

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

CAMERON BROWN,)	
)	
Appellant,)	
)	
v.)	C.A. No. N13A-01-007 CLS
)	
DEL DOT and UNEMPLOYMENT)	
INSURANCE APPEAL BOARD,)	
)	
Appellees.)	
)	
)	

Date Submitted: July 19, 2013
Date Decided: October 8, 2013

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

ORDER

Cameron Brown, Wilmington, Delaware, 19810, *Pro Se* Appellant.

James T. Wakley, Esquire, Delaware Department of Justice, 820 North French Street, Wilmington, Delaware, 19801. Attorney for the Appellee, Unemployment Insurance Appeal Board.

Scott, J.

Introduction

Before the Court is Appellant Cameron Brown's ("Appellant") appeal from the decision of the Unemployment Insurance Appeal Board ("Board"). The Court has reviewed the parties' submissions and the record. For the following reasons, the Board's decision is **AFFIRMED**.

Background

Appellant was employed by DeIDOT ("Employer") as an outdoor equipment operator from January 22, 2008 through July 27, 2012.¹ On June 30, 2012, Appellant's CDL driver's license was suspended.² Employer was notified of Appellant's suspended license by the Department of Motor Vehicles on July 3, 2012.³ As a result, Appellant was suspended from work on July 5, 2012⁴ and subsequently terminated on July 27, 2012 for failing to possess a valid CDL driver's license, which is required to perform his job.⁵

Appellant filed a claim for unemployment insurance benefits with the Delaware Department of Labor on October 10, 2012.⁶ On October 27, 2012, the Claims Deputy determined that Appellant was discharged with just cause

¹ Record at 1-3.

² *Id.* at 1.

³ *Id.*

⁴ Appellant stated that he was suspended on July 11, 2012. *Id.* at 2.

⁵ *Id.* at 3.

⁶ *Id.*

and thus ineligible to receive benefits pursuant to 18 *Del.C.* § 3314(2).⁷ On October 30, 2012, Appellant appealed the Claims Deputy's decision to the Appeals Referee, alleging that the facts given by his former employer were false.⁸ A hearing was scheduled for December 3, 2012.⁹ Despite receiving notification of the hearing, Appellant did not attend.¹⁰ The Referee dismissed the case due to Appellant's failure to appear to prosecute the appeal.¹¹

On January 2, 2013, twenty days past the final date to file, Appellant filed an appeal to the Board explaining why he was unable to attend the hearing.¹² On January 9, 2013, the Board determined that Appellant's appeal was twenty days past the final date to file and therefore, not timely.¹³ The Board declined to accept Appellant's late appeal, explaining that both the Notice of the Hearing and the Referee's Decision and Dismissal were sent to Appellant's address of record with the Department.¹⁴

Ultimately, the Board determined that there was no evidence of departmental error which prevented the Appellant from filing a timely

⁷ *Id.* at 5.

⁸ *Id.* at 8.

⁹ *Id.* at 11, 13-14.

¹⁰ *Id.* at 11, 15.

¹¹ *Id.*

¹² *Id.* at 18.

¹³ *Id.* at 20.

¹⁴ *Id.*

appeal of the Referee's Decision and Dismissal and that in absence of any evidence of departmental error causing the late appeal, the Appellant was given notice and opportunity to be heard sufficient to satisfy due process requirements.¹⁵ The Board denied Appellant's application for further review and determined that the decision of the Referee dismissing Appellant's case was final and binding.¹⁶

Appellant then filed a Notice of Appeal with this Court on January 28, 2013. On May 16, 2013, this Court issued a briefing schedule requiring Appellant to file an opening brief by June 5, 2013. No opening brief was filed and on June 11, 2013, and the Court sent a Final Delinquent Brief Notice to Appellant informing Appellant that the Court would dismiss the appeal if no further action of record was taken within ten days from the date of the notice.

Appellant replied to the notice with a one-page handwritten opening brief, dated June 27, 2013. Appellant only stated that he was unable to attend the hearing before the Referee because of a work assignment with a temporary employment agency, but he did not address the untimeliness of

¹⁵ *Id.*

¹⁶ *Id.*

his appeal to the Board. Employer did not file an answering brief in this matter.¹⁷

Standard of Review

The scope of 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.¹⁸ The Court will not weigh evidence, determine questions of credibility, or make its own factual findings and conclusions.¹⁹ If there is substantial supporting evidence and no legal error, the Board's decision will be affirmed.²⁰ "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."²¹

Discussion

Pursuant to 19 *Del.C.* § 3318(c), a referee's decision "shall be deemed to be final unless within 10 days after the date of the notification or mailing

¹⁷ On July 12, 2013, counsel for the Board submitted a letter to the Court informing the Court that the Board does not intend to file an answering brief in the matter because "the underlying case is on the merits and the Board does not intend to take a position as to the merits of the case."

¹⁸ *Thompson v. Christina Care Health Sys.*, 25 A.3d 778, 781-82 (Del. 2011).

¹⁹ *Id.* at 782.

²⁰ *Longobardi v. UIAB*, 287 A.2d 690, 692 (Del. Super. Ct. 1972) *aff'd*. 293 A.2d 295 (Del. 1972).

²¹ *Ramey v. Wal-Mart Stores E., LP*, 2008 WL 2507173, at *2 (Del. Super. Ct. Aug., 13, 2009).

of such decision further appeal [to the Board] is initiated pursuant to §3320 of this Title.” “[T]he time for filing an appeal is an express statutory condition of jurisdiction that is both mandatory and dispositive.”²² If an appeal is not timely filed, the reviewing body must dismiss for lack of jurisdiction.²³ In certain circumstances, a Board may exercise its discretion under 19 *Del.C.* § 3320 to accept an untimely appeal *sua sponte*, but this authority is limited to “[t]hose cases where there has been some administrative error on the part of the Department . . . or in those cases where the interests of justice would not be served by inaction . . .”²⁴

A Board’s discretionary decision to not accept an untimely appeal is a procedural decision that cannot be an abuse of discretion “unless it is based on clearly unreasonable or capricious grounds” or “the Board exceeds the bounds of reason in view of the circumstances and had ignored recognized rules of law or practice so as to produce injustice.”²⁵ Thus, absent abuse of discretion, the Board’s judgment must be affirmed.

The Board’s decision was supported by substantial evidence and free from legal error. Appellant’s appeal to the Board was filed twenty days past

²² *Lively v. Dover Wipes Co.*, 2003 WL 21213415, at *1 (Del. Super. Ct. May, 16, 2003) (citing *Duncan v. Delaware Dep’t of Labor*, 2002 WL 31160324, at *2 (Del. Super. Ct. Sept., 10, 2002)).

²³ See *Wilson v. Masten Lumber*, 1993 WL 590326 at *2 (Del. Super. Ct. Dec., 21, 1993).

²⁴ *Funk v. UIAB*, 591 A.2d 222, 225 (Del. 1991).

²⁵ *Hartman v. UIAB*, 2004 WL 772067, at *2 (Del. Super. Ct. Apr., 5, 2004).

the final date to file. In addition, Appellant's one-page opening brief only recited his reasons for being unable to appear for his hearing before the Referee and failed to address why his appeal was untimely.²⁶

There is also no evidence of departmental error which caused Appellant's appeal to be untimely. Both the notice of hearing and Referee's Decision and Dismissal were sent to the Appellant's address of record with the Department; therefore, under Delaware law, notice was sufficient to afford Appellant due process. Moreover, the Referee's Decision and Dismissal contained a notice of the Appellant's right of appeal with instructions about how to appeal and stated the deadline to file an appeal. There is also no evidence in the record to show that Appellant disputed timely receipt of notice.

The Board's decision to not accept Appellant's untimely appeal was not an abuse of discretion. There is no evidence in the record of departmental error, as previously determined, and the circumstances do not rise to the level where the interests of justice would not be served by inaction to warrant acceptance of Appellant's untimely appeal. In view of

²⁶ The only issue before the Board was the timeliness of Appellant's appeal to the Board. The Court cannot consider the facts relating to Appellant's reasons for leaving his job because those facts relate to the issue of "good cause" and not timeliness. Similarly, the Court cannot consider the facts relating to Appellant's reason for not attending the hearing before the Referee because those facts relate to "failure to prosecute an appeal" and not timeliness.

the circumstances, the Board's decision was an appropriate procedural response to Appellant's untimely appeal and therefore, not an abuse of discretion.

Conclusion

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

AFFIRMED.

IT IS SO ORDERED.

SCOTT

/S/ CALVIN L.

Judge Calvin L. Scott, Jr.