

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR KENT COUNTY

SHANNON POWELL,	:
	: C.A. No. K13A-01-001 WLW
Appellant,	:
	:
v.	:
	:
UNEMPLOYMENT INSURANCE	:
APPEALS BOARD,	:
	:
Appellee.	:

Submitted: May 9, 2013

Decided: July 23, 2013

ORDER

Upon an Appeal from the Decision of the
Unemployment Insurance Appeals Board.

Affirmed.

Shannon Powell, *pro se*

Lynn A. Kelly, Esquire, Department of Justice, Wilmington, Delaware; attorney for
the UIAB.

WITHAM, R.J.

Introduction

This is a *pro se* appeal by Claimant Shannon Powell ("Powell" or "Appellant") from the December 18, 2012 decision of the Unemployment Insurance Appeal Board ("the Board" or "UIAB") that denied Powell's appeal from a decision of the Appeals Referee as untimely. For the foregoing reasons, the decision of the UIAB is hereby affirmed.

Factual and Procedural Background

Powell filed for Unemployment benefits effective January 1, 2012.¹ It was discovered, though a wage audit investigation, that Powell was earning wages from Right Way Flagging and was also collecting Unemployment Insurance benefits.² Powell was reporting wages during this period; however, there were large discrepancies in the amounts reported by Powell and those reported by the employer.³ Powell was mailed an "interview notice" on July 20, 2012, but never responded to the notice. As a result of Powell not responding in a timely fashion and based on the documentation provided by the employer, the Department of Labor disqualified Powell, on August 6, 2012, for fraudulently collecting unemployment benefits pursuant to Title 19 of Delaware Code 3314(6), and 3325.⁴

¹ Record at 1 (hereinafter "R. at _").

² *Id.*

³ *Id.*

⁴ R. at 1-2.

The disqualification decision was made final on August 18, 2012, as an appeal was not received within the prescribed time period.⁵ Powell then appealed on October 5, 2012, almost two months past the deadline for an appeal, stating: "I am late filing the appeal because I have been working. [I have] not been able to get there. I disagree with the decision because I was doing what I was told to do when reporting my earnings."⁶

Pursuant to the appeal, a hearing on the issue of the timeliness was held on November 15, 2012.⁷ At the hearing Powell confirmed that the Department of Labor had his correct address when they mailed him the notice of determination on August 6, 2012, but that it was his child's mother's address.⁸ Powell revealed through testimony that he did in fact receive the notice, but that he received it late, as he was having issues with his child's mother, who was in receipt of the letter.⁹ He then claimed that after receiving the letter, he was not able to get to the Department of Labor to appeal, as he was busy working.¹⁰ On November 29, 2012, the Appeals Referee ruled, pursuant to Title 19, Delaware Code, Section 3318(b), that: "[t]he

⁵ R. at 5.

⁶ R. at 7.

⁷ R. at 9.

⁸ R. at 12.

⁹ R. at 14.

¹⁰ *Id.*

claimant failed to file a timely appeal and the decision of the claims deputy is final and binding."¹¹ Powell was given until December 9, 2012 to appeal the "Appeal Referee Decision" to the UIAB.¹² The UIAB ultimately affirmed the Appeal Referee's Decision on December 18, 2012.

Powell's appeal of the UIAB decision is now before the Court.

Discussion

When this Court reviews a procedural decision of the UIAB, the Court must consider whether the UIAB abused its discretion in rendering its decision.¹³ A procedural decision is not considered an abuse of discretion "unless it is based on clearly unreasonable or capricious grounds" or "the Board exceeds the bounds of reason in view of the circumstances and had ignored recognized rules of law or practices so as to produce injustice."¹⁴ Absent an abuse of discretion, the Court must affirm the judgment of the UIAB.¹⁵

This Court affirms the UIAB's decision not to assume jurisdiction of his appeal from the Appeals Referee pursuant to 19 *Del. C.* § 3318(b) because the appeal was untimely. Section 3318(b) states, in pertinent part:

¹¹ R. at 17.

¹² *Id.*

¹³ *Hartman v. UIAB*, 2004 WL 772067, at *2 (Del. Super. Ct. Apr. 5, 2004)(citing *Funk v. UIAB*, 591 A.2d 222, 225 (Del. 1991)).

¹⁴ *Hartman*, 2004 WL 772067, at *2.

¹⁵ *Funk*, 591 A.2d at 225.

Unless a claimant or a last employer who has submitted a timely and completed separation notice in accordance with § 3317 of this title files an appeal within 10 calendar days after such Claims Deputy's determination was mailed to the last known addresses of the claimant and the last employer, the Claims Deputy's determination shall be final and benefits shall be paid or denied in accordance therewith.¹⁶

The UIAB lacks the power to accept a late appeal from a party because the UIAB is a "creature of statute" and the parties are subject to a statutory ten-day limitation period.¹⁷

In *Funk v. UIAB*, the Supreme Court did recognize that the Board has the discretion under 19 *Del. C.* § 3320 to consider a late appeal *sua sponte* if the situation involved circumstances "severe enough" to require the UIAB to exercise its discretion.¹⁸ The UIAB may choose to assume jurisdiction over an untimely appeal if the lateness of the filing can be traced back to an error of the UIAB, or "in those cases where the interests of justice would not be served by inaction."¹⁹

The UIAB did not abuse its discretion when it declined to accept Powell's appeal because, under the strictures of 19 *Del. C.* § 3318(b), it was filed late. The

¹⁶ Del. Code Ann. Tit. 19, § 3318 (West).

¹⁷ *Chrysler Corp. v. Dillion*, 327 A.2d 604, 605 (Del. 1974); *see also Funk v. UIAB*, 591 A.2d at 225 (holding that claimant's appeal was untimely because it was not filed within the ten-day limit set by statute for such appeals.)

¹⁸ *Funk*, 591 A.2d at 225 (quoting, with approval, the UIAB's letter opinion of June 27, 1989 in Funk's appeal of the Appeal Referee's decision denying him unemployment benefits.).

¹⁹ *Id.*

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Claims Deputy mailed a Notice of Determination on August 6, 2012 to Powell's last known address. On August 16, 2012, 10 calendar days after the Claims Deputy's determination was mailed, the decision became final and bounding pursuant to 19 *Del. C.* § 3318(b). Powell's failure to appeal by August 16, 2012 renders his appeal untimely.

Additionally the UIAB did not abuse its discretion in declining to hear Powell's appeal *sua sponte* pursuant to 19 *Del. C.* § 3320. There was no administrative error on the part of the Department of Labor, nor do the circumstances surrounding Powell's appeal warrant the exercise of the Board's discretionary power.

Powell argues that he did not receive the Notice of Decision of the Claims Deputy because it was sent to his child's mother's address and he did not receive it until later. Additionally, he claims that he was working, which prohibited him from appearing at the Unemployment Office to file an appeal. Delaware case law has established the legal principle that properly addressed mail is presumed to be received by the addressee and mere denial of receipt of the notice is insufficient to rebut this presumption.²⁰ The Court is thus satisfied that Powell was adequately notified of the Notice of Decision by the Claims Deputy. Thus, Powell may not attribute the lateness of his appeal to an error on the part of the Department of Labor.

²⁰ See, e.g., *Straley v. Advanced Staffing, Inc.*, 2009 WL 1228572, at *3 (Del. Super. Ct. April 30, 2009) (“If notice is properly addressed by the agency and not received because of some fault of the party to whom it was addressed, the notice may be deemed sufficient *even if the party did not receive it.*”) (citing *Funk*, 591 A.2d at 226) (emphasis added).

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Conclusion

Appellant's explanation is insufficient to excuse the untimely filing of his notice of appeal. The Court finds that the UIAB did not abuse its discretion in declining to assume jurisdiction over Appellant's appeal. Accordingly, the decision of the UIAB is hereby ***affirmed***. IT IS SO ORDERED.

/s/ William L. Witham, Jr. _____
Resident Judge

WLW/dmh
oc: Prothonotary
xc: Mr. Powell, *pro se*
Lynn A. Kelly, Esquire