

SUPERIOR COURT
OF THE
STATE OF DELAWARE

T. HENLEY GRAVES
RESIDENT JUDGE

SUSSEX COUNTY COURTHOUSE
1 THE CIRCLE, SUITE 2
GEORGETOWN, DE 19947
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April 17, 2015

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Longneck, Delaware 19966
Pro se Plaintiff

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RE: *Cornell v. Candle light Bridal*
C.A. No. S14A-09-001 THG

Dear Parties:

Before the Court is Marco Cornell's ("Claimant") appeal from the Unemployment Insurance Appeal Board (the "UIAB" or "Board"). Specifically, Claimant is appealing the UIAB's dismissal of his unemployment insurance benefits claim, and the subsequent denial for a rehearing of his case. Based on the following, the Board's decision is **AFFIRMED**.

FACTS
Substantive Facts

Claimant was employed at Candle Light Bridal ("Employer"), located at 314 Main Street,

Millsboro, Delaware.¹ He was employed as an Office Clerk, and worked at Employer from April 1, 2012 to January 28, 2014.² While there, Claimant made \$9.50 per hour.³ Claimant is a life long Delaware resident,⁴ and currently resides in Long Neck, Delaware.⁵

Claimant stopped working at Employer on January 28, 2014 due to health complications.⁶ The events leading up to Claimant's resignation at work are as follows: prior to January 28, 2014, Claimant did not come into work for a week, because he believed he had the flu.⁷ When Claimant failed to recover, an ambulance was called to take him to the hospital.⁸ Upon arrival at the hospital, it was discovered that Claimant's blood sugar was over 900, despite Claimant never having diabetic issues in the past.⁹ Claimant stayed at the hospital for a week before being sent home.¹⁰ When Claimant returned home, he began having pains in his leg, and was sent back to the hospital in response to problems with his breathing.¹¹ During his second hospital stay, he was informed his leg

¹ R. at 3.

² *Id.*

³ R. at 23.

⁴ R. at 4.

⁵ R. at 5.

⁶ R. at 3.

⁷ R. at 23.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

was “full of blood clots and they had traveled to [his] heart.”¹² Claimant stayed at the hospital for a few days after the clots were discovered and treated.¹³ In addition to the medicine and treatment Claimant received, he was instructed to not move much and to stay away from work for six months.¹⁴ Claimant’s doctors advised him not to return to work until October, 2014, though his doctor did write a letter stating that Claimant could work “light duty a couple hours a day,” after a Division of Unemployment Insurance (“DUI”) Claims Deputy (“Claims Deputy”) denied Claimant unemployment insurance benefits.¹⁵ Due to Claimant’s absence from work, Employer was forced to fill his position, causing Claimant to seek employment elsewhere.

Procedural History

Claimant filed a claim for unemployment insurance benefits on April 27, 2014.¹⁶ Employer filed a separation notice with the DUI on April 28, 2014, and indicated Claimant separated for medical purposes.¹⁷ Due to the answers Claimant provided when he filed his claim, and the answers given by Employer on the separation notice, the Claims Deputy denied Claimant unemployment

¹² *Id.*

¹³ *Id.* (Claimant was placed on blood thinners, insulin, and a few other medications. R. at 23-24.)

¹⁴ R. at 24. (Claimant’s doctors explained that minor activity was permissible, but clarified that moving his legs could jar the blood clots, which could travel to his heart and kill him. *Id.*)

¹⁵ *See* R. at 24-25.

¹⁶ R. at 8 (However, the April 27 date is scratched out and the date of May 8, 2014 has been written in hand writing in its place).

¹⁷ R. at 11.

insurance.¹⁸ The Claims Deputy explained that under 19 *Del. C.* §3314 (8), any total or partial unemployment due to an individual's inability to work, including unemployment stemming from medical reasons, prevents the individual from receiving unemployment insurance benefits.¹⁹ The Claims Deputy's decision was mailed to Claimant on June 18, 2014.²⁰ Claimant timely appealed the decision on June 24, 2014.²¹

An administrative hearing was held on July 10, 2014 ("July 10 hearing") before an Appeals Referee.²² Much of the substantive facts discussed above were uncovered at the July 10 hearing. Upon hearing all the evidence, the Appeals Referee affirmed the Claims Deputy's determination to deny benefits in a written decision dated July 21, 2014.²³ Claimant timely appealed the Appeals Referee's decision to the UIAB.²⁴

On August 12, 2014, the UIAB mailed notice to Claimant, indicating that Claimant's UIAB hearing would be held at 10:40 AM on August 27, 2014 at 1114 South Dupont Highway, Suite 103 in Dover, Delaware.²⁵ Claimant was advised to arrive at the specified location at least 15 minutes prior to the 10:40 AM start time, and that his failure to arrive on time could result in his appeal being

¹⁸ R. at 13.

¹⁹ *Id.* (citing 19 *Del. C.* §3314 (8)).

²⁰ *Id.*

²¹ R. at 16.

²² R. at 18.

²³ R. at 29-31.

²⁴ R. at 35.

²⁵ R. at 36.

dismissed.²⁶ On August 27, 2014, Claimant's UIAB hearing began promptly at 10:40 AM.²⁷ Claimant failed to appear on time, and at 10:54 AM, after waiting for Claimant to arrive for approximately 14 minutes, the UIAB dismissed Claimant's case.²⁸

Later that day, after the hearing was dismissed, Claimant arrived at the designated Dover, Delaware location, and filed a "re-appeal."²⁹ The UIAB treated the "re-appeal" request as a motion for rehearing.³⁰ Claimant, then filed an appeal with this Court on September 9, 2014.³¹ The Board then issued a written decision explaining that the decision to grant a motion for rehearing was entirely within its discretion.³² It stated:

Claimant does not argue that he did not receive notice of the hearing. Based on the records provided by the Department of Labor, notice was properly mailed to the Claimant. The Board finds that the Claimant was provided proper notice of the hearing and has been afforded ample opportunity to present testimony and evidence. The Board finds no legal justification to examine the matter further and declines to grant a rehearing.³³

²⁶ *Id.*

²⁷ R. at 38.

²⁸ *Id.*

²⁹ R. at 43.

³⁰ R. at 44.

³¹ R. at 49.

³² R. at 45.

³³ *Id.*

The UIAB's decision regarding Claimant's request for a rehearing was mailed to him on October 9, 2014.³⁴ Now that the UIAB has addressed Claimant's request for a rehearing and is divested of jurisdiction with regard to that decision, the Court may now address Claimant's appeal.

STANDARD OF REVIEW

This case invokes a different standard of review than the typical UIAB appeal. Normally, the Court evaluates an appeal from the UIAB under the Substantial Evidence standard.³⁵ However, as will be explained below, because Claimant failed to appear before the UIAB, the merits of his case cannot be assessed by the Court due to lack of jurisdiction, making the Substantial Evidence standard inapplicable.³⁶ With that said, though the Court lacks jurisdiction to consider the merits of Claimant's case, it maintains jurisdiction to evaluate whether the UIAB abused its discretion in denying Claimant's request for a rehearing.³⁷

DISCUSSION

Jurisdiction

This Court may only review the merits of an unemployment insurance benefits case after the

³⁴ See R. at 45-46.

³⁵ See, e.g., *Norgues v. Mountaire Farms of Del., Inc.*, 2015 WL 556167 (Del. Super. Feb. 10, 2015); *Layfield v. Division of Unemployment*, 2015 WL 98646 (Del. Super. Jan. 6, 2015); *Moss v. Mountaire Farms*, 2014 WL 4933060 (Del. Super. Sept. 29, 2014).

³⁶ See *Tesla Indus., Inc. v. Bhatt*, 2007 WL 2028460, *2 (Del. Super. June 28, 2007); *Wilson v. Servalli Rest.*, 1999 WL 1611271, *2 (Del. Super. Apr. 29, 1999).

³⁷ See *Telsa*, 2007 WL 2028460 at *2; *Wilson*, 1999 WL 1611271 at *2; *Mullins v. Dover Downs, Inc.*, 1998 WL 278408, *2 (Del. Super. Mar. 11, 1998).

appellant has exhausted all of its administrative remedies.³⁸ Without the exhaustion of such remedies, the Court lacks jurisdiction to address the merits of the case.³⁹ The UIAB has broad review powers under 19 *Del. C.* §3320.⁴⁰ These review powers are further increased by 19 *Del. C.* §3321 (a), which allows the UIAB to enact regulations governing its hearing procedures.⁴¹ Pursuant to 19 *Del. Regs.* 1000 1201 R. 4.2, “[a]ll parties to the appeal shall be present at the Board’s hearing. Failure to appear within 10 minutes of the time indicated on the Notice may result in [UIAB’s] hearing the appeal in absence of the delinquent party or, if the delinquent party is the appellant, dismissal of the appeal.”⁴² Without a necessary party’s appearance at the hearing, the UIAB cannot address the merits of the case.⁴³ Thus, if a case is dismissed due to a party failing to appear at the hearing, the merits of the case can never be determined absent a rehearing. As such, the Court cannot address the merits of such a case for lack of jurisdiction due to the appellant’s failure to exhaust all of his administrative remedies.

Excusable Neglect

Though the UIAB may dismiss a case for a necessary party’s failure to appear, it may grant

³⁸ 19 *Del. C.* §3322 (a); *Telsa*, 2007 WL 2028460 at *2 (citing 19 *Del. C.* §3322(a)); *Wilson*, 1999 WL 1611271 at *2.

³⁹ *Telsa*, 2007 WL 2028460 at *2 (citing *Griffin v. Daimler Chrysler*, 2000 WL 33309877 (Del. Super. Apr. 27, 2001)).

⁴⁰ *Id.* (citing 19 *Del. C.* §3320(a)).

⁴¹ *Clemmons v. Lifecare at Lofland Park*, 2003 WL 21090169, *2 (Del. Super. Apr. 25, 2003).

⁴² 19 *Del. Regs.* 1000 1201 R. 4.2

⁴³ *See Telsa*, 2007 WL 2028460 at *2.

a rehearing.⁴⁴ There is no explicit statutory grant of power allowing the UIAB to reopen and reconsider a decision, but such a power is inherent in “a public body exercising judicial functions. . . .”⁴⁵ With that said, the Board may only rehear a case if it decides to do so prior to losing jurisdiction.⁴⁶ The UIAB retains jurisdiction of a case until its decision becomes final, which occurs ten days after the parties receive notification of the decision.⁴⁷

As stated above, the UIAB has extensive powers of review and is able to enact its own regulations to establish hearing procedures. The inherent power of the UIAB to reconsider cases is noted in Unemployment Insurance Appeal Board Regulation 7.1. Regulation 7.1 allows the UIAB to grant or deny a motion for rehearing after a final decision, in its sole discretion.⁴⁸ Because of the Board’s broad powers, this Court will not disturb its ruling to deny a rehearing absent an abuse of discretion.⁴⁹ Therefore, though the Court may not have jurisdiction to address the merits of an unemployment insurance benefits case, it does have jurisdiction to determine whether the UIAB abused its discretion in denying a rehearing.⁵⁰

When addressing whether the UIAB abused its discretion in denying a motion for rehearing,

⁴⁴ 19 *Del. Regs.* 1000 1201 R. 7.0, *et seq.*

⁴⁵ *Henry v. Dep’t. of Labor*, 293 A.2d 578, 581 (Del. Super. 1972).

⁴⁶ *Id.*

⁴⁷ 19 *Del. C.* §3322(a); *Henry*, 293 A.2d at 582.

⁴⁸ *Clemmons*, 2003 WL 21090169 at *2 (*citing* 19 *Del. Regs.* 1000 1201 R. 7.1).

⁴⁹ *Telsa*, 2007 WL 2028460 at *2 (*citing Funk v. Unemployment Ins. Appeal Bd.*, 591 A.2d 222, 225 (Del. 1991)); *Clemmons*, 2003 WL 21090169 at *2 (*citing Funk*, 591 A.2d at 225).

⁵⁰ *Telsa*, 2007 WL 2028460 at *2 (*citing Wilson*, 1999 WL 1611271 at *2).

the appellant must establish that the decision was “clearly unreasonable or capricious,”⁵¹ which can be done by demonstrating the appellant’s failure to appear at the scheduled hearing was due to excusable neglect.⁵² “In the absence of a UIAB regulation or rule defining excusable neglect, this Court may apply the standard set forth in Superior Court Civil Rule 60(b)(1).”⁵³ Civil Rule 60(b)(1) states, in pertinent part: “[o]n a motion and upon such terms as are just, the Court may relieve a party . . . from a final judgment . . . for the following reasons: Mistake, inadvertence, surprise, or excusable neglect. . . .”⁵⁴ The courts of this State have defined excusable neglect as “more than ‘mere negligence or carelessness without a valid reason.’”⁵⁵ To establish excusable neglect, the appellant must satisfy one of two standards: “1) excusable neglect can be established if a person has a valid reason for his action or inaction⁵⁶ or 2) excusable neglect can be established if a reasonable prudent person might have acted similarly under the circumstances.”⁵⁷

APPLICATION

Based on the law and the facts of this case, the Court finds that the UIAB did not abuse its discretion in denying Claimant’s request for a rehearing. Claimant had notice to appear. The UIAB

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Mullins*, 1998 WL 278408 at *2; *Wright v. Quorum Litig. Serv.*, 1997 WL 524061, *2 (Del. Super. Apr. 4, 1997).

⁵⁴ Super. Ct. Civ. R. 60(b)(1).

⁵⁵ *Telsa*, 2007 WL 2028460 at *2 (citing *Wright*, 1997 WL 524061 at *3; *Snyder v. Quicksilver Trucking*, 2007 WL 315337, *1 (Del. Super. Jan. 31, 2007)).

⁵⁶ *Id.* (citing *Cohen v. Brandywine Raceway Assoc.*, 238 A.2d 320, 325 (Del. Super. 1968)).

⁵⁷ *Id.*

sent him information in the mail to his address indicating the date, time, and location of his hearing, and advising him to arrive at least 15 minutes early. Claimant's excuse is not that he did not receive notice, but rather that traffic prevented him from arriving at the hearing on time. Traffic is not a valid reason for Claimant's failure to timely appear at the scheduled hearing. A reasonable, prudent person would not have been placed in the situation Claimant found himself in for two reasons. First, a reasonable, prudent person would have factored the possibility of oppressive traffic into his travel time. Second, a reasonable, prudent person would have followed the advise of the Board to arrive at the specified hearing location at least 15 minutes prior to the hearing's start time. Further, a reasonable, prudent person would have, at the very least, called ahead to the UIAB to notify it that he would be running late. None of the above was done in this case.

Claimant's hearing was scheduled for August 27, 2014 at 10:40 AM and the UIAB dismissed his hearing at 10:54 AM. Pursuant to 19 *Del. Regs.* 1000 1201 R. 4.2, the UIAB was entitled to dismiss Claimant's case. Its decision to do so was well within its rights under 19 *Del. C.* §3320. The UIAB was also entitled to deny Claimant's request for a rehearing, since such a decision is within the Board's sole discretion under 19 *Del. Regs.* 1000 1201 R. 7.1. Finally, case law has developed such that this Court gives the UIAB great deference with regard to decisions to reconsider cases. The Court, finding no abuse of discretion, will not disturb the UIAB's decision not to grant a rehearing.

CONCLUSION

Based on the above, the Court finds the Board did not abuse its discretion when it denied Claimant's request for a rehearing, in that there was no excusable neglect on the part of Claimant. As such, the decision of the UIAB is **AFFIRMED**. The Court lacks jurisdiction to address

Claimant's case regarding his entitlement to unemployment insurance benefits.

IT IS SO ORDERED.

Very truly yours,

/s/ T. Henley Graves

T. Henley Graves