

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

**IN AND FOR NEW CASTLE COUNTY**

**HENRY C. ALLEN,** )  
 )  
 Appellant (*pro se*), )  
 )  
 v. ) **C.A. No. 02A-01-009**  
 )  
 **J.R. GETTIER & ASSOCIATES** )  
 **and** )  
 **UNEMPLOYMENT INSURANCE** )  
 **APPEAL BOARD,** )  
 )  
 Appellees. )

Date Submitted: April 24, 2002

Date Decided: May 22, 2002

**MEMORANDUM OPINION**

**UPON EMPLOYEE'S APPEAL FROM THE  
UNEMPLOYMENT INSURANCE APPEAL BOARD**

**AFFIRMED**

Henry C. Allen, Bear, Delaware, Appellant - Claimant Below.

Robert F. Stewart, Jr., Esquire, Newark, Delaware, Appellee - Employer Below.

Stephani Ballard, Esquire, Wilmington, Delaware, Appellee - UIAB Below

This 22<sup>nd</sup> day of May 2002 upon review of the record below, it appears to the Court that:

#### FACTS

This is an appeal from the Unemployment Insurance Appeals Board (“UIAB”) which determined that Henry C. Allen (“Claimant”) appeal, from the UIAB’s decision that he was disqualified from receiving unemployment benefits, was untimely.

Claimant was employed as a security guard for J.R. Gettier & Associates (“Employer”) from February 10, 2000 through July 28, 2001. On or about August 5, 2001 Claimant filed for unemployment benefits. A Claims Deputy found that claimant was disqualified from receiving benefits. This decision was based on Employer’s representations that Claimant last worked on July 30, 2001, then took a two-week vacation. Employer contends that the site manager tried to contact Claimant after the vacation but Claimant did not call back. When Claimant eventually called back, the position was filled.

The Claims Deputy thus determined that Claimant voluntarily quit without good cause. This decision set forth in a Notice of Determination was dated and mailed September 21, 2001. Pursuant to the statute, Claimant had ten (10) days from the date of

mailing of the Notice of Determination to file an appeal from the Claims Deputy's determination. Thus, Claimant had until October 1, 2001 to file an appeal.

Claimant did not file an appeal until October 11, 2001, ten days after the last day he could appeal. Claimant claims he was late in filing his appeal as he did not receive the Notice of Determination. Claimant had moved from his last known address registered with the Department of Labor. Claimant filed a change of address form with the United States Postal Service ("USPS") but allegedly had problems receiving mail at the new address. Claimant admits that he did not change his address with the Department of Labor until October 11, 2001.

On November 4, 2001, a hearing was held by the Appeals Referee solely on the issue of timeliness. Michael Chitwood ("Chitwood"), a Claims Deputy, testified that on September 21, 2001 Claimant's record address at the Department of Labor was 902 Governor House Circle, Wilmington Delaware. Chitwood testified that the Notice of Determination was sent to that address and never returned by the USPS as undeliverable. At the hearing, Claimant acknowledged he did not file an appeal until October 11, 2001. He testified that he went to the UIAB on October 11 because he had not heard anything from them and wanted to know the status of his benefits. At that time, he was informed that he was disqualified from receiving benefits and immediately he filed an appeal. He

testified that he had changed his address with the USPS to 2 Boggs Lane, Bear, Delaware but did not receive any mail from the Department of Labor there.

In a decision dated November 21, 2001 the Appeals Referee issued an opinion holding that Claimant's late appeal was jurisdictionally barred and no circumstances justified a waiver. Claimant appealed the Referee's decision to the UIAB on November 26, 2001. The UIAB affirmed the below decision ruling that Claimant's late appeal was jurisdictionally barred. Claimant then filed this appeal on January 24, 2002.

#### STANDARD OR REVIEW

When reviewing a decision of the UIAB this Court determines whether the decision is supported by substantial evidence and whether the Board's proceedings are free from legal error. *Unemployment Ins. Bd. of Dep't. of Labor v. Duncan*, 337 A.2d 308, 309 (Del. 1975); *Avon Products, Inc. v. Wilson*, 513 A.2d 1315, 1317 (Del. 1986). Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Breeding v. Contractors-One-Inc.*, 549 A.2d 1102, 1104 (Del. 1988). The Board is to solve any questions as to credibility and conflicts in testimony; while the Court is to determine only whether there is satisfactory proof to support a factual finding. *Duncan*, 337 A.2d at 309; *Abex Corp. v. Todd*, 235 A.2d 271, 273 (Del. 1967).

#### ANALYSIS

Claimant's brief offers no specific challenge to the UIAB's factual findings nor application of law. Claimant merely asserts that he never received the Notice of Determination as he moved from the record address of the Department of Labor and had problems with the USPS forwarding his mail. After a review of the record the Court finds that the UIAB's decision is supported by substantial evidence and is free from legal error for the reasons set forth below.

The UIAB found that Claimant's appeal was jurisdictionally barred. This bar is set forth in 19 *Del. C.* § 3318, which states in relevant part:

Unless a claimant or a last employer . . . 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 benefits shall be paid or denied in accordance therewith.

There is no dispute that Claimant's appeal was filed after this ten-day time limit. Further, there is no dispute that Claimant's last known address was 902 Governor House Circle, Wilmington, Delaware. The Supreme Court stated in *Funk v. Unemployment Ins. Appeal Bd.*, 591 A.2d 222, 226 (Del. 1991), that:

We are of the opinion that a statutory ten-day time limit for filing an administrative appeal is reasonable. Its application in this case where the claimant had notice through prior experience of the possible misdelivery of his mail and where the misdelivery was made through no fault of the Department of Labor did not violate the claimant's rights.

*Allen v. J.R. Gettier & Assoc., et al.*  
C.A. No. 02A-01-009 HLA  
May 22, 2002  
Page 6

Here, there was no evidence of fault on the part of the Department of Labor. The Department of Labor mailed the Notice of Determination to Claimant's last known address. Claimant made no effort before October 11, 2001 to change his address with the Department of Labor, despite known problems with the USPS forwarding his mail to his new address. Whereas Claimant filed his appeal twenty-one days after the mailing of the Notice of Determination, the Department of Labor mailed the Notice of Determination to Claimant's last known address and Claimant admits that he did not change his address with the Department of Labor until October 11, 2001 despite known problems with the USPS forwarding his mail, the Court finds substantial evidence to support the decision of the UIAB.

For the forgoing reasons the decision of the Unemployment Insurance Appeal Board is hereby **AFFIRMED**.

**IT IS SO ORDERED.**

---

**ALFORD, J.**

Original: Prothonotary's Office - Civil Division