

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

LAMONT DOSTER,)	
Appellant)	
)	
v.)	
)	CA No. 12A-08-006 FSS
PEPSI BOTTLING GROUP, INC., and)	
UNEMPLOYMENT INSURANCE)	
APPEAL BOARD,)	
Appellees)	

Submitted: January 16, 2013
Decided: April 22, 2013

ORDER

**Upon Appeal from the Unemployment Insurance Appeal Board—
*AFFIRMED***

1. On February 2, 2012, after he reinstated his suspended driver’s license, Pepsi Bottling allegedly fired Lamont Doster as a delivery driver. Doster, claiming he was “being responsible” by “resolving” the suspended license “situation” without his employer’s knowledge, applied for unemployment benefits on February 7, 2012. Doster claimed “the [Teamsters] union tried to fight [the termination] They thought it was not worth being terminated.”

2. To support his benefits claim, Doster submitted a February 3, 2012 letter from Teamsters Local Union No. 830, stating Pepsi notified the union of Doster's termination. The letter further indicated that a grievance was not filed on Doster's behalf. In contrast, TALX, Pepsi's UIAB agent, submitted a February 14, 2012 letter stating Doster "is currently working all available hours." Thus, when the case came to a claims deputy, Doster claimed he was fired, while Pepsi said he was still employed.

3. Based upon TALX's representation, the claims deputy denied benefits on February 23, 2012. Before the denial, the deputy verified TALX's information with Pepsi on February 20, 2012. That day, the claims deputy left messages for Doster, requesting a response by February 22, 2012. Doster failed to return the deputy's call. The deputy's decision denying benefits became final on March 4, 2012.

4. On March 9, 2012, the Department of Labor received Doster's appeal, dated March 5, 2012. Importantly, Doster apologized "for not getting this appeal in on time. I just receiv[ed] the letter." Doster claimed to have been arrested on February 19, 2012. Doster also alleged that he had "all documentation to prove [he had] not worked at PBC since [February 2, 2012]."

5. After mutual continuance requests from Pepsi and Doster, an appeal hearing was set for May 7, 2012. A Pepsi representative and two witnesses appeared for the rescheduled hearing; Doster did not. The referee dismissed the appeal based on Doster's failure to prosecute. Doster's last day to appeal that decision was May 17, 2012.

6. Nearly three weeks after the deadline, on June 7, 2012, Doster filed an appeal with the Unemployment Insurance Appeal Board. Doster's appeal claimed "[he] was being held at Howard Young Correctional Institute [and when] moved to the Plummer Center[,] the date of the hearing had passed." The appeal board refused jurisdiction on Doster's untimely appeal and declined to exercise its discretion to review it *sua sponte*. Accordingly, the UIAB's decision became final August 6, 2012.

7. Doster timely filed this appeal on August 8, 2012 and the UIAB submitted its record on September 13, 2012. Doster filed his opening brief on October 26, 2012. Neither the UIAB nor Pepsi answered. On January 7, 2013, the court issued its final notice that, pursuant to Superior Court Civil Rule 107(f), the record was closed and the court would rule on the papers submitted.

8. This court’s review of UIAB appeals is limited.¹ The court cannot sit as a trier of fact and weigh the evidence or consider credibility.² Appellate review on a UIAB decision is limited to “whether its findings and conclusion are ‘free from legal error and supported by substantial evidence in the record.’”³ Substantial evidence simply requires “evidence as a reasonable mind might accept as adequate to support a conclusion.”⁴ Absent any abuse, discretionary decisions by the UIAB will be upheld.⁵ Abuse of discretion occurs where the UIAB “acts arbitrarily or capriciously or exceeds the bounds of reason in view of the circumstances, and has ignored recognized rules of law or practice so as to produce injustice.”⁶

9. The UIAB did not abuse its discretion by refusing to hear Doster’s claims three weeks after the appeal deadline. Generally, the UIAB will only exercise its discretion when the agency erred or the interests of justice so require.⁷ Doster

¹ See *Pal of Wilmington v. Graham*, 2008 WL 2582986, *3 (Del. Super. June 18, 2008) (Jurden, J.).

² *Johnson v. Chrysler Corp.*, 213 A.2d 64, 66 (1965).

³ *Graham*, 2008 WL 2582986 at *3 (quoting *Fed. St. Fin. Serv. v. Davies*, 2000 WL 1211514, *2 (Del. Super. June 28, 2000)).

⁴ *Oceanport Indus. v. Wilmington Stevedores, Inc.*, 636 A.2d 892, 899 (1994).

⁵ *Funk v. Unemp’t Ins. App. Bd.*, 591 A.2d 222, 225 (Del. 1991).

⁶ *Graham*, 2008 WL 2582986, *4 (internal citations omitted).

⁷ See *Funk*, 591 A.2d at 225.

claims his imprisonment constituted a “severe circumstance” upon which the UIAB should have heard his claim. Even if that were so, and it is not, Doster knew how to contact the Board and request a continuance as evidenced by his first appeal. Incarceration does not excuse “a failure to comply with jurisdictional requirements such as time.”⁸

10. Moreover, the court observes that Doster’s incarceration made him ineligible for benefits.⁹ Therefore, the only available claim for benefits, had Doster been terminated on February 2, 2012, which does not appear to have been so, would have been from February 2-19, 2012.

11. Lastly, Doster also takes issue with the conflicting information submitted to the claims deputy. As to that, the claims deputy, as the initial fact-finder, must weigh the evidence. The deputy verified the information from TALX. As the court cannot ignore the fact finder and weigh the evidence, the court finds that the deputy’s decision to accept the employer’s position, based on her inquiry, is enough to support denial of benefits.

Because the UIAB did not abuse its discretion, and the claims deputy, as fact-finder, relied on substantial evidence, the UIAB’s decision not to waive its

⁸ *McCleaf v. Unemp’t Ins. App. Bd.*, 2012 WL 6914479, *3 (Del Super. Dec. 12, 2012) (Witham, J.).

⁹ *See, e.g., Mason v. Best Drywall*, 1999 WL 459303 (Apr. 1, 1999) (Gebelein, J.).

filing requirements based on Doster's imprisonment cannot be called unreasonable.

So, it is **AFFIRMED**.

IT IS SO ORDERED.

/s/ Fred S. Silverman

Judge

cc: Prothonotary
Lamont Doster
Caroline L. Cross, Esquire