

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY**

SHARI JOHNSON,)
)
 Appellant,)
)
 v.)
)
 PERFORMANCE STAFFING, and)
 UNEMPLOYMENT INSURANCE)
 APPEAL BOARD,)
)
 Appellee.)

C. A. No. 04A-01-002-JEB

Submitted: June 3, 2004
Decided: July 29, 2004

*Motion to Dismiss an Appeal from a Decision of the Unemployment Insurance
Appeal Board. Granted*

OPINION

Appearances:

Shari Johnson, *Pro Se*, 145 Honeywell Drive, Claymont, Delaware, 19703.

Sean A. Dolan, Esquire, Wilmington, Delaware.
Attorney for Performance Staffing.

Mary Page Bailey, Esquire, Wilmington, Delaware.
Attorney for Unemployment Insurance Appeal Board.

JOHN E. BABIARZ, JR., JUDGE

The Delaware Unemployment Insurance Appeal Board (“Board”) has moved to dismiss Claimant Shari Johnson’s appeal from the Board’s decision denying her petition for unemployment benefits. The Board contends that this Court has no jurisdiction over the matter because Claimant’s appeal was not timely filed. The Court agrees and concludes that the appeal must be dismissed.

On November 12, 2003, the Board held a hearing to determine whether Claimant was entitled to unemployment benefits following termination of her employment with Performance Staffing. The Board concluded that Claimant left her job voluntarily and was therefore not entitled to benefits. The decision was sent to Claimant by first class mail on November 21, 2003, at the address provided by Claimant. The decision also stated that it became final on December 1, 2003, and that an appeal had to be filed within 10 days of the final date. Thus, Claimant had until December 15, 2003, to file a timely notice of appeal. Claimant filed her notice on January 5, 2004.

Pursuant to DEL. CODE ANN. tit. 19, § 3323(a), “[w]ithin ten 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 in the county in which the claimant resides.” Claimant failed to meet this statutory requirement.

Claimant contends that she never received a copy of the Board’s decision.

However, the decision was mailed to Claimant's address of record, the same address Claimant provided on all of her paperwork. The decision was not returned by the U.S. Post Office to the Delaware Department of Labor. There is a legal presumption that properly addressed mail is received by the addressee, and the addressee's mere denial of receipt of the document is insufficient to rebut the presumption.¹ The filing of a timely notice of appeal is a jurisdictional matter, and this Court has previously held that it cannot make exceptions even for *pro se* litigants on this issue.²

For the above stated reasons, the Board's motion to dismiss is ***Granted***.

It Is So ORDERED.

Judge John E. Babiarz, Jr.

JEB,jr./ram/bjw
Original to Prothonotary

¹*Hopkins v. Unemployment Ins. Appeal Bd.*, 1994 WL 680076 (Del. Super.).

²*Klossowski v. Letica Corp.*, 1994 WL 710943 (Del. Super.).