

SUPERIOR COURT  
OF THE  
STATE OF DELAWARE

RICHARD F. STOKES  
JUDGE

1 THE CIRCLE, SUITE 2  
SUSSEX COUNTY COURTHOUSE  
GEORGETOWN, DE 19947

Mr. Michael L. Hooper  
7 Mill Street  
Milford, DE 19963

Philip G. Johnson, Esquire  
Deputy Attorney General  
Department of Justice  
820 N. French Street, 6<sup>th</sup> Floor  
Wilmington, DE 19801

Re: ***Hooper v. Delaware Department of Labor et al.***  
C.A. No. S09A-12-003 RFS

*Upon an Appeal of a Decision of the Unemployment Insurance Board.  
Affirmed.*

Submitted Date: July 9, 2010  
Decided Date: July 22, 2010

Dear Mr. Hooper and Mr. Johnson:

Pending before me is Claimant Michael L. Hooper's appeal of a decision of the Unemployment Insurance Appeal Board ("Board"). The sole issue is the timeliness of Claimant's appeal of a Claims Deputy's determination of Claimant's disqualification from receipt of benefits and liability for overpayment of benefits. For the reasons explained below, the Board's decision is affirmed.

**Facts.** The record shows the following relevant facts. Claimant filed a claim for

unemployment benefits on December 7, 2007, Claim Number 50110656 (“the ‘656 claim”). Under the ‘656 claim, he received unemployment benefits from February 9, 2008 to July 26, 2008. Claimant filed a claim for an extension of benefits on July 26, 2008, Claim Number 50110658 (“the ‘658 claim”).

On August 4, 2009, a Claims Deputy determined that Claimant was liable for repayment of benefits in the amount of \$8000 for the weeks from February 9, 2008 through July 26, 2008 because of an earlier determination of fraudulent action.<sup>1</sup> The decision stated that it became final on August 14, 2009, unless a written appeal was filed. Also on August 4, 2009, a Claims Deputy determined that Claimant was liable for repayment of benefits in the amount of \$2,865 for the weeks from August 2, 2008 through September 27, 2008. This decision also stated that it became final on August 14, 2009. On August 27, 2009, Claimant faxed an appeal of both determinations to the Department of Labor, Division of Unemployment Insurance (“Division”).

On September 1, 2009, a Claims Deputy issued a notice of determination on the ‘656 claim, finding that Claimant’s appeal was not timely filed and that the determination of disqualification and overpayment was therefore final and binding. Also on September 1, 2009, the Claims Deputy issued an identical notice of determination on the ‘658 claim.

Claimant filed a timely appeal of the September 1 determinations, and a hearing on

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<sup>1</sup>The Claims Deputy’s decision as to fraud is not part of the certified record filed with the Court by the Board. Claimant has not challenged this decision, although he disputes the amounts owed. The decision on the merits is not under consideration.

the issue of timeliness was scheduled for September 21, 2009. Claimant failed to appear, and the Appeals Referee dismissed the matter for failure to prosecute. Claimant appealed to the Board, asserting that he had to work on the day of the hearing but that he called and left a message at the Division. The Board remanded the matter to the Appeals Referee to hold another hearing on the issue of the timeliness of Claimant's appeal of the Claims Deputy's determinations.

At the hearing on November 5, 2009, both Claimant and Stacie Davis, a Division representative, offered testimony as to the timeliness of Claimant's appeal of the determination of '656 claim and the '658 claim. Ms. Davis testified that the overpayment decisions were mailed on August 4, 2009, and that the appeal was received on August 27. It was therefore found to be untimely under the ten-day rule set forth in 19 *Del.C.* §§ 3318(b). As to both claims, Claimant stated that he just missed the appeal date. The Referee issued a decision finding that Claimant did not file the appeal within the statutory 10-day period<sup>2</sup> and that the determinations of the Claims Deputy were therefore final and binding. Claimant filed a timely appeal to the Board.

On December 1, 2009, the Board reviewed the matter and issued its decision on December 3, 2009, affirming the Referee's decision and denying Claimant's application for further review. Claimant filed a timely appeal to this Court.

**The parties' contentions.** On appeal to this Court, Claimant argues that he does

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<sup>2</sup>Title 19 *Del.C.* § 3318(b).

not owe the amounts being charged to him as overpayment. He apologizes for the late filing of his appeal and asserts that he was working full-time hours, perhaps suggesting that he missed the appeal deadline for that reason. The Board argues that Claimant's appeal of the Claims Deputy's determinations was untimely pursuant to 19 *Del.C.* § 3318(b), and that the Board did not abuse its discretion in not resuming jurisdiction over the case *sua sponte* pursuant to 19 *Del. C.* §3320.

**Standard of review.** When this Court reviews a procedural decision of the Board, the Court must consider whether the Board abused its discretion in rendering its decision.<sup>3</sup> A procedural decision by an administrative agency is not an abuse of discretion “unless it is based on clearly unreasonable or capricious grounds” or the Board decision “exceeds the bounds of reason in view of the circumstances and ignored recognized rules of law or practice so as to produce injustice.”<sup>4</sup> Absent an abuse of discretion, the Court must affirm the Board's judgment if it did not otherwise commit an error of law.<sup>5</sup>

**Discussion.** Title 19 *Del.C.* § 3318(b) provides in part as follows:

Unless a claimant. . . files an appeal within 10 calendar days after such Claims Deputy's determination was mailed to the last known addresses of the claimant and the last employer, the Claims Deputy's determination shall be final and binding and benefits shall be paid or denied in accordance therewith.

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<sup>3</sup>*Wilson v. Franciscan Care Center*, 2006 WL 1134779 (Del. Super.) (citing *Funk v. UIAB*, 591 A.2d 222, 225 (Del. 1991)).

<sup>4</sup>*K-Mart, Inc. v. Bowles*, 1995 WL 269872, at \*2 (Del. Super.).

<sup>5</sup>*Funk v. Unemployment Ins. Appeal Bd.*, 591 A.2d 222, 225 (Del. 1991).

In this case, the Claims Deputy's determinations were dated August 4, 2009, and stated that they became final on August 14, 2009. Claimant faxed his appeal on August 27, 2009, past the 10-day deadline. Claimant's proffered reason for being late was that he simply missed the deadline. There is no evidence that the Division did not mail the determination to Claimant's correct address or made any other error in communicating with him. Stacie Davis testified that the determinations were mailed to Claimant's last known address, and Claimant does not deny that he received them. The Board did not abuse its discretion in affirming the Referee's finding that the appeal was untimely filed.

The Board does have authority under 19 *Del.C.* § 3320 to "act *sua sponte* beyond the ten day appeal period to consider a case where no valid appeal has been filed by the parties."<sup>6</sup> However, this authority is used only where there has been some administrative error on the part of the Division which deprived the claimant of the opportunity to file a timely appeal, or where the interest of justice would not be served by inaction.<sup>7</sup> Absent abuse of discretion the Court must uphold a decision of an administrative tribunal.<sup>8</sup>

Claimant's statements that he just missed the deadline speak for themselves. They are a tacit acknowledgment of Claimant's receipt of the Claims Deputy's determinations

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<sup>6</sup>*Funk*, 591 A.2d at 225.

<sup>7</sup>*Id.*

<sup>8</sup>*Anderson v. Comfort Suites*, 2004 WL 304359 (Del. Super.)

and Claimant's own failure to meet the appeal deadline. Claimant's excuse does not merit a finding that the interest of justice would not be served by inaction. Nothing has been presented so severe to merit the waiver of a timely appeal.<sup>9</sup> The Court concludes that the Board did not abuse in choosing not to exercise its discretion to take the appeal *sua sponte*.

**Conclusion.** For all these reasons, the decision of the Unemployment Insurance Appeal Board is **AFFIRMED**.

**IT IS SO ORDERED.**

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Richard F. Stokes

Original to Prothonotary  
cc: UIAB

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<sup>9</sup>*Lacsamana v. Department of Labor, Division of Unemployment Ins.*, 1998 WL 109883, at \*3 (Del. Super.).