

SUPERIOR COURT  
OF THE  
STATE OF DELAWARE

E. SCOTT BRADLEY  
*JUDGE*

SUSSEX COUNTY COURTHOUSE  
1 The Circle, Suite 2  
GEORGETOWN, DE 19947

June 18, 2010

Howard Miller  
35750 Henny Penny Drive  
Pittsville, MD 21850

**RE: Howard Miller v. Unemployment Insurance Appeal Board  
C.A. No. S09A-10-001-ESB  
Letter Opinion**

Date Submitted: June 1, 2010

Dear Mr. Miller:

This is my decision on your appeal of the Unemployment Insurance Appeal Board's denial of your claim for unemployment benefits. You "re-opened" your claim for unemployment benefits on July 5, 2009. The Chief Appeals Referee denied your claim, reasoning that you were not entitled to unemployment benefits because you were self-employed. He mailed the written decision to you on August 14, 2009. You had 10 days after the mailing of the decision to file your appeal of it with the Board.<sup>1</sup> Thus, the last possible day for you to file your appeal with the Board was August 24, 2009. You filed your appeal with the Board on August 25, 2009. The Board decided not to hear your appeal because it was untimely.

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<sup>1</sup> 19 *Del.C.* § 3318 (c).

## STANDARD OF REVIEW

The Supreme Court and this Court repeatedly have emphasized the limited appellate review of the factual findings of an administrative agency. On appeal from a decision of the Board, this Court is limited to a determination of whether there is substantial evidence in the record sufficient to support the Board's findings, and that such findings are free from legal error.<sup>2</sup> Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.<sup>3</sup> The Board's findings are conclusive and will be affirmed if supported by "competent evidence having probative value."<sup>4</sup> The appellate court does not weigh the evidence, determine questions of credibility, or make its own factual findings.<sup>5</sup> It merely determines if the evidence is legally adequate to support the Board's factual findings.<sup>6</sup> Absent an error of law, the Board's decision will not be disturbed where there is substantial evidence to support its conclusions.<sup>7</sup>

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<sup>2</sup> *Employment Ins. Appeals Board of the Dept. of Labor v. Duncan*, 337 A.2d 308, 309 (Del. 1975); *Longobardi v. Unemployment Ins. Appeal Board*, 287 A.2d 690, 692 (Del. Super. 1971), *aff'd* 293 A.2d 295 (Del. 1972).

<sup>3</sup> *Oceanport Ind. v. Wilmington Stevedores, Inc.*, 636 A.2d 892, 899 (Del. 1994); *Battista v. Chrysler Corp.*, 517 A.2d 295, 297 (Del. Super. 1986), *app. disp.*, 515 A.2d 397 (Del. 1986).

<sup>4</sup> *Geegan v. Unemployment Compensation Commission*, 76 A.2d 116, 117 (Del. Super. 1950).

<sup>5</sup> *Johnson v. Chrysler Corp.*, 213 A.2d 64, 66 (Del. 1965).

<sup>6</sup> 29 Del.C. § 10142(d).

<sup>7</sup> *Dallachiesa v. General Motors Corp.*, 140 A.2d 137 (Del. Super. 1958).

## DISCUSSION

You did not in your appeal to this Court raise any arguments challenging the Board's finding that your appeal to it was untimely. The Appeals Referee sent his written decision to you on August 14, 2009. He mailed it to you at the address you provided to the Department of Labor. A letter that is correctly addressed and stamped is presumed to be received by the addressee.<sup>8</sup> You had 10 days to file your appeal with the Board.<sup>9</sup> The 10-day time period for filing an appeal is jurisdictional. 19 *Del.C.* § 3318(c) states that the referee's decision "shall be deemed to be final unless within 10 days after the date of notification or mailing of such decision further appeal is initiated pursuant to § 3320 of this title." The Board does have the authority under 19 *Del.C.* § 3320 to act "*sua sponte* beyond the ten-day appeal period to consider a case where no valid appeal had been filed by the parties."<sup>10</sup> However, the Board may do this "only 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."<sup>11</sup> The Board did not find that such circumstances existed and you have not argued that such circumstances existed. Thus, the last day for you to file your appeal with the Board was August 24, 2009. You filed your appeal with the Board on August 25, 2009. Your appeal was filed one day late. Therefore, the Board's

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<sup>8</sup> *Lively v. Dover Wipes*, 2003 WL 21213415 (Del. Super. May 16, 2003).

<sup>9</sup> 19 *Del.C.* § 3318(c).

<sup>10</sup> *Funk v. Unemployment Insurance Appeal Board*, 591 A.2d 222, 225 (Del. 1991).

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

decision not to hear your appeal because it was untimely is in accordance with the applicable law and supported by substantial evidence in the record.

**CONCLUSION**

The Unemployment Insurance Appeal Board's decision is affirmed.

IT IS SO ORDERED.

Very truly yours,

E. Scott Bradley

oc: Prothonotary's Office  
cc: Philip G. Johnson, Esquire  
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