

SUPERIOR COURT  
OF THE  
STATE OF DELAWARE

E. SCOTT BRADLEY  
JUDGE

1 The Circle, Suite 2  
GEORGETOWN, DE 19947

June 23, 2005

Regina White  
P.O. Box 466  
Ocean View, DE 19970

Chrome World  
Attention: John Wells  
P.O. Box 469  
Selbyville, DE 19975

RE: White v. Chrome World  
C.A. No. 04A-12-003 ESB

Date Submitted: March 4, 2005

Dear Ms. White and Mr. Wells:

This is my decision on Regina White's ("White") appeal of the Unemployment Insurance Appeal Board's ("UIAB") refusal to hear White's appeal of the Appeals Referee's denial of White's claim for unemployment benefits. White was employed full-time by Chrome World, Inc. ("Chrome World") as a sales associate, working Monday through Friday from 9:00 a.m. to 5:00 p.m. White attended Delaware Technical and Community College at night while working at Chrome World. White was able to balance both her work and school schedules until she signed up for a morning class that would cause her to be late for work. White worked at Chrome World until her morning class started. She then filed a claim for unemployment benefits.

The Claims Deputy determined that White voluntarily quit her job without good cause and denied White's claim for unemployment benefits. The Appeals Referee

determined that Chrome World discharged White for cause and denied White's claim for unemployment benefits. The UIAB refused to hear White's appeal because she did not, according to the UIAB, file it in time. White then filed an appeal with this Court, seeking relief from the UIAB's refusal to hear her appeal of the Appeals Referee's decision.

### **STANDARD OF REVIEW**

The Supreme Court and this Court repeatedly have emphasized the limited appellate review of the factual findings of an administrative agency. On appeal from a decision of the UIAB, this Court is limited to a determination of whether there is substantial evidence in the record sufficient to support the Board's findings, and that such findings are free from legal error.<sup>1</sup> Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.<sup>2</sup> The Board's findings are conclusive and will be affirmed if supported by "competent evidence having probative value."<sup>3</sup> The appellate court does not weigh the evidence, determine questions of credibility, or make its own factual findings.<sup>4</sup> It merely determines if the evidence is legally adequate to support the

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<sup>1</sup> *Employment Ins. Appeals Board of the Dept. of Labor v. Duncan*, 337 A.2d 308, 309 (Del. 1975); *Longobardi v. Unemployment Ins. Appeal Board*, 287 A.2d 690, 692 (Del. Super. Ct. 1971), *aff'd* 293 A.2d 295 (Del. 1972).

<sup>2</sup> *Oceanport Ind. v. Wilmington Stevedores*, 636 A.2d 892, 899 (Del. 1994); *Battisa v. Chrysler Corp.*, 517 A.2d 295, 297 (Del.), *app. disp.*, 515 A.2d 397 (Del. 1986).

<sup>3</sup> *Geegan v. Unemployment Compensation Commission*, 76 A.2d 116, 117 (Del. 1950).

<sup>4</sup> *Johnson v. Chrysler Corp.*, 312 A.2d 64, 66 (Del. 1965).

agency's factual findings.<sup>5</sup> Absent an error of law, the Board's decision will not be disturbed where there is substantial evidence to support its conclusions.<sup>6</sup>

### **DISCUSSION**

The Appeals Referee's decision was dated October 20, 2004, and mailed to White on the same day. The last day for White to file an appeal with the UIAB was November 1, 2004.<sup>7</sup> White filed her appeal with the UIAB on November 3, 2004, which was beyond the deadline. White has not offered this Court any reason for her untimely appeal. The Appeals Referee's decision contained an enclosed area of text in the middle of the page that described White's right to file an appeal. The box quotes 19 Del.C. §3318 (c), which states that a referee's decision "shall be deemed to be final unless within 10 days after the date of notification or mailing of such decision further appeal is initiated pursuant to Del.C. §3320 of this title." This time limit is jurisdictional.<sup>8</sup> White's failure to file her appeal within the mandatory time frame not only acted as a waiver by White of her right to appeal the Appeals Referee's decision, but it also divested the UIAB of its jurisdiction to hear White's appeal.

### **CONCLUSION**

The UIAB's decision is affirmed.

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<sup>5</sup> 29 *Del.C.* § 10142(d).

<sup>6</sup> *Dellachiesa v. General Motors Corp.*, 140 A.2d 137 (Del. Super. Ct. 1958).

<sup>7</sup>White had 10 days to file an appeal of the Appeal Referee's decision, making the deadline October 30, 2004. However, because that day fell on a Saturday, the last day for White to file the appeal was Monday, November 1, 2004.

<sup>8</sup>*Funk v Unemployment Insurance Appeal Board*, 591 A.2d 222,225 (del.1991).

IT IS SO ORDERED.

Very truly yours,

E. Scott Bradley