

SUPERIOR COURT  
OF THE  
STATE OF DELAWARE

E. SCOTT BRADLEY  
*JUDGE*

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

June 24, 2010

James E. Kreider  
P.O. Box 263  
Milford, DE 19963

**RE: James E. Kreider v. JC Penney Custom Decorating  
C.A. NO. S09A-09-002-ESB  
Letter Opinion**

Date Submitted: June 2, 2010

Dear Mr. Kreider:

This is my decision on your appeal of the Unemployment Insurance Appeal Board's refusal to grant your motion for a rehearing after you failed to appear for the original hearing before the Board. You were employed as a custom decorator by JC Penney Custom Decorating for over ten years. JC Penney terminated you for violating its policy regarding timely attendance at meetings. You then filed a claim for unemployment benefits with the Department of Labor.

The Claims Deputy and Appeals Referee decided that you were ineligible for unemployment benefits, reasoning that JC Penney had just cause for terminating you. You then filed an appeal with the Board. The Board sent you a notice at your correct address setting forth the time and location for your hearing before the Board. You did not appear at the hearing before the Board. After waiting the customary ten minute grace period, the Board dismissed your appeal because you did not appear at the hearing. You requested

a rehearing before the Board, arguing that you were confused by the directions to the hearing that you had obtained from an online map service. The Board denied your motion for a rehearing, reasoning that you were at fault for not appearing at the original hearing. You then filed an appeal with this Court.

### **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>1</sup> Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.<sup>2</sup> The Board's findings are conclusive and will be affirmed if supported by "competent evidence having probative value."<sup>3</sup> The appellate court does not weigh the evidence, determine questions of credibility, or make its own factual findings.<sup>4</sup> It merely determines if the evidence is legally adequate to support the Board's factual findings.<sup>5</sup> Absent an error of law, the Board's decision will not be disturbed where there is substantial evidence in the record to support

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<sup>1</sup> *Unemployment Ins. Appeals Board of the Dept. of Labor v. Duncan*, 337 A.2d 308, 309 (Del. 1975).

<sup>2</sup> *Oceanport Ind. v. Wilmington Stevedores*, 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>3</sup> *Geegan v. Unemployment Compensation Commission*, 76 A.2d 116, 117 (Del. Super. 1950).

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

<sup>5</sup> 29 Del.C. § 10142(d).

its conclusions.<sup>6</sup>

## DISCUSSION

You argue that the Board abused its discretion when it refused to grant your motion for a rehearing. You received a proper notice for the hearing before the Board. The notice informed you that your “failure to appear for your hearing in a timely manner can result in your appeal being dismissed.” You did not appear at the hearing. The Board then dismissed your appeal. You filed a request for a rehearing, claiming that you did not attend the hearing because you were confused by the directions to the hearing that you got from an online map service. The Board denied your request, stating that your inability to follow the directions was not attributable to a departmental error. The Board noted that you were provided with a proper notice and an opportunity to be heard, thereby satisfying your due process requirements.

This Court’s appellate review of the Board’s decision is limited. Since the Board did not hold a hearing on the merits of your case, the only issue that this Court can properly address is whether or not the Board abused its discretion in denying your request for a rehearing. This issue has been addressed previously in *Archambault v. McDonald’s Restaurant*.<sup>7</sup> In *Archambault*, the Court stated:

The Board maintains statutory authority to promulgate regulations designed to ensure the prompt and orderly determination of the parties’ rights. In that regard, the Board has adopted Unemployment Insurance Appeals Board Rule B which provides in pertinent part, that “[a]ll parties are required to be present for a hearing at the scheduled time. Any party who is not present

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<sup>6</sup> *Dallachiesa v. General Motors Corp.*, 140 A.2d 137 (Del. Super. 1958).

<sup>7</sup> 1999 WL 1611337 (Del. Super. Mar. 22, 1999); See also *Strazzella v. Joe Tejas, Inc.*, 2008 WL 376354 (Del Super. Feb. 12, 2008).

within 10 minutes after the scheduled start time for hearing shall be deemed to waive his right to participate in said hearing.” The Court cannot conclude that the Board abused its discretion by dismissing Claimant’s appeal. This Court has previously recognized “the importance of adhering to a hearing schedule to efficiently manage and dispose of cases and the need to enforce rules such as Rule B to engender cooperation from the interested parties.” Thus, the Court concludes that the Board did not act arbitrarily by dismissing Claimant’s appeal for failure to appear.<sup>8</sup>

The Board did not abuse its discretion when it denied your request for a rehearing. The Board followed its regulations. You were provided with a proper notice and an opportunity to be heard. The Board waited the customary 10 minutes after the scheduled start time, but you failed to appear. You were well aware of the consequences for not appearing. The notice that the Board sent to you stated that “failure to appear for your hearing in a timely manner can result in your appeal being dismissed.” The Board then properly dismissed your appeal. The Board’s decision is in accordance with the applicable law, supported by substantial evidence in the record, and not an abuse of its discretion.

**CONCLUSION.**

The Unemployment Insurance Appeal Board’s decision is affirmed.

IT IS SO ORDERED.

Very truly yours,

E. Scott Bradley

cc: JC Penney Custom Decorating

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<sup>8</sup> *Id.* at 1999 WL 1611337, at \*2.