

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

SCOTT GULLION,)
)
 Appellant,)
)
 v.)
)
 ADVANCE XING PAIN, and)
 UNEMPLOYMENT INSURANCE)
 APPEAL BOARD,)
)
 Appellees.)

C. A. No. 05A-10-005-JEB

Submitted: February 15, 2006

Decided: April 24, 2006

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

OPINION

Appearances:

Scott Gullion, *Pro Se*, 206 Kenmark Road, Newark, Delaware, 19713.

Eileen Filliben Edmunds, Esquire, Wilmington, Delaware.
Attorney for Advance Xing Pain.

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

JOHN E. BABIARZ, JR., JUDGE

Claimant Scott Gullion has filed an appeal of a decision of the Unemployment Insurance Appeals Board (“Board”) dismissing his case because he failed to appear at the scheduled hearing. Because Claimant did not exhaust his administrative remedies, his appeal to this Court will be dismissed for lack of jurisdiction.

Claimant worked as a medical assistant for AdvanceXing Pain and Rehabilitation (“Employer”) from December 2004 until March 21, 2005. He was hired as a full-time employee but was told in March 2004 that his position would be reduced to approximately two days per week because of his under performance. Employer offered to continue Claimant’s full-time status through March 29 if he would agree to work certain days when another employee had scheduled vacation. Claimant signed an agreement to this effect on March 16, but the last day he showed up for work was March 21, 2005. The next day he e-mailed his supervisor to say that his time would be better spent looking for a new job and that he would not return to work.

Claimant filed for unemployment insurance benefits and was initially awarded benefits. Employer appealed this decision. An appeals referee held a hearing and concluded that Claimant was not entitled to receive benefits. The referee found that Claimant voluntarily quit his work without good cause because he failed to comply with the terms of the agreement which provided that he would work until march 29,

2005.

Claimant appealed this decision to the Board, but he failed to appear at the hearing. The Board dismissed his appeal, and Claimant filed a timely appeal to this Court. The Board argues that it properly dismissed the appeal and that this Court lacks jurisdiction because Claimant failed to exhaust his administrative remedies.

Pursuant to 19 *Del. C.* § 3322(a), this Court may review a Board decision only after an aggrieved party has exhausted all administrative remedies. Jurisdiction does not vest in this Court until an appellant has taken all administrative avenues open to him,¹ and the final such avenue is a hearing before the Board.² An appellant who fails to show up for a Board hearing deprives the Board of the opportunity to review the referee's decision and make findings for appellate review.³

This Court has no jurisdiction over the merits of the case because the administrative remedies were not exhausted, and the only issue before the Court is whether the dismissal by the Board was an abuse of discretion.⁴ Failure to prosecute, as evidenced by the Claimant's absence at the hearing, provides the Board with

¹*Griffin v. Daimler Chrysler*, 2000 WL 33309877 (Del. Super.).

²DEL. CODE ANN. tit. 19, § 3320.

³*Harris v. Mountaire Farms*, 2003 WL 22853425 (Del. Super.).

⁴*Id.*

reasonable grounds for dismissal.⁵ The Board did not abuse its discretion.

Claimant failed to exhaust the administrative remedies available to him, and his appeal is therefore *Dismissed* for lack of jurisdiction.

It Is So ORDERED.

Judge John E. Babiarz, Jr.

JEBjr/ram/bjw
Original to Prothonotary

⁵*Id.*