

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

CHRISTI DILLMORE)	
Appellant,)	
)	
v.)	C.A. No.: N13A-01-006-ALR
)	
ULTA BEAUTY SALON)	
Defendants/Third Party Plaintiffs,)	
)	
&)	
)	
UNEMPLOYMENT INSURANCE)	
APPEALS BOARD)	
Appellee)	

Submitted: September 11, 2013
Decided: October 15, 2013

**On Appeal from Decision of the Unemployment Insurance Appeals Board
DISMISSED**

MEMORANDUM OPINION

Rocanelli, J.

This is an appeal by Christi Dillmore (“Claimant”) from a decision of the Unemployment Insurance Appeals Board’s (“UIAB”). This appeal to the Superior Court was filed by the claimant in an untimely manner. Accordingly, the appeal must be dismissed for lack of jurisdiction. Moreover, the Court finds that Claimant’s appeal should also be dismissed on the merits because the UIAB’s decision is free from legal error.

I. Procedural History

Claimant was employed by Ulta Beauty Salon until July 17, 2012, when she was terminated for violation of the attendance policy. Claimant opened a claim for unemployment insurance benefits on September 2, 2012. The Claims Deputy of the Division of Unemployment Insurance determined that Claimant had violated the attendance policy 13 separate times, and found that she received a final written warning from Ulta in June 2012. The Determination of the Claims Deputy was that Claimant was disqualified “for receipt of benefits . . . until [she has] been employed in each of 4 subsequent weeks (whether or not consecutive) and ha[s] earned covered wages in employment equal to not less than 4 times the weekly benefit amount” (“Determination”).

The Determination was mailed to Claimant’s address of record on October 1, 2012. The Determination notified Claimant that the last day to file an appeal from the Determination was Thursday, October 11, 2012 (“Determination Appeal”). Claimant filed the Determination Appeal on October 15, 2012, four days after the deadline.

A hearing regarding the Determination Appeal was held on November 8, 2012, before an Appeals Referee. The Notice of Hearing mailed to Claimant advised her that the only testimony at the hearing would be on the issue of the timeliness of the Determination Appeal.

At the November 8, 2012, hearing Claimant stated that she first attempted to file her Determination Appeal on Friday October 12, 2012 but, because she arrived at 4:02 pm and the

office closed at 4:00 pm, she could not file her appeal. However, the Court notes that, even if Claimant would have filed the appeal on this date, the appeal would have been untimely.

Claimant returned and filed her Determination Appeal in person on Monday October 15, 2012. At the hearing Claimant also confirmed that her address of record where the Determination was mailed was her correct address.

The Appeals Referee held that the Determination was final and binding as Claimant failed to file her Determination Appeal within the ten-day period for filing an appeal (“Appeals Referee Decision”). A copy of the Appeals Referee Decision was mailed to Claimant on November 8, 2012, the same day as the hearing. On November 13, 2012, Claimant filed an appeal of the Appeals Referee Decision to the UIAB.

On November 28, 2012, the UIAB affirmed the Appeals Referee Decision, and stated that the Appeals Referee Decision is final and binding (“UIAB Decision”). The UIAB found that the late filing of the Determination Appeal by Claimant was not caused by any error on the part of the Department of Labor and that Claimant was given notice and opportunity to be heard sufficient to satisfy the requirements of due process. A copy of the UIAB Decision was mailed to Claimant on December 3, 2012. The UIAB Decision indicated that it would become final on December 14, 2012.

Although the UIAB Decision did not, on its face, identify the deadline for appeal to Superior Court, the deadline for filing an appeal was December 31, 2012. On January 25, 2013, Claimant filed an appeal of the UIAB Decision to the Superior Court. This is the Court’s decision on that appeal.

II. Jurisdictional Defect

Claimant’s appeal to the Superior Court was not filed within the deadline for filing an appeal. Accordingly, there is a jurisdictional defect and Claimant’s appeal to this Court therefore

cannot be considered because the Court does not have jurisdiction to hear a late-filed appeal. Appeals to the Superior Court from a decision of the UIAB must be made ten (10) days after the decision of the UIAB becomes final.¹ For the purpose of computing any period of time of less than eleven (11) days under the Delaware Superior Court Rules of Civil Procedure, intermediate Saturdays, Sundays and other legal holidays shall be excluded in the computation.² The UIAB's decision became final December 14, 2012. Therefore, Claimant was required to file any appeal by December 31, 2012. Claimant filed her Superior Court appeal on January 25, 2013.

When a party fails to perfect an appeal within the period mandated by statute, a jurisdictional defect is created that may not be excused in the absence of unusual circumstances that are attributable to court personnel and are not attributable to the appellant.³ In this case no such unusual circumstances exist. The appellate jurisdiction of a court cannot be invoked or properly exercised unless an appeal is perfected within the time period fixed by law.⁴ As Claimant's appeal was not perfected within the time period allowed by law, this court is without jurisdiction to review the UIAB Decision.

III. Claimant Cannot Prevail on the Merits

Moreover, even if the appeal to the Superior Court were considered on its merits, the UIAB Decision would be affirmed. The scope of review for any court considering a decision of the UIAB is whether the UIAB abused its discretion. Absent abuse of discretion the Court must uphold a decision of the UIAB.⁵ An appellate review of a decision by the UIAB is limited to

¹ 19 Del. Code 3323(a).

² Del. Super. Ct. Civ. R. 6(a).

³ *Draper King cole v. Malave*, 743 A.2d 672, 673 (Del. 1999).

⁴ *Id.*

⁵ *Funk v. Unemp't Ins. App. Bd.*, 591 A.2d 222, 225 (Del. 1991); *Dept. of Labor v. Medical Placement Services, Inc.*, 457 A.2d 382, 383 (Del. Super. 1982).

determining whether the UIAB's findings and conclusions are free from legal error and are supported by substantial evidence in the record.⁶

Under Delaware law, a claimant or employer has ten calendar days to appeal a determination by a Claims Deputy.⁷ If the determination is not appealed within ten calendar days, then, according to statute, that determination shall be final.⁸ In this case, the Determination by the Claims Deputy was issued October 1, 2012. According to statute, Claimant's deadline for her Determination Appeal was October 11, 2012. Claimant filed her Determination Appeal on October 15, 2012. The Department of Labor did not commit any error which could have prevented Claimant from appealing the decision by the October 11, 2012 deadline. The UIAB Decision that Claimant's Determination Appeal was not timely failed was a decision without legal error and based on substantial evidence. The UIAB did not abuse its discretion.

Accordingly, if Claimant's appeal to the Court were considered on the merits, the appeal must be dismissed.

IV. Conclusion

The Court has examined the record and has determined that Claimant did not file her appeal to the Superior Court within the time period allowed by law. Therefore, this appeal is dismissed for lack of jurisdiction. Moreover, if Claimant's appeal to the Court were considered on the merits, the appeal must be dismissed.

IT IS SO ORDERED.

⁶ See *PAL of Wilmington v. Graham*, 2008 WL 2582986, *3 (Del. Super. June 18, 2008).

⁷ 19 Del. Code 3318(b).

⁸ *Id.*

Honorable Andrea L. Rocanelli