IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

RODERICK GIBBS,	:	
	:	
Plaintiff/Appellant,	:	
	:	
v.	:	**C.A. No. N11A-11-009 CEB**
	:	
CITY OF WILMINGTON and THE U.I.A.B.,	:	
	:	
	:	
Defendant/Appellees.	:	

Date Submitted: March 18, 2013
Date Decided: March 27, 2013

MEMORANDUM OPINION

Upon Consideration of an Appeal from
The Unemployment Insurance Appeal Board.
DISMISSED.

G. Kevin Fasic, Esquire, COOCH AND TAYLOR, P.A, Wilmington, Delaware. Attorney for Appellant Roderick Gibbs.

Daniel F. McAllister, Esquire, CITY OF WILMINGTON LAW DEPARTMENT, Wilmington, Delaware. Attorney for the Appellee City of Wilmington.

BUTLER, J.

I. INTRODUCTION

In this case, we are called upon to determine an appeal from an order of the Unemployment Insurance Appeals Board ("UIAB") that decided that the City of Wilmington's appeal of a Delaware Department of Labor ("DOL") claims deputy's determination should be considered as timely filed despite its having been filed over a month late. For the reasons that follow, we determine that the claimant's request for review of that decision is not properly before the Court and we therefore dismiss the appeal.

II. FACTS

Mr. Roderick Gibbs' ("Mr. Gibbs") employment with the City of Wilmington ("the City") ended on June 10, 2011. He filed for unemployment benefits two days later. The unemployment office of the DOL sent the City a "UC-119C" – a "separation notice" under 19 *Del. C.* §3317(b) – that invites the employer to take a position with respect to the claimant's request for unemployment benefits. That mailing was addressed to the City at "800 French St. Wilmington DE."[1] The City was instructed to return it by June 23, 2011. The record contains a copy of the separation notice that is stamped "Received" by the City on June 21, 2011.[2] By the terms of 19 *Del. C.* §3317(b), an employer who

[1] Record at 38 (Hereinafter "R. at __").

[2] *Id.*

fails to timely return the separation notice to the DOL is barred from contesting the unemployment benefits request unless the failure to return the form is excused by the DOL for "good cause." There is some record evidence that the City faxed a response to the separation notice to the DOL, but there is also record evidence that the Department of Labor did not have it at the time the Claims Deputy issued her decision.[3] Without consideration of a response from the City, the Claims Deputy granted Mr. Gibbs' request for unemployment benefits on July 6, 2011.[4] By the terms of the ruling and in accordance with 19 *Del. C.* § 3318(b), the City was required to appeal the decision of the claims deputy no later than July 16, 2011.[5] July 16, 2011 came and went without an appeal by the City. The decision of the claims deputy was thus "final."

Then, on August 18, 2011, the City faxed a request to appeal the claims deputy's July 6 ruling.[6] On August 22, 2011, the claims deputy denied the requested review as the appeal was filed late.[7] On August 25, 2011, an Appeals Referee for the Division of Unemployment Insurance ordered a hearing to be held

[3] *Id.* at 4, 35, 65.

[4] *Id.* at 35.

[5] *Id.*

[6] *Id.* at 37.

[7] *Id.* at 5.

on September 14, 2011, with the issue limited to the timeliness of the City's appeal.

At the September 14, 2011 hearing, the City's Human Resources manager testified that the City did not receive the decision of the Claims Deputy in a timely manner and therefore did not know it missed the July 16, 2011 deadline for filing its appeal. According to the City, it did not realize the Claims Deputy had ruled until August, 2011 when it learned that Mr. Gibbs was receiving unemployment compensation through a routine audit of ongoing expenditures by the City for unemployment compensation.[8] It was subsequently determined that the notice of the determination by the Claims Deputy was mailed to "City of Wilmington" at "800 King Street, Wilmington, DE."[9] A more complete address would have sent the notice to "Human Resources, City of Wilmington, Fourth Floor, 800 King Street, Wilmington, DE" and indeed, the City produced unrelated papers sent from the Department of Labor that did reflect this more precise address.[10]

The City maintained that the incomplete address on correspondence from the Dept. of Labor left delivery to the City's Human Resources Department to chance

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[8] *Id.* at *25-26.*

[9] *Id.* at 38.

[10] *Id.* at 39-40.

– sometimes correspondence was received, sometimes it was not.[11] The City presented testimony that although the Human Resources department receives some mail from the Department of Labor that is addressed to "City of Wilmington 800 French Street," it has also experienced difficulties getting mail addressed in the same fashion, since it processes through a central mail room that is shared by the county government. The human resource witness expressed the great preference that mail be addressed to "City of Wilmington, 4th Floor, 800 King Street, Wilmington DE" or "City of Wilmington, Human Resources, 800 King Street, Wilmington DE" or both. For the unemployment office's part, the testimony was that the address for mailing the Claims Deputy's decision comes from "a printer where we have a certain database in which we put the addresses for the claimant and the employer…"[12]

Exactly where the information in these "certain databases" comes from is not clear in this record. The Appeals Referee ruled on September 14, 2011 that the evidence of "administrative error" on the part of the Department of Labor was sufficient to warrant reversing the Claims Deputy's determination that the appeal was untimely.[13]

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[11] *Id*. at 29.

[12] *Id.* at 27.

[13] *Id.* at 41-43.

The claimant appealed that determination to the UIAB pursuant to 19 *Del. C.* §3320.[14] Because Mr. Gibbs had not been present or participated in the September 14, 2011 hearing, the UIAB ordered a second hearing before the Appeals Referee with Mr. Gibbs present.[15] That hearing was held on October 20, 2011.[16] It is safe to call this second hearing a somewhat enhanced version of the first, with similar results. The Appeals Referee again ruled that the Department of Labor was at fault for its failure to properly address the mailed notice of determination in July, 2011 and therefore remanded the matter to the Claims Deputy for further resolution on the merits.[17] The Appeals Referee's decision was thus a reversal of that of the Claims Deputy (who did not take testimony in making her initial ruling) and his order was to remand the proceedings to the Claims Deputy in order to allow her to "address the merits of the separation issue."[18] The Claimant appealed this decision to the UIAB, which upheld the Appeals Referee's decision on November 1, 2011.[19] The claimant next docketed this appeal. And here we are.

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[14] *Id*. at 44.

[15] *Id.* at 46.

[16] *Id*. at 48.

[17] *Id.* at 77-80.

[18] *Id.* at 80.

[19] *Id.* at 81-84.

III. ANALYSIS

It is significant to consider the effect of the UIAB's decision: while a reversal of the UIAB would presumably end the matter, upon affirmance by this Court, the matter would be remanded to the UIAB, which would remand it to the claims deputy for consideration of at least 2 more significant questions: 1) whether the City timely filed its response to the UC-119C/separation notice or there was "good cause" for its failure to do so, and 2) whether Mr. Gibbs was terminated "for cause" that would justify denying him unemployment benefits. If we consider each of these rulings to be appealable orders, it is quite possible for the same dispute to give rise to three separate opinions by this Court. While a piecemeal approach to the dispute may be exactly what the statutes demand, we would do well to consider the question carefully as such repetitive treatment necessarily delays final resolution and has practical implications for both the claimant and the employer. The idea that one dispute could give rise to three separate proceedings in this Court struck the Court as at least odd and we therefore requested additional briefing from the parties on whether this dispute is properly before the Court. The Court appreciates the additional arguments of counsel and, so informed, issues this Order.

The Statute Does Not Contemplate Interlocutory Review in the Superior Court

The Superior Court's jurisdiction to hear appeals from the UIAB can be found in 19 *Del. C.* §3333. The Court is instructed to hear appeals of "the decision" of the UIAB filed by any "aggrieved party." Later in the section, the Court is instructed to treat findings of fact made by the board as conclusive and to confine its review to questions of law.

These statements of law are not controversial and generally comport with language that is to be expected when a Court sits in review of an administrative agency's findings. Similar language can be found in the Worker's Compensation statute, 19 *Del. C.* §2350 and the Administrative Procedures Act. 29 *Del. C.* §10142.

But while the Superior Court may be vested with jurisdiction to hear administrative agency appeals generally, there are legal and prudential considerations that may mandate that the Court stay its hand pending further action by the agency. 19 *Del. C.* § 3322(a) provides that judicial review of decisions of the UIAB "shall be permitted only after any party claiming to be aggrieved thereby has exhausted all administrative remedies." The "exhaustion requirement" of § 3322(a) is simply an administrative expression of the general prohibition on

"interlocutory appeals."[20] These concepts eschew piecemeal review of decisions in litigation and express the rule that the parties should have their dispute fully, fairly and finally resolved in the tribunal of original jurisdiction before alleged errors of law are brought to an appellate court for review.[21]

It is true that there are far more cases that dismiss an appeal for failure to exhaust because the claimant failed to appear for his hearings before the UIAB.[22] It might be said that those cases rest as much on the Court's right to dismiss any appeal "for failure of a party to diligently prosecute the appeal," D.R.C.P. 72(i), as a failure to exhaust administrative remedies. There are nonetheless a number of cases holding directly that interlocutory orders of boards and commissions are not appealable.[23]

While an interim order by the Court is properly called one that is "interlocutory" and "unappealable" except upon application to the Court, *see* D.R.C.P. 74, an interim order by an administrative board or agency is not so

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[20] *See* D.R.C. P. Rule 72(i) (appeals from agencies may be dismissed by the Court where the party has appealed "an unappealable interlocutory order.").

[21] *See generally Frunzi v. Dep't of Pub. Safety*, 2000 WL 303455 (Del. Super. Feb. 23, 2000) (section 3322 "does not contemplate interlocutory appeals, but rather requires exhaustion of administrative remedies").

[22] *See, e.g., Carter v. Dep't of Labor*, 1993 WL 489222 (Del. Super. Nov. 12, 1993); *Griffin v. Chrysler,* 2000 WL 33309877 (Del. Super. Apr. 27, 2001).

[23] *See, e.,g., Eastburn v. Newark School Dist*. 324 A.2d 775 (Del. 1974) (Interim Orders of the Industrial Accident Board not appealable); *Kenol v. Johnny Janosik, Inc*. 2011 WL 900588 (Del. Super. Ct. March 15, 2011) (IAB order requiring employee to sign a receipt for payments is an unappealable interlocutory order).

termed but instead the litigant's attempted appeal is rebuffed because s/he has failed to "exhaust administrative remedies." So it is quite apparent that there is a category of decision making by the UIAB that is not reviewable by the Superior Court: those decisions that do not set the rights of the parties fully and finally and where the parties have not completed the administrative process.

IV. THIS APPEAL IS INTERLOCUTORY

This is not like the great numbers of appeals to Superior Court from the UIAB. In the "normal" case, a claimant's right to receive unemployment benefits has been determined by the UIAB – either on the merits or on the basis of a procedural bar -- and the appeal seeks review of that determination. Here, there has been no final determination of anyone's rights. The UIAB determined only that the City had a right to be heard on the merits of its arguments that Mr. Gibbs was not an appropriate recipient of unemployment benefits. If the UIAB had determined that the City's filing was too late, that would indeed end the matter and the decision would be immediately reviewable, but a decision that the City was not too late does not. In similar fashion, a motion to dismiss that is denied cannot be appealed, a motion to dismiss that is granted can. A motion for summary judgment that is denied cannot be appealed, a motion for summary judgment that is granted can. In each case, the order is appealable because it has finally determined the

rights of the parties.[24] Here, there has been no final determination of the rights of the parties; the UIAB has merely determined who has a seat at the table for later argument and determination of the rights of the parties. Because that ruling did not finally determine the rights of the parties, it is not a final order or, as stated in 19 *Del. C.* § 3322, he has not "exhausted all administrative remedies."

It is unfortunate, as argued by Mr. Gibbs, that the UIAB advised Gibbs that he could appeal the UIAB determination that the City's appeal was not "late" to the Superior Court. The Court has determined that he could not. But incorrect advice from the UIAB to a claimant cannot confer jurisdiction on this Court when the statute so clearly demonstrates that jurisdiction does not lie.

This appeal is hereby **DISMISSED.**

IT IS SO ORDERED.

/s/ Charles E. Butler
Judge Charles E. Butler

[24] The Delaware Supreme Court has defined a final order, "as one that determines the merits of the controversy or defines the rights of the parties and leaves nothing for future determination or consideration. In short, a final order is one that determines all the claims as to all the parties. The test for whether an order is final and therefore ripe for appeal is whether the trial court has clearly declared its intention that the order be the court's "final act" in a case." *Tyson Foods, Inc. v. Aetos Corp.*, 809 A.2d 575, 579 (Del. 2002)(internal citations omitted).