

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR KENT COUNTY

MATTHEW E. THOMPSON, :
 : C.A. No. K14A-04-002 WLW
Appellant, :
 :
v. :
 :
UNEMPLOYMENT INSURANCE :
APPEALS BOARD, :
 :
Appellee. :

Submitted: August 8, 2014
Decided: November 5, 2014

ORDER

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

Matthew E. Thompson, *pro se*

Catherine C. Damavandi, Esquire, Department of Justice, Wilmington, Delaware;
attorney for the Unemployment Insurance Appeals Board.

WITHAM, R.J.

Before the Court is the *pro se* appeal of Appellant Matthew Thompson (hereinafter “Appellant”) from the decision of the Unemployment Insurance Appeals Board (hereinafter “the Board” or “the UIAB”) denying Appellant’s appeal as untimely pursuant to 19 *Del. C.* § 3318(b). The Court has reviewed the record in this matter and the parties’ submissions. For the following reasons, the Board’s decision is affirmed.

BACKGROUND

On August 16, 2013, a Claims Deputy with the Delaware Department of Labor (hereinafter “the Department”) issued a Notice of Determination informing Appellant that he had been overpaid benefits due to fraudulent actions, and that Appellant was liable to the Department for recoupment of those benefits (Case Number 60872320). The notice informed Appellant that he had been overpaid \$2,184.00 in benefits over the course of eight (8) weeks during the time period of December 24, 2011 to February 11, 2012. The Notice of Determination was mailed to Appellant’s address of record at that time in Dover, Delaware, and stated that he had until August 26, 2013 to file an appeal.

Appellant received a second Notice of Determination (Case Number 60879436). This Notice of Determination stated that, due to fraudulent actions, Appellant was overpaid benefits and was liable to the Department for \$1,275.00 for five (5) weeks during the time period of October 13, 2012 to November 10, 2012. The notice further provided that the Notice of Determination would become final on August 26, 2013. The Notice of Determination was mailed to Appellant’s address

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Dover, Delaware. On January 27, 2013, Appellant filed an appeal challenging the Claims Deputy's determination for both the first and second notices.

On January 28, 2014, the Claims Deputy issued a determination that Appellant's appeal of the August 26, 2013 Notice of Determination was untimely. The Claims Deputy concluded that the appeal was untimely pursuant to 19 *Del. C.* § 3318(b). The Claims Deputy noted that the Dover address to which both Notices of Determination were mailed was Appellant's address of record at the time. Appellant timely appealed the determination

On February 19, 2014, the Appeals Referee held a hearing solely on the timeliness of the appeal. Appellant stated he had not received the mailing because Appellant had moved to Massachusetts in 2012, and instead any notifications were delivered to his mother who lived at the address on file. Appellant further testified that the cover letter used for the appeal stated his current Massachusetts address. He states that the mailing address in Dover is an assisted living home where his mother resides, and that due to possible confusion with the mail delivery system, this explained his late receipt of both Notices of Determination.

By decision dated February 19, 2014, the Appeals Referee affirmed the Claims Deputy's determination that Appellant's appeal was untimely. The Appeals Referee noted that the mail was never returned to the Post Office or The Department, and was sent to the last address on record for Appellant. Appellant stated during the hearing that he last resided at the Dover address in 2012, and has lived in Massachusetts since October of 2012. Appellant timely appealed the Appeals Referee's decision to

the Board. The Board found no error in the Appeals Referee's findings or conclusions. The Board concluded that Appellant's appeal was not reviewable because it was untimely. Accordingly, the Board affirmed the Appeals Referee's decision.

Appellant had ten (10) days to file the instant appeal with this Court from the date the UIAB's decision became final, which was March 22, 2014. Appellant did not file his appeal until April 15, 2014.

STANDARD OF REVIEW

When this Court reviews a procedural decision of the UIAB—which is a discretionary decision, as opposed to a factual decision that would trigger substantial evidence review—the Court must determine whether the UIAB abused its discretion in rendering its decision.¹ There is no abuse of discretion unless the Board based its procedural decision “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 practices so as to produce injustice.”² If there is no abuse of discretion, the Court must affirm the Board's decision if the Board did not otherwise commit an error of law.³

¹ *Hartman v. Unemployment Ins. App. Bd.*, 2004 WL 772067, at *2 (Del. Super. Apr. 5, 2004) (citing *Funk v. Unemployment Ins. App. Bd.*, 591 A.2d 222, 225 (Del. 1991)).

² *Powell v. Unemployment Ins. App. Bd.*, 2013 WL 3834045, at *1 (Del. Super. July 23, 2013) (citing *Hartman*, 2004 WL 772067, at *2)).

³ *Wilson v. Franciscan Care Ctr.*, 2006 WL 1134779, at *1 (Del. Super. Apr. 18, 2006) (citing *Funk*, 591 A.2d at 225)).

DISCUSSION

Section 3318(b) of Title 19 of the Delaware Code provides that a Claims Deputy's determination becomes final unless a claimant for unemployment benefits has filed an appeal from the determination within ten calendar days from when the decision was "mailed to the last known addresses of the claimant and the last employer. . . ." ⁴ Under 19 *Del. C.* § 3320, the Board has discretion to consider an untimely appeal "if the lateness of the filing can be traced back to an error of the UIAB, or in those cases where the interests of justice would not be served by inaction."⁵

The only issue that was before the Board throughout this appeals process was the timeliness of Appellant's original appeal from the August 16, 2013 Claims Deputy's determination that Appellant was disqualified from receiving benefits.⁶ Both Notices of Determination explicitly stated that the decisions would become final on August 26, 2013. Appellant filed his appeal from that determination on January 27, 2014, after the decision had already become final. Thus, Appellant's appeal was untimely.

Appellant testified that he received the Notices of Determination at his mother's home address, which he subsequently moved out of without notifying The

⁴ 19 *Del. C.* § 3318(b).

⁵ *Powell*, 2013 WL 3834045, at *2 (citing *Funk*, 591 A.2d at 225).

⁶ Appellant states in his letters to the Board that the amount overpaid to him was miscalculated, however he fails to provide any information to corroborate his statement.

Board. The only reason given by Appellant for his untimely filing was that mail sent by The Board went to an address that he no longer resided at (his mother's house), and was subsequently forwarded to him after the holiday season.

The Court is conscious of the fact that Appellant is litigating this appeal *pro se*. Courts are at liberty to reasonably interpret a *pro se* litigant's filings, pleadings and appeals "in a favorable light to alleviate the technical inaccuracies typical in many *pro se* legal arguments. . . ." ⁷ However, barring extraordinary circumstances, "procedural requirements are not relaxed for any type of litigant. . . ." ⁸ The timely filing of an appeal constitutes as a procedural requirement. Appellant has failed to show that extraordinary circumstances existed that prevented him from responding to the UIAB's decision prior to the August 26, 2013 deadline; thus, the Court cannot relax the ten (10) day filing period for Appellant.

The Board's decision denying Appellant's untimely appeal was neither clearly unreasonable nor capricious, nor did the Board otherwise exceed the bounds of reason. Accordingly, the Board did not abuse its discretion.

⁷ *McGonigle v. George H. Burns, Inc.*, 2001 WL 1079036, at *2 (Sept. 4, 2001).

⁸ *Id.*

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CONCLUSION

In light of the absence of any error of law or abuse of discretion, the decision of the UIAB must be, and is, hereby **AFFIRMED**.

IT IS SO ORDERED.

/s/ William L. Witham, Jr.
Resident Judge

WLW/dmh