

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

EDWARD BOCK, JR.,)	
Claimant–Appellant,)	
)	
v.)	IAB Hearing No.: 783950
)	
)	
CATALYTIC, INC.,)	C.A. 03A-05-014 JRS
Employer-Appellee)	
)	
and)	
)	
INDUSTRIAL ACCIDENT BOARD,)	
Appellee.)	

Date Submitted: June 22, 2004

Date Decided: September 29, 2004

Upon consideration of the Appellee’s Motion to Strike.

GRANTED.

Upon consideration of the Appellee’s Motion to Dismiss.

GRANTED.

ORDER

This 29th day of September, 2004, Catalytic, Inc. (“Catalytic”), having moved to strike the Opening Brief of Appellant, Edward Bock, Jr. (“Bock or Appellant”), and to dismiss Appellant’s appeal, it appears to the Court that:

Facts

1. Bock was employed by Catalytic on November 7, 1984 when he sustained an injury to his back from an industrial accident. The Industrial Accident Board (“IAB”) heard Bock’s injury claim and awarded relief.

2. Bock received Worker’s Compensation benefits until 1993 when he was “able to get back into an employability position . . . and gain other employment.”¹ Bock suffered a second, but unrelated, compensable injury while working for this new employer.

3. Compensation for Bock’s 1984 injury ceased on June 5, 1993.

4. More than five years later, on December 19, 2001, Bock filed a Petition to Determine Additional Compensation against Catalytic, recorded under IAB File Number 783950. After a hearing, the IAB denied the Petition on the ground that the five year statute of limitations had run on Bock’s 1984 injury, the last payment of compensation having been made on June 5, 1993.

5. Under Del. Code Ann. tit. 19, § 2361(b) (“Section 2361”), the five year statute of limitations “where payments of compensation have been made under an agreement approved by the [IAB]” . . . runs from “the time of the making of the last payment.”² And, under Del. Code Ann. tit. 19, § 2301(5) (“Section 2301”), payment of compensation does not include any additional payments for medical reports and

¹ *Edward Bock v. Catalytic, Inc.*, Testimony, Industrial Accident Board, State of Delaware, Hearing No. 783950, at 3 (August 8, 2003).

² Section 2361 provides in part: “(b) Where payments of compensation have been made in any case under an agreement approved by the Board or by an award of the Board, no statute of limitations shall take effect until the expiration of 5 years from the time of the making of the last payment for which proper receipt has been filed with the Department.”

other administrative materials.³ Bock's Petition to Determine Additional Compensation clearly was filed beyond five years from the last payment made to him by Catalytic.

6. On May 16, 2003, the attorney for Appellant filed a complaint for Citation on Appeal of the IAB decision under Del. Super. Ct. Civ. R. 72(e). Thereafter, on July 17, 2003, Appellant's counsel sought leave to withdraw as counsel on the ground that Bock had been advised before the appeal was taken that counsel would not prosecute the appeal, but thereafter Bock failed to communicate with counsel about retaining new counsel. Counsel filed the appeal prophylactically and immediately moved to withdraw. The Court granted the motion to withdraw and allowed Bock ninety (90) days to retain new counsel.

7. On November 20, 2003, Catalytic filed a request for a briefing schedule. A briefing schedule was issued by the Court setting January 5, 2004 as the deadline for the filing of Appellant's Opening Brief. On January 7, 2004, the Court received a handwritten letter from Bock with his request that certain medical expenses be paid by the workers compensation carrier. On or about March 19, 2004, in response to an inquiry directed to him by the Prothonotary, Bock indicated that he intended to proceed *pro se* and that his January 7th letter would serve as his opening brief.

8. On June 22, 2004, Appellee filed a Motion to Strike Appellant's Opening Brief and to Dismiss the Appeal. Bock has not responded to the motion.

The Contentions

9. Appellee contends that Appellant's Opening Brief on Appeal "(1) wholly

³ Section 2301 provides, in part: "(5) Compensation, wherever the context requires it, includes surgical, medical and hospital services, medicines and supplies and funeral benefits provided for in this chapter."

fails to comply with requirements of Del. Super. Ct. Civ. R. 107(c) and (d); and (2) was never served on Catalytic’s counsel, as required by Del. Super. Ct. Civ. R. 5 and 107(e).”

Discussion

10. The Supreme Court of Delaware and this Court “recognize the need to grant some degree of leniency to pro se appellants.”⁴ On several occasions in this litigation, the Court has afforded great deference to this *pro se* appellant. For example, Bock failed to file an opening brief by the January 5, 2004 deadline, yet the court kept this potential appeal open. When Bock’s informal “to whom it may concern” letter was received on January 7, 2004, the Court tried to ascertain its purpose. For two months, the Court awaited clarification from Bock regarding the intended purpose of his January 5, 2004 letter. Ultimately, when Bock continued in his failures to respond to the Court’s inquiries, the Prothonotary set a response deadline of March 19, 2004. On or about that date, Bock, still acting *pro se*, indicated that he wished to have the January 5, 2004 letter serve as his appeal brief. Catalytic has now called the question of whether this cryptic letter can suffice as an opening brief on appeal in this Court. For the reasons that follow, the Court concludes that the letter is fatally deficient and that the appeal must be dismissed.

11. The Supreme Court of Delaware has ruled that “at a minimum, briefs must be adequate to enable an appellate court to conduct a meaningful review of the merits of the appellant’s claims.”⁵ The minimum requirements for an appeal brief in this

⁴ *Power v. Myriad Services, Inc.*, 718 A.2d 528, 528 (Del. 1998) (*Pro se* Appellant’s opening brief failed to comply with Supr. Ct. R. 25(a) even when viewed with the typical leniency afforded *pro se* litigants.).

⁵ *Id.* at 528.

Court are provided in Del. Super. Ct. Civ. R. 5 and 107.

12. Del. Super. Ct. Civ. R. 107(c) requires that all brief covers “shall contain the following information:”

1. The name of the Court.
2. The title of the case and its number in this Court.
3. The names of counsel for party submitting the brief with the office addresses of such counsel resident outside the State.

Bock’s letter contained none of this information and, as such, violates the Court’s rule.

13. Even assuming that this Court was to look beyond the requirements of Del. Super. Ct. Civ. R. 107(c), as it might be inclined to do for a *pro se* litigant, the Appellant’s brief still must comply with the more substantive requirements of Del. Super. Ct. Civ. R. 107(d). As a practical matter, this rule governs the content of all briefs so that the opposing party has sufficient information upon which to base its response and the Court has sufficient information upon which to conduct a meaningful review of the issues. Specifically, Del. Super. Ct. Civ. R. 107(d) requires that all briefs “shall contain the following matter arranged in the following order:”

1. A table of contents or index.
2. A table of citations arranged alphabetically and indicating the pages of the brief on which each cited authority appears.
3. In the first brief of each party, a statement of the case, including a statement of the nature of the proceedings and a concise chronological statement, in narrative form, of all relevant facts with page references to the transcript of

testimony, if any, and to any pleadings and exhibits.

4. A statement of the questions involved.
5. Argument, divided into sections under appropriate headings, one section to be devoted to each of the questions involved.

14. In order to assess Bock's compliance with both the letter and, more importantly, the spirit of Rule 107(d), the Court has undertaken a comparison of the substantive elements of the rule against the contents of Bock's January 5, 2004 letter brief. This comparison leads to following conclusions: Bock's letter failed to provide the opposing party (Catalytic) with his view of the facts as required by 107(d)(3), failed to identify the question or issue to be resolved as required by 107(d)(4), failed to identify his arguments by headings or otherwise as required by 107(d)(5), and failed to identify any authority, legal or otherwise, upon which his arguments (also not identified) might be based as required by Rule 107(d)(2).

15. In short, Bock's January 5, 2004 letter fails to satisfy *any* of the Court's requirements for an opening appellate brief. More importantly, the letter fails to identify what the IAB did wrong, why it was wrong, or how the Court should fix it. Catalytic cannot be expected meaningfully to participate in this appeal when neither it nor the Court can discern Bock's basis for taking the appeal in the first place.⁶ Under these circumstances, when the Appellant has refused to avail himself of

⁶ *Howard v. Snyder*, Civ. No. 01-376-SLR, 2004 U.S. Dist. LEXIS 11117 (appeal must state the "claim on which relief could be granted.").

multiple opportunities to cure the deficiencies, the Court is left with no choice but to strike his purported opening brief and dismiss the appeal.⁷

Based on the foregoing, Appellee's Motion to Strike and Motion to Dismiss the Appeal are **GRANTED**.

IT IS SO ORDERED.

Judge Joseph R. Slights, III

Original to Prothonotary

⁷*Power*, 718 A.2d at 528 (when an opening appeal brief, including *pro se* briefs, fails to meet the requirements of Del. Super. Ct. Civ. R. 107, "the Superior Court [is] well within the bounds of its discretion in dismissing the appeal" in accordance with Del. Super. Ct. R. 72(i) which states "dismissal may be ordered for . . . failure to comply with any rule [or] statute . . . of the Court.").