

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE**

Kyasia Chavous, )  
 )  
 Appellant, )  
 )  
 v. ) C.A. No.: N19A-05-001 SKR  
 )  
 Unemployment Insurance Appeals Board, )  
 )  
 Appellee. )

Submitted: August 13, 2019  
Decided: October 24, 2019

*Upon Appeal from the Unemployment Insurance Appeals Board*  
**AFFIRMED**

Kyasia Chavous, *pro se*, Appellant.

Victoria W. Counihan, Esq., Deputy Attorney General, Attorney for Delaware  
Department of Labor, Division of Unemployment Insurance

Daniel C. Mulveny, Esq., Deputy Attorney General, Attorney for Delaware  
Department of Labor, Unemployment Insurance Appeal Board

Jennifer C. Jauffret, Esq., & Lori A. Brewington Esq., Attorneys for Appellee,  
Child, Inc.

**Rennie, J.**

## ORDER

Before the Court is *pro se* appellant, Kyasia Chavous's ("Chavous"), appeal<sup>1</sup> from an April 30, 2019 decision<sup>2</sup> of the Unemployment Insurance Appeals Board (the "Board"). Upon consideration of Chavous's briefs on appeal,<sup>3</sup> and the record in this case, it appears to the Court that:

### BACKGROUND

1. On January 23, 2019 the Delaware Department of Labor, Division of Unemployment Insurance (the "Division") issued Determination No. 11113106 ("3106 Determination"),<sup>4</sup> ruling that Chavous was eligible for unemployment benefits from her employment with Child, Inc.

2. On February 1, 2019, Child, Inc. appealed the 3106 Determination to an Appeals Referee.<sup>5</sup> On February 20, 2019, a hearing was held before the Appeals Referee. Child Inc. was present, but Chavous was absent, even though proper notice of the hearing had been mailed to her.<sup>6</sup> The Appeals Referee found that Child Inc.

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<sup>1</sup> Notice of Appeal (Trans. ID. 63226256).

<sup>2</sup> Record on Appeal at 50-52 ("R. on Appeal"), April 30, 2019 Decision of the Unemployment Insurance Appeals Board.

<sup>3</sup> Opening Brief (Trans. ID. 63536806); Answering Brief (Trans. ID. 63642210); Reply Brief (Trans. ID. 64110891). The Delaware Department of Labor, Division of Unemployment Insurance Letter (Trans. ID.63536806); The Delaware Unemployment Insurance Appeals Board Letter (Trans. ID. 63617523).

<sup>4</sup> R. on Appeal 1, January 23, 2019 Determination.

<sup>5</sup> R. on Appeal 7, Appeal Request Notification from the 3106 Determination.

<sup>6</sup> R. on Appeal 18 Transcript of Referee Hearing 3:18-22.

did not terminate Chavous for an unjust cause and reversed the 3106 Determination.<sup>7</sup> Notice of the Referee's decision was sent to Chavous on February 20, 2019 via first class mail.<sup>8</sup> On April 15, 2019, Chavous sought review of the Referee's decision.<sup>9</sup> On April 30, 2019, the Board issued a decision which affirmed the Appeals Referee. In its ruling, the Board denied review of the appeal because it was untimely and thereby found that the Referee's decision was final and binding.<sup>10</sup> On May 2, 2019, Chavous appealed the Board's decision to this Court.

### **Standard of Review**

3. Title 29, Section 10142 of the Delaware Code provides that this Court has appellate jurisdiction over final agency decisions.<sup>11</sup> The Court upholds the agency decision so long as it is "free from legal error" and supported by "substantial evidence."<sup>12</sup> Substantial evidence amounts to "relevant evidence that a reasonable mind might accept as adequate to support a conclusion."<sup>13</sup> This Court considers the evidence in the light most favorable to the party prevailing from the Board's appeal.<sup>14</sup> The issue before this Court is limited solely to whether Chavous's appeal

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<sup>7</sup> R. on Appeal 11, February 20, 2019 Referee Decision.

<sup>8</sup> R. on Appeal 14, February 20, 2019 Affidavit of Mailing.

<sup>9</sup> R. on Appeal 48, April 15, 2019 Notice of Appeal of Referee's Decision.

<sup>10</sup> R. on Appeal at 50-52, April 30, 2019 Decision of the Unemployment Insurance Appeals Board.

<sup>11</sup> 29 *Del. C.* §10142.

<sup>12</sup> *Morrison v. Unemployment Ins. Appeal Bd.*, 2013 WL 5786417, at \*3 (Del. Super. Oct. 18, 2013) (internal citations omitted).

<sup>13</sup> *Murphy & Landon, P.A. v. Pernic*, 121 A.3d 1215, 1221 (Del. 2015) (citing *Oceanport Indus., Inc. v. Wilmington Stevedores, Inc.*, 636 A.2d 892, 899 (Del.1994).

<sup>14</sup> *Id.*

of the Referee's decision to the Board was timely filed. The Court finds that it was not.

4. Title 19, Section 3318(c) provides that, the Referee's decision "shall be deemed to be final unless within 10 days after the date of notification or mailing of such decision further appeal is initiated."<sup>15</sup> The time limit is jurisdictional, but the Board may, pursuant to 19 Del. C. §3320, exercise its discretion in severe circumstances and accept the appeal *sua sponte*.<sup>16</sup>

5. In this case, the Referee's decision was mailed to Chavous on February 20, 2019. The decision conspicuously indicated that Chavous had a right of further appeal to the Board and that such an appeal had to be filed by March 2, 2019 or the decision of the Referee would be final.<sup>17</sup> However, Chavous did not file her appeal until April 15, 2019, approximately 6 weeks beyond the statutory period.

6. In her appeal, Chavous asserts that she never received a notice of the February 20, 2019 referee hearing, nor notice of the decision. Delaware courts have held that there is a rebuttable presumption that correctly addressed mail was received by the party to whom it was addressed.<sup>18</sup> Although a party can obviate this

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<sup>15</sup> 19 Del. C. §3318(c).

<sup>16</sup> *Funk v. Unemployment Ins. Appeal Bd.*, 591 A.2d 222, 225 (Del. 1991).

<sup>17</sup> R. on Appeal 11, February 20, 2019 Referee Decision. March 2, 2019 was a Saturday, thus Chavous's appeal was due on the next business day, March 4, 2019.

<sup>18</sup> *Windom v. William C. Ungerer, W.C.*, 903 A.2d 276, 282 (Del. 2006); *Rehoboth-By-The-Sea v. Baris*, 2015 WL 3643496, at \*4 (Del. Super. June 10, 2015).

presumption, “merely denying receipt does not rebut the presumption.”<sup>19</sup> Chavous does not allege any facts in her brief that are sufficient to rebut this presumption. She does not deny living at the address to which notice of the hearing and decision were sent, nor does she allege that her failure to receive notice of the letter was due in part to any wrongdoing by the Division.

7. Moreover, Chavous did not demonstrate and the Board did not find any valid bases to exercise its discretion under §3320 to accept the appeal *sua sponte*. Therefore, the Court agrees with the Board that Chavous failed to file an appeal of the Referee’s decision within the statutorily-required timeframe, and the decision is final and binding.

For all the reasons stated above, the Board’s April 30, 2019 decision is **AFFIRMED.**

**IT IS SO ORDERED.**

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Sheldon K. Rennie, Judge

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<sup>19</sup> *Windom*, 903 A.2d at \*282