

IN THE SUPREME COURT OF THE STATE OF DELAWARE

STEVE HAN,	§
	§ No. 43, 2014
Appellant Below,	§
Appellant,	§ Court Below—Superior Court
	§ of the State of Delaware,
v.	§ in and for New Castle County
	§
UNEMPLOYMENT INSURANCE,	§ C.A. No. N13A-05-003
APPEAL BOARD	§
	§
Appellee Below,	§
Appellee.	§

Submitted: April 18, 2014

Decided: June 11, 2014

Before **BERGER, JACOBS,** and **RIDGELY,** Justices.

ORDER

This 11th day of June 2014, upon consideration of the appellant’s opening brief and the record below,¹ it appears to the Court that:

(1) The appellant, Steve Han, appeals from the Superior Court’s January 27, 2014 order affirming the April 26, 2013 decision of the Unemployment Insurance Appeal Board (“UIAB”). We find no merit to the appeal and we affirm.

(2) The record reflects that, on March 8, 2013, a Department of Labor notice finding Han disqualified from receiving unemployment benefits was mailed

¹ In a letter dated March 13, 2014, the appellee informed the Court that it did not intend to file an answering brief and would rest upon the record below.

to Han. The notice stated that the determination of the Claims Deputy would become final on March 18, 2013 unless Han filed a written appeal by that date. Han filed an appeal on March 20, 2013. On March 25, 2013, it was determined that the March 8, 2013 decision was final and binding because Han had failed to file a timely appeal.

(3) On April 12, 2013, the Appeals Referee held a telephonic hearing on the timeliness of Han's appeal. At the hearing, a Department of Labor representative testified that the notice of disqualification was mailed on March 8, 2013 to the address that Han verified as accurate on the record. The Department of Labor representative also testified that to the best of her knowledge the U.S. Postal Service did not return the March 8, 2013 notice as undeliverable. Han testified that when he applied for unemployment benefits on February 25, 2013, a Department of Labor employee told him that he would be notified of a decision in two or three weeks. When Han did not hear anything, he returned to the Department of Labor on March 20, 2013. At that time, the Department of Labor told Han that a decision had been mailed and that he had missed the deadline to file a timely appeal.

(4) On April 12, 2013, the Appeals Referee mailed her decision, which concluded that Han's appeal of the March 8, 2013 notice was untimely and that there was no evidence to suggest Han's late filing was the result of any mistakes or errors by the Department of Labor in mailing the March 8, 2013 notice. Because

the appeal was untimely, the Appeals Referee lacked jurisdiction to hear the merits of Han's appeal from the Claims Deputy's determination.

(5) On April 18, 2013, Han timely appealed from the Appeals Referee's decision to the UIAB. The UIAB held a review hearing on April 24, 2013. On April 26, 2013, the UIAB mailed its decision affirming the Appeals Referee's decision and denying the application for further review. The UIAB found no evidence of error by the Department of Labor that prevented Han from filing a timely appeal.

(6) On May 2, 2013, Han timely appealed from the UIAB's decision to the Superior Court. Han argued that he never received the March 8, 2013 notice, he was told it would be two to three weeks until the Department of Labor made a decision, and that a false accusation led to the termination of his employment. The UIAB responded that substantial evidence supported its conclusion that Han's appeal was untimely.

(7) In an order dated January 27, 2014, the Superior Court affirmed the UIAB's decision. The Superior Court determined that other than Han's contention that he did not receive the March 8, 2013 notice, there was no evidence in the record showing that an error or mistake by the Department of Labor caused Han to file an untimely appeal.

(8) On January 31, 2014, Han timely appealed from the Superior Court's order to this Court. Han argues that (i) sometimes mail is misdelivered, (ii) he never received the March 8, 2013 notice, (iii) he was told it would be two to three weeks until the Department of Labor made a decision, and (iv) he was unjustly terminated. The UIAB rested on the record below.

(9) We review a Superior Court decision that, in turn, has reviewed an administrative agency's ruling, by examining directly the decision of the agency.² Our review of a UIAB decision is limited to a determination of whether there is substantial evidence in the record to support the UIAB's findings and whether such findings are free from legal error.³ Absent abuse of discretion, this Court must uphold a decision of the UIAB.⁴

(10) The statutory provision governing unemployment insurance appeals requires a claimant to file his appeal within ten calendar days after the Claims Deputy's determination is mailed to the claimant's last known address.⁵ If a timely appeal is not filed, the Claims Deputy's decision is deemed final.⁶ Although the

² *Pub. Water Supply Co. v. DiPasquale*, 735 A.2d 378, 380 (Del. 1999).

³ *Unemployment Ins. Appeal Bd. of the Dep't of Labor v. Duncan*, 337 A.2d 308, 309 (Del.1975); see 19 Del. C. § 3323(a).

⁴ *Funk v. Unemployment Ins. Appeal Bd.*, 591 A.2d 222, 225 (Del. 1991).

⁵ 19 Del. C. § 3318(b).

⁶ *Id.*

UIAB has discretion to review, *sua sponte*, a decision where no timely appeal has been filed,⁷ such discretion is exercised rarely and only in cases where there has been administrative error by the Department of Labor that has deprived the claimant of the ability to file a timely appeal or where the interests of justice would be served.⁸

(11) We have carefully reviewed the record in this case and conclude that the UIAB's decision is supported by the evidence and is free from legal error and abuse of discretion. The interests of justice did not require the UIAB to review the Claims Deputy's decision. Accordingly, we conclude the Superior Court's January 27, 2014 order must be affirmed.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Jack B. Jacobs
Justice

⁷ 19 *Del. C.* § 3320; *Funk*, 591 A.2d at 225-26.

⁸ *Funk*, 591 A.2d at 225.