

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

KERIA L. CAIN,)	
Appellant,)	
v.)	C.A. No.: N13A-04-001 RRC
)	
)	
UNEMPLOYMENT INSURANCE)	
APPEAL BOARD,)	
Appellee.)	

Submitted: October 28, 2013
Decided: January 10, 2014

Upon Appeal from the Unemployment Insurance Appeal Board.
AFFIRMED.

ORDER

Ms. Keria L. Cain, Wilmington, Delaware, Appellant, *pro se*.

James T. Wakley, Esquire, Deputy Attorney General, Department of Justice,
Wilmington, Delaware, Attorney for Appellee Unemployment Insurance Appeal
Board.

COOCH, R.J.

This 10th day of January 2014, upon consideration of Appellant’s Appeal
from the Unemployment Insurance Appeal Board, it appears to the Court that:

1. Appellant Keria Cain (“Appellant”) worked as a teacher for Foulk Pre-
school & Daycare Center (“Employer”) from June 1, 2010 until August
21, 2012.¹ On August 21, 2012, Appellant left her position and did not

¹ Division of Unemployment Appeals Referee’s Decision (Nov. 26, 2012) at 2.

- return to work. There is some dispute as to whether or not she provided proper notice.²
2. On September 30, 2012, Appellant applied for unemployment benefits. On October 19, 2012, a claims deputy granted benefits because Appellant had “voluntarily quit [her] work for good cause attributable to [her] work” and had “exhaust[ed] all administrative remedies before leaving [her] employment.”³ Employer timely appealed the decision.
 3. On November 26, 2012, an Appeals Referee heard Employer’s appeal. Appellant did “not appear[] either in person or by telephone.”⁴ The Appeals Referee proceeded with the appeal and subsequently reversed the claims deputy’s decision. The Appeals Referee held “[Appellant] abandoned her job, voluntarily quitting without good cause under the code.”⁵ Appellant timely appealed the decision to the Board.
 4. The Board scheduled Appellant’s appeal for February 13, 2013 and Appellant received proper notice of the Board hearing’s date, time, and location.⁶ Despite Appellant’s failure to attend the hearing, the Board accepted Appellant’s reason for her absence and remanded the case back to the Appeals Referee.⁷ Appellant was again notified of the new Appeals Hearing’s date, time, and location.
 5. On March 4, 2013 the Appeals Referee dismissed Appellant’s claim because she again failed to attend the hearing to prosecute her claim.⁸ Appellant timely appealed, citing issues with her transportation.⁹
 6. The Board denied Appellant’s request for a new hearing and held “[t]he Board exercised [its] discretion in [Appellant’s] case once, and [Appellant], having missed the first Referee hearing, failed to appear at a second Referee hearing.... Taking the wrong bus or getting off at the

² Appellant’s Br. of July 5, 2013 at 1; Division of Unemployment Appeals Referee’s Decision (Nov. 26, 2012) at 2.

³ Division of Unemployment Claims Deputy’s Decision (Oct. 19, 2012) at 1.

⁴ *Cain v. Foulk Preschool and Daycare*, Appeal No. 10868895, at 3 (Del. U.I.A.B. Nov. 26, 2012) (TRANSCRIPT).

⁵ Division of Unemployment Appeals Referee’s Decision (Nov. 26, 2012) at 3.

⁶ Decision of the Unemployment Insurance Appeal Board on Appeal from the Decision of Kathleen D. Smith, Appeal Docket No. 10868895 (Mar. 6, 2013) at 1.

⁷ *Id.* at 1-2.

⁸ Division of Unemployment Appeals Referee’s Decision (Mar. 4, 2013) at 1.

⁹ Appellant’s Division of Unemployment Appeal Req. Notification (Mar. 4, 2013).

- wrong stop is not relevant. There is no evidence of Department error.”¹⁰
Appellant timely appealed the Board’s decision to this Court.
7. On July 5, 2013, Appellant submitted her Opening Brief. The brief did not address the issue for which her claim was dismissed: her failure to attend the Appeals Referee hearings to prosecute her claim. Instead, the brief mostly focused on Appellant’s substantive claims.¹¹
 8. On appeal, the Board advised the Court that it would not file an Answering Brief because Appellant’s Opening Brief did not address the basis for the Board’s decision, and the Board believes their decision in the matter is “sufficient response to the claims raised by [Appellant].”¹²
 9. Employer filed an Answering Brief at the Court’s request¹³ on October 16, 2013. Employer argued, in part, that “[Appellant] had four chances to bring [her concerns] up for discussion at the Department of Labor Hearings, but she never showed up at any of them. We attended all four of the Hearings. Clearly, [Appellant] must not have deemed them that important.”¹⁴
 10. Appellant failed to file a Reply Brief in compliance with the briefing schedule sent from the Prothonotary by letter on June 19, 2013.
 11. Dismissal is appropriate under Superior Court Civil Rule 72(i) because Appellant failed to file an appropriate Opening Brief (i.e., one that addressed the issue of her failure to appear at various hearings) and no Reply Brief.¹⁵ Appellant did not address her failure to attend the Appeals Referee hearings to prosecute her claim, thereby ignoring the basis of the Board’s decision in her appeal.
 12. “The Court recognizes that some leniency may be given to a *pro se* party in order to assume that a case is fully heard. However, at a minimum a

¹⁰ Decision of the Unemployment Insurance Appeal Board on Appeal from the Decision of Kathleen D. Smith, Appeal Docket No. 10868895 (Mar. 6, 2013) at 2.

¹¹ Appellant’s Br. of July 5, 2013.

¹² Letter dated of August 22, 2013 from James T. Wakley, Esquire, Deputy Attorney General to the Court.

¹³ Letter dated September 19, 2013 from the Court to Foulk Pre-school & Daycare Center.

¹⁴ Employer’s Ans. Br. of October 16, 2013.

¹⁵ Super. Ct. Civ. R. 72(i) (“The Court may order an appeal dismissed, sua sponte . . . Dismissal may be ordered for untimely filing of an appeal, for appealing an unappealable interlocutory order, for failure of a party diligently to prosecute the appeal, for failure to comply with any rule, statute, or order of the Court or for any other reason deemed by the Court to be appropriate.”).

pro se appellant's 'brief[] must be adequate to enable an appellate court to conduct a meaningful review of the merits of the appellant's claims.'"¹⁶ By failing to address the basis on which her claim was dismissed, the Appellant has failed to meet that standard.

13. Assuming, *arguendo*, that Appellant's brief was satisfactory, dismissal is still appropriate. The Court must uphold the Board's decision absent an error of law or abuse of discretion.¹⁷ Also, judicial review is not available until the Appellant exhausts all of her administrative remedies.¹⁸ The Board dismissed Appellant's appeal because she did not attend her Appeals Hearing, despite being given an earlier remand for a similar absence. The Court sees no abuse of discretion or error of law.

Therefore, the Board's decision is **AFFIRMED**.

IT IS SO ORDERED.

Richard R. Cooch, R.J.

cc: Prothonotary
Unemployment Insurance Accident Board

¹⁶ *Texiera v. Tryon*, 2002 WL 1575225, at *1 (Del. Super. July 15, 2002) (quoting *Power v. Myriad Services, Inc.*, 718 A.2d 528, 1998 WL 665022 (Del. July 21, 1998) (ORDER)).

¹⁷ *Funk v. Unemployment Insurance Appeal Board*, 591 A.2d 222, 225 (Del. 1991).

¹⁸ See 19 Del. C. § 3322(a) ("Any decision of the Unemployment Insurance Appeal Board shall become final 10 days after the date of notification or mailing thereof, and judicial review thereof as provided in this subchapter shall be permitted only after any party claiming to be aggrieved thereby has exhausted all administrative remedies as provided by this chapter.").