

May 29, 2003

Jonathan Church
168 Ramunno Circle
Hockessin, DE 19707

Stephanie Ferguson
401 Brewster Drive
Newark, DE 19711

RE: Jonathan Church v. Stephanie Ferguson and
Unemployment Insurance Appeal Board
Civil Action No. 02A-10-010 WCC

Submitted: February 4, 2003
Decided: May 29, 2003

On Claimant's Motion to Dismiss. Denied.

Dear Mr. Church and Ms. Ferguson:

Ms. Ferguson's ("Claimant") initial claim for unemployment benefits was presented to an Appeals Referee who found that she had voluntarily quit her employment for personal reasons and was disqualified from receiving benefits. She appealed that decision to the Unemployment Insurance Appeal Board. In spite of being notified of the Board's hearing, the employer, Jonathan Church ("Employer"), failed to appear for the hearing, and in a decision rendered on August 21, 2002, the Board reversed the Appeals Referee and awarded benefits to the Claimant. The decision of the Board was mailed on August 26, 2002, and would have become final on September 6, 2002.

On August 29, 2002, the Employer faxed a letter to the Board requesting the matter be reopened because he was unable to participate on the scheduled hearing date because of related business commitments. The Board denied this "motion for rehearing" as he was properly noticed and chose not to attend for personal reasons connected to his business. The Board's denial of the Employer's request for a rehearing was mailed on September 30,

2002 and as such, the Board's decision would have become final on October 10, 2002. Subsequently the Employer filed an appeal to this Court on October 24, 2002.

On January 7, 2003, the Court received a letter from the Claimant arguing that the Employer's appeal should be dismissed as it was filed untimely from the Board's decision. The Court interpreted this request as a "Motion to Dismiss for failing to file within the 10 day limitation set forth in 19 *Del. C.* Section 3323" and requested the Employer file a written response on this issue. This is the Court's decision on that motion based upon the submissions made by the parties.

Title 10, section 3322 of the Delaware Code provides that a decision of the Board becomes final 10 days after the date of notification or mailing of the decision. If a motion for rehearing is made before the Board's decision becomes final, the running of the appeal period is tolled.¹ The August 26, 2002 decision of the Board became final on September 6, 2002 and rather than appeal that decision directly to the Court, the Employer sought a rehearing of the issue before the Board on August 29, 2002. Since this request was filed within the 10 day limitation, it tolled the period for an appeal to this Court and was properly docketed and considered by the Board.

The Board's denial of the Employer's motion for rehearing was made on September 30, 2002 and would have become final on October 10, 2002. Under title 19, section 3323(a) "[w]ithin 10 days after the decision of the Unemployment Insurance Appeal Board has become final, any party aggrieved thereby may secure judicial review thereof by commencing an action in the Superior Court. . . ." Once the matter is filed in Superior Court, the civil rules of this Court become applicable. Rule 6(a) controls the computation of time and indicates "[w]hen the period of time prescribed or allowed is less than 11 days, intermediate Saturdays, Sundays, and other legal holidays shall be excluded in the computation"² and the initial day on which the Board's order became final would also not be included in the computation.³ By the application of this rule, the deadline for filing the appeal would be October 24, 2002. Since the Employer's appeal was filed on that day, the appeal is considered timely.⁴

¹ *Henry v. Department of Labor*, 293A.2d 578, 581 (Del. Super. Ct. 1972).

² SUPER. CT. CIV. R. 6(a) (2003).

³ *Id.*

⁴ The Court would note that for the parties' future reference, the date of filing is the day the item is actually received by the Court's Prothonotary's Office and not the date of mailing. The Employer appears to have been simply fortunate in having his mailed appeal received on the deadline. The Court also does not accept fax responses and all pleadings should be personally

As a result, for the reasons stated above, Claimant's Motion to Dismiss is DENIED, and the Claimant should file her answering brief to the Employer's appeal by June 30, 2003. The Employer's reply brief shall be due July 30, 2003.

Sincerely yours,

Judge William C. Carpenter, Jr.

WCCjr:twp

cc: Lori Poe - Prothonotary's Office

delivered to the Prothonotary's Office.