

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

PATRICK BEISEIGEL	:	
	:	
Appellant,	:	
	:	
v.	:	C.A. No.: 04A-11-006 SCD
	:	
UNEMPLOYMENT INSURANCE	:	
APPEAL BOARD,	:	
	:	
Appellee.	:	

ORDER

This 2nd day of June, 2005, the appellant Patrick Beiseigel’s (“appellant”) appeal from the decision of the Unemployment Insurance Appeal Board (“appellee” or “Board”) having been duly considered, it appears that:

1. This is an appeal of a Board ruling denying unemployment benefits. Appellant was terminated from his job at Diamond Triumph Auto Glass. He was denied unemployment benefits as his employer claimed he was terminated for failing to report to work and failing to inform his supervisor of his absences. The Claims Deputy denied appellant’s claim on July 23, 2004. The notice, mailed to him at his address of record in Holmes, PA stated that the determination would be made final on August 2, 2004 unless it was appealed. Appellant filed an appeal that was postmarked August 3, 2004. On September 7, 2004, a hearing was held solely on the issue of timeliness of his appeal.

2. At the hearing, appellant argued that he did not receive the notice of denial of benefits until late in the day on August 2, 2004. He immediately wrote out a response and returned to the Post Office after 5 p.m. that same day. He states that even though he does not live far from Delaware, it sometimes take a week to ten days to get mail from Delaware

delivered to him. He states he called the Department of Labor the next day to explain what had happened. Appellant submitted as evidence an envelope with a metered mail postmark of September 8, 2004 that he claims he did not receive until September 20, 2004. He also submitted an envelope that was mailed by the Department of Labor, postmarked November 10, 2004, that he acknowledged receiving on November 11, 2004.

3. The Appeals Referee found that there was no evidence of mistake or error made by an employee of the Department of Labor. The Referee found the statutory provision for appeal was explicit and mandates that a claimant file an appeal¹ within 10 days of mailing, or the decision of the Claims Deputy becomes final. The Referee found there was no jurisdiction to entertain the merits of the appeal, and affirmed the decision of the Claims Deputy denying benefits. Appellant appealed the decision of the Appeals Referee to the Board. On October 27, 2004, the Board affirmed the Referee's decision, finding there was no evidence of error on the part of the Department which might have delayed appellant's response to the July 23, 2004 determination. The Board found that the Department properly fulfilled its responsibility by mailing the determination to appellant's address of record. The Board found the Referee correctly held that appellant's late appeal constituted a jurisdictional bar to further proceedings in the matter.

4. Appellant makes the same arguments in his opening brief that he made at the September 2004 hearing; namely that he did not receive the notice until late in the day on August 2, 2004. He immediately wrote a letter, but because it was mailed after 5 p.m. on August 2, it was not postmarked until August 3, 2004.

¹ 19 *Del. C.* § 3304 states in pertinent part that "the day of mailing shall be deemed the day of filing."

5. Pursuant to sunset laws, the Board no longer exists as of January 1, 2005. No answering brief has been filed.

6. This Court has limited appellate review of a decision from an administrative agency. On appeal, this Court determines whether the agency's decision is supported by substantial evidence and is free from legal error.² Substantial evidence is such relevant evidence that a reasonable mind would accept it as adequate to support a conclusion.³ This Court does not act as the trier of fact nor does it have authority to weigh the evidence, weigh issues of credibility, or make factual conclusions.⁴ Therefore, given an agency's specialized competence, this Court merely reviews whether the findings made by that agency are adequately supported by the evidence.⁵ This Court's review of conclusions of law made by the Board is *de novo*.⁶

7. I find there is sufficient evidence in the record to support the Board's finding that appellant did not timely file an appeal of the denial of benefits decision by the Claims Deputy. Appellant submitted no evidence of any error on the part of the Department of Labor. The Board's Decision is supported by substantial evidence. The Board's decision that timely filing is an express condition of jurisdiction is a correct conclusion of law.⁷

²*Devine v. Advanced Power Control, Inc.*, 663 A.2d 1205, 1209 (Del. Super. 1995) (citing *General Motors Corp. v. Freeman*, 164 A.2d 686, 688 (Del. 1960); *Johnson v. Chrysler Corp.*, 213 A.2d 64, 66 (Del. 1965); *General Motors Corp. v. Jarrell*, 493 A.2d 978, 980 (Del. Super. 1985)).

³*Oceanport Ind. v. Wilmington Stevedores*, 636 A.2d 892, 899 (Del. 1994); *Battista v. Chrysler Corp.*, 517 A.2d 295, 297 (Del. Super. 1986).

⁴*Johnson*, 213 A.2d at 66.

⁵DEL. CODE ANN. Tit. 29 §10142(d) (1997).

⁶*Stevens v. State*, 802 A.2d 939, 944 (Del. Super. 2002) (citing *State of Delaware v. Worsham*, 638 A.2d 1104, 1106 (Del. 1994)).

⁷*Lively v. Dover Wipes Co.*, 2003 WL 21213415 at *1 (Del Super.) ("The time for filing an appeal is an express statutory condition of jurisdiction that is both mandatory and dispositive.") (internal quotation marks and citation omitted).

WHEREFORE, the Decision of the Board is AFFIRMED.

IT IS SO ORDERED.

Judge Susan C. Del Pesco

Original to Prothonotary

xc: Patrick Beiseigel
Mary Page Bailey, Esquire (DOJ)