

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

|                   |   |                          |
|-------------------|---|--------------------------|
| SHAWN A SHAW,     | ) |                          |
|                   | ) |                          |
| Appellant,        | ) |                          |
|                   | ) |                          |
| v.                | ) | C. A. No. 05A-01-004-JEB |
|                   | ) |                          |
| H.L. YOH COMPANY, | ) |                          |
|                   | ) |                          |
| Appellee.         | ) |                          |

Submitted: May 11, 2005  
Decided: June 13, 2005

*Appeal from a Decision of the Unemployment Insurance Appeal Board.  
Affirmed.*

**OPINION**

*Appearances:*

Shawn A. Shaw, Pro Se, 1119 Flint Hill Road, Delaware 19103.

H.L. Yoh Company - Unrepresented, 1818 Market Street, 8<sup>th</sup> Floor,  
Philadelphia, Pennsylvania, 19103.

**JOHN E. BABIARZ, JR., JUDGE**

This is the Court's opinion on a decision of the Unemployment Insurance Appeal Board ("Board") affirming an appeals referee's decision denying unemployment benefits to Claimant Shawn A. Shaw. For the reasons explained below, the Board's decision is affirmed.

The issue in this case is procedural. After filing for unemployment insurance benefits in June 2004, Claimant received a Notice of Determination disqualifying her from receipt of such benefits, dated July 20, 2004. Pursuant to statute,<sup>1</sup> the last day to file an appeal of this initial determination was July 30, 2004. Claimant filed her appeal on August 4, 2004, and a claims deputy found that it was not timely filed. Claimant appealed this decision to an appeals referee, who affirmed it. The referee's decision stated that the last day to file an appeal to the Board was October 1, 2004, but Claimant's appeal to the Board was postmarked December 17, 2004, and received by the Department of Labor on December 21, 2004. Claimant offered no reason for her untimely filing.

The Board declined to accept the appeal because it was not filed within the ten-day statutory time frame<sup>2</sup> and chose not to exercise its discretion to accept a late

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<sup>1</sup>DEL. CODE ANN. tit. 19, § 3318(b).

<sup>2</sup>DEL. CODE ANN. tit. 19, § 3318 (c).

appeal.<sup>3</sup> The Board correctly noted that the referee’s decision was dated September 21, 2004, but incorrectly stated that the last day to file an appeal was September 22, 2004, the next day. This inaccuracy is harmless error because Claimant’s appeal was required to be filed “within 10 days after the date of notification or mailing”<sup>4</sup> of the decision, or October 1, 2004, and this is precisely what was stated on the first page of the referee’s decision.

On appeal, Claimant makes factual arguments and asserts that she is owed unemployment benefits from July 16, 2004, through August 23, 2004, when she returned to work. The only issue is properly before the Court is whether the Board abused its discretion in declining to hear the appeal because it was not filed within the statutory ten-day time frame.<sup>5</sup> A procedural decision by an administrative agency is not an abuse of discretion unless it is based on clearly unreasonable or capricious grounds.<sup>6</sup> The Court finds that the Board acted reasonably and was well within its discretion not to consider the late appeal. When notification of the referee’s decision is made through the mail, the ten-day period begins to run on the date of mailing

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<sup>3</sup>DEL. CODE ANN. tit. 19, § 3320.

<sup>4</sup>DEL. CODE ANN. tit. 19, § 3318(b).

<sup>5</sup>*Funk v. UIAB*, 591 A.2d 222, 225 (Del. 1991).

<sup>6</sup>*Hartman v. UIAB*, 2004 WL 772067 (Del. Super.)

unless the mailing fails to reach a party because of some mistake made by employees of the Department of Labor.<sup>7</sup> The Board found no evidence of such error and correctly stated that Claimant's appeal was filed with the Department of Labor on December 21, 2004, far past the statutory deadline, which was plainly stated on the referee's decision.

The Board's decision is Affirmed.

***It Is So ORDERED.***

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Judge John E. Babiarez, Jr.

JEB,Jr./rm/bjw  
Original to Prothonotary

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<sup>7</sup>*Id.* at 224.