

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

STACEY FOX-GREYERBIEHL,)	
Appellant)	
)	
v.)	
)	CA No. 12A-11-009 FSS
SPHERION C/O TALX,)	
and UNEMPLOYMENT INSURANCE)	
APPEAL BOARD,)	
Appellees)	

Submitted: June 11, 2013
Decided: August 29, 2013

ORDER

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

This concerns Appellant’s unexcused failure to appear at her Unemployment Insurance Appeal Board hearing, resulting in the appeal’s dismissal and denial of benefits. Working nine months in a stressful, full-time contract position exacerbated Appellant’s pre-existing medical condition. After recuperating two weeks, on her fifteenth day off, Appellant left a voice-mail for her boss about returning to work. Appellant never got a response, and she never contacted her employer again. Instead, she filed for unemployment benefits, but was disqualified because she was deemed to have quit.

Appellant appealed and, ultimately, the UIAB dismissed her appeal for failure to prosecute. Specifically, having been denied benefits by a claims deputy and an appeals referee, Appellant failed to appear at the properly noticed UIAB hearing. Because the UIAB did not abuse its discretion by dismissing Appellant's appeal, the UIAB decision is affirmed. As mentioned, the decision turns on Appellant's having failed to follow-through on her claim administratively. For background, the court will summarize the facts leading to Appellant's procedural default:

1. Hired by a staffing agency, Spherion, from June 23, 2011 through March 23, 2012, Appellant worked as a credit account manager. In January 2012, apparently based on her work ethic and enthusiasm, Appellant was placed in charge of a large, problematic account.

2. Due to the new account's high demand and stress, however, Appellant aggravated several preexisting medical problems. On March 26, 2012, Appellant expressed her frustrations and health concerns to her boss, and it was agreed that Appellant would take a few days off. Three days later, based on Appellant's health, Appellant's boss agreed to end the assignment and told her to contact him in two weeks. Again, on her fifteenth day off, Appellant called as instructed. Instead of asking for work, Appellant left a message, thanking her boss

for “the time” and asking him to call her back.¹ The boss never called and Appellant never contacted anyone again.

3. Considering herself laid-off, Appellant filed for unemployment insurance benefits on April 29, 2012. On May 14, 2012, the Department of Labor received Spherion’s notice that Appellant voluntarily quit, spurring a fact-finding interview with a Department of Labor claims deputy. Both parties seem to agree on the events. The employer, however, also told the claims deputy that because Appellant could not complete the assignment, Spherion’s client had requested and received a replacement employee. On July 9, 2012, finding that Appellant “left her job voluntarily for a personal reason,” the claims deputy terminated Appellant’s unemployment benefits.

4. Appellant timely appealed the claims deputy’s decision. On August 15, 2012, an appeals referee heard from Appellant. Spherion did not appear. Nevertheless, the appeals referee affirmed the claims deputy’s decision, holding that Appellant left Spherion “without good cause attributable to her work.”

5. The pivotal fact here is that Appellant further appealed to the UIAB, yet she failed to appear at the hearing. After waiting fifteen minutes beyond the

¹ Admin. Hrg. Trans. at 8, *Fox-Greyerbiehl v. Spherion*, App. Dkt. No. 20854084, Aug. 15, 2002.

hearing's start time, the UIAB dismissed Appellant's appeal. Again, the appeal was not dismissed based on lack of merit, but because Appellant failed to pursue her appeal when she had the chance.

6. On November 26, 2012, Appellant timely filed this appeal. Although she recapitulates the events leading to her procedural default, Appellant never explains why she did not appear at her UIAB hearing. The UIAB notified the court that it did not intend to submit briefing.² Spherion, having won below, remained content to rely on the established record and did not respond here.³ The record closed on June 11, 2013.

7. Appellate review of a UIAB decision is limited to "whether [the UIAB] findings and conclusion are 'free from legal error and supported by substantial evidence in the record.'"⁴ This court does not weigh evidence, determine credibility,

² Apr. 23, 2013 ltr. from UIAB's counsel to the court, File & ServeXpress Transaction ID 51925434.

³ *McIntyre v Unemp't Ins. App. Bd.*, 962 A.2d 917, 2008 WL 4918217 *1, *2 (Del. 2008) (TABLE) ("Under Superior Court Civil Rule 107(e), the Superior Court has discretion to decide the merits of an appeal where a non-appealing party declines to file an answering brief."); *see also, Stewart v. Connections*, 2008 WL 2700290 (Del. Super. July 9, 2008) (Slights, J.); *Gonzalez v. Mountaire Farms*, 2002 WL 31667899 (Del. Super. Sept. 17, 2002) (Stokes, J.).

⁴ *See PAL of Wilmington v. Graham*, 2008 WL 2582986, *3 (Del. Super. June 18, 2008) (Jurden, J.) (quoting *Fed. St. Fin. Serv. v. Davies*, 2000 WL 1211514, *2 (Del. Super. June 28, 2000)).

or make its own factual findings.⁵ Absent legal error, the court must affirm a UIAB decision supported by substantial evidence. Similarly, as to discretionary matters the UIAB must be affirmed if it did not abuse its discretion.⁶

8. The UIAB's decision to dismiss an appeal is discretionary.⁷ Abuse of discretion is 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."⁸

9. As mentioned, Appellant offers no reason for failing to appear at the UIAB hearing, where she might have convinced the Board that the claims deputy and appeals referee were mistaken. Her appeal here is based entirely on her challenge to the appeal referee's holding that Appellant voluntarily quit, which would have been the subject of the hearing she missed.

10. At this point, the court is only concerned about the merits indirectly, as they may have a tangential bearing on whether the dismissal below was unjust and,

⁵ *Johnson v. Chrysler Corp.*, 213 A.2d 64,66 (Del. 1965).

⁶ *Funk v. Unemp't Ins. App. Bd.*, 591 A.2d 222, 225 (Del. 1991).

⁷ *Connors v. Mountaire Farms of Delmarva, Inc.*, 1996 WL 453327 *1, *2 (Del. Super. May 22, 1996) (Lee, R. J.);

⁸ *Graham*, 2008 WL 2582986 at *4.

therefore, abusive.⁹

11. According to the record, the UIAB's hearing notice was addressed as previous ones, which also is the address Appellant listed on her documents filed here. The law assumes that the notice was delivered and received,¹⁰ and Appellant does not refute that.

12. Further, the UIAB hearing notice clearly states that “[f]ailure to appear for your hearing [...] can result in your appeal being dismissed.” The hearing was scheduled for 10:40 AM and at 10:54 AM the UIAB decided to dismiss for failure to prosecute. That action was within the UIAB's purview and, on its face, it was neither unreasonable nor capricious.¹¹

13. Although Appellant mentions here that her mother passed away four days after the hearing, Appellant does not contend that her failure to appear was based upon her mother's condition before the hearing. To the contrary, Appellant mentions that the unfortunate loss was “unexpected.” Finally, even if her mother's

⁹ See *Griffin v. Daimler Chrysler*, 2000 WL 33309877 *1 (Del. Super. Apr. 27, 2001) (Carpenter, J.) (“The Appellant failed to appear at the Board hearing, and the merits were not addressed by the Board. As such, the Court lacks jurisdiction to review the merits of the case because the Appellant did not exhaust all administrative remedies by not presenting his case to the Board.”).

¹⁰ *Id.*

¹¹ *Harris v. Mountaire Farms of Del.*, 2003 WL 22853425 *1 (Del. Super. July 16, 2003) (Bradley, J.).

condition is why Appellant failed to appear, and it is not established that it was, Appellant should have done something to let the UIAB know that attending the hearing was problematic.

14. For the foregoing reasons, it appears that Appellant failed to appear at her UIAB hearing without excuse and, therefore, the UIAB's dismissal was not an abuse of discretion. Thus, the dismissal is **AFFIRMED**.

IT IS SO ORDERED.

/s/ Fred S. Silverman

Judge

cc: Prothonotary
Lynn A. Kelly, Deputy Attorney General
Stacey Fox-Greyerbiehl