The Board’s decision to accept an untimely appeal *sua sponte* is discretionary.⁵

¹ *Employment Ins. Appeals Bd. of the Dep’t of Labor v. Duncan*, 337 A.2d 308, 309 (Del. 1975); *Longobardi v. Unemployment Ins. Appeals Bd.*, 287 A.2d 690, 692 (Del. Super. Ct. 1971), *aff’d*, 293 A.2d 295 (Del. 1972).

² *Oceanport Indus. v. Wilmington Stevedores*, 636 A.2d 892, 899 (Del. 1994); *Battista v. Chrysler Corp.*, 517 A.2d 295, 297 (Del. Super. Ct. 1986).

³ *Geegan v. Unemployment Comp. Comm’n*, 76 A.2d 116, 117 (Del. Super. Ct. 1950).

⁴ *Johnson v. Chrysler Corp.*, 213 A.2d 64, 66 (Del. 1965).

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

Therefore, this Court is limited in its scope of review to whether the Board abused its discretion.⁶ A procedural decision such as the Board’s decision to deny an untimely appeal is not an abuse of discretion unless it is based on “clearly unreasonable or capricious grounds [or] the Board exceeded the bounds of reason in view of the circumstances and ignored the recognized rules of law or practice so as to produce injustice.”⁷ Absent an abuse of discretion, the Court must affirm the Board’s decision.⁸

Discussion

Section 3318(b) of Title 19 of the Delaware Code provides:

Unless a claimant . . . files an appeal within 10 calendar days after such Claims Deputy’s determination was mailed to the last known address[] 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.⁹

The ten-day appeal period set forth in § 3318(b) is jurisdictional and neither the Referee nor the Board has the power to accept an appeal filed by a claimant beyond the appeal period.¹⁰ “Where the lateness of the appeal is due to the claimant’s

⁶ *Id.*

⁷ *Russell v. Unemployment Ins. Appeal Bd.*, 2000 WL 1211216, at *2 (Del. Super.) (quoting *K-Mart, Inc. v. Bowles*, 1995 WL 269872, at *2 (Del. Super.)).

⁸ *Funk*, 591 A.2d at 225.

⁹ 19 *Del. C.* § 3318(b).

¹⁰ *Crawford v. Unemployment Ins. Appeal Bd.*, 1999 WL 458725, at *2 (Del. Super.) (citing *Rosebert v. Perdue Inc.*, 1996 WL 662988, at *3 (Del. Super.)).

unintentional or accidental actions, and not due to an administrative error, the Claims Deputy's determination will become final and § 3318(b) will jurisdictionally bar the claim from further appeal."¹¹

The Board concluded that Bruner's appeal of the Claims Deputy's decision was untimely because Bruner filed his appeal beyond the ten-day appeal period set forth in 19 *Del. C.* §3318(b). The record clearly reflects that Bruner filed his appeal well over a month after the expiration of the appeal period. The record also reflects that the Department properly fulfilled its responsibility by mailing the determination to Bruner's address of record. Consequently, there is substantial evidence on the record to support the Board's conclusion, and the Court finds that it is free from legal error.

Nevertheless, under 19 *Del. C.* § 3320, the Board has the power to hear a late appeal *sua sponte* "in those cases where there has been some administrative error on the part of the Department of Labor which deprived the claimant of the opportunity to file a timely appeal, or in those cases where the interests of justice would not be served by inaction."¹² Cases where the Board has exercised its power under § 3320 to hear an untimely appeal, however, have been few and far between.¹³

Bruner contends that his appeal should not be barred because the delay was due

¹¹ *Hartman v. Unemployment Ins. Appeal Bd.*, 2004 WL 772067, at *2 (Del. Super.).

¹² *Sheppard v. GPM Investments, LLC*, 2008 WL 193317, at *2 (Del. Super.) (citing *Funk*, 591 A.2d at 225) (holding that the Board did not abuse its discretion in refusing to exercise its power under 19 *Del. C.* § 3320 when the appeal was untimely because of the claimant's problems receiving his mail in a timely manner for which the Department of Labor had no responsibility)).

¹³ *Funk*, 591 A.2d at 225.

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to his hospitalization and subsequent recovery. The Referee, however, noted that Bruner's injury was not a proper mitigating circumstance to allow any waiver of the timeliness requirements. The Referee further noted that despite his injury, Bruner returned home for a "substantial period of time"¹⁴ before finally mailing his appeal. The Board affirmed the Referee's conclusions.

There is no evidence of any administrative error on the part of the Department in sending the notification to Bruner's last known address. Given the facts of this case and the Board's conclusion, the Court finds that these circumstances do not rise to a level where the Board would be required to act in the interests of justice.

Conclusion

For the foregoing reasons, the decision of the Unemployment Insurance Appeals Board is AFFIRMED.

IT IS SO ORDERED.

R.J.

WLW/dmh
oc: Prothonotary
xc: Mr. Ryan Bruner
Thomas H. Ellis, Esquire

¹⁴ The record indicates that Bruner checked his mail on July 15, 2008. He mailed his appeal on August 27, 2008. Consequently, over a month passed between when Bruner retrieved his mail, including the Notice of Determination, and when he mailed his appeal.