SUPERIOR COURT
OF THE
STATE OF DELAWARE

RICHARD R. COOCH
RESIDENT JUDGE

NEW CASTLE COUNTY COURTHOUSE
500 North King Street, Suite 10400
Wilmington, Delaware 19801-3733
(302) 255-0664

Colene Lafferty-Eaton
314 Ashbourne Road
Claymont, Delaware 19703
Appellant

T.D. Bank NA
c/o Talx
P.O. Box 283
Saint Louis, Missouri 63166
Appellee

Re: Colene Lafferty-Eaton v. T.D. Bank NA
C.A. No. N13A-03-011 RRC

Submitted: August 18, 2013
Decided: November 1, 2013

On Appeal from a Decision of the Unemployment Insurance Appeal Board.
REVERSED and REMANDED.

Dear Ms. Lafferty-Eaton and T.D. Bank NA:

INTRODUCTION

Appellant Colene Lafferty-Eaton ("Employee") appeals from the March 4, 2013 decision of the Unemployment Insurance Appeal Board ("the Board") holding that Employee was discharged by her employer for just cause, thereby disqualifying her from unemployment benefits. Although the Division of Unemployment Insurance Appeals and T.D. Bank NA ("Employer") received a copy of the Court's briefing schedule by letter of June 19, 2013, Employer failed to file an Answering

Brief.[1] On August 8, 2013, this Court issued a "Final Delinquent Brief Notice" and received no response from Employer. Accordingly, this Court will reverse the determination of the Board due to Employer's failure to respond, in violation of Superior Court Civil Rule 107.

FACTS AND PROCEDURAL HISTORY

This case arises from Employee's disqualification from receipt of unemployment benefits in November 2012. Prior to her termination in August 2012 for violation of company policy, Employee had worked for Employer as a teller for two years. The Appeals Referee determined that Employee was discharged from employment with just cause.[2] Therefore, the Appeals Referee disqualified Employee from receiving unemployment insurance benefits immediately upon her discharge.[3]

The Board affirmed the Appeals Referee's decision. The Board noted that the Employee was terminated because she violated Employer's policy when she failed to do a final box count at the very end of her shift.[4] Furthermore, the Board found she was aware of the policy and was on notice that breach could result in termination because she testified to her familiarity with Employer's policies and had been disciplined for violating them on two previous occasions.[5]

On appeal to this Court, Employee filed a brief alleging that, while she admits she did not count her cash drawer at the very end of her shift, she counted it several times as she waited to be relieved by another teller.[6] She contends her final count happened about a half hour before she left for the day and she deducted the following non-cash transactions before she left.[7] She insists her drawer was in balance.[8] Employee argues that the audit of her box which showed a discrepancy and led to her termination was done out of her presence and may have been an

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[1] No T.D. Bank representative was present at the Appeal Board hearing and no administrative or legal personnel has responded to this appeal. As a result, the Court has addressed this opinion to Employer generally. No address was provided in the record for contacting the representative personally. Prior notices and this opinion have been sent to the address used by the Department of Labor.
[2] Division of Unemployment Appeals Referee's Decision at 4.
[3] *Id.*
[4] Decision of the Unemployment Insurance Appeal Board on Appeal from the Decision of Geoffrey D. Silverberg, Appeal Docket No. 10863449 (March 4, 2013).
[5] *Id.*
[6] Employee's Br. of July 9, 2013 at 1.
[7] *Id.*
[8] *Id.*

excuse to get rid of her.[9] Employer has never responded to this Appeal, or to the "Final Delinquent Brief Notice." Counsel for the Board has stated its intention not to file an answering brief in this matter because it is the Employer's obligation to defend the Board's decision.

STANDARD OF REVIEW

This Court's review of an Unemployment Insurance Appeal Board decision is defined by statute. Pursuant to 19 Del. C. § 3323(a), "the findings of the Unemployment Insurance Appeal Board as to the facts, if supported by evidence and in the absence of fraud, shall be conclusive, and the jurisdiction of the Court shall be confined to questions of law." Superior Court review "is limited to a determination of whether there was substantial evidence sufficient to support the [Board's] findings."[10] Substantial evidence requires "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion."[11] This Court does not weigh evidence or make determinations based on credibility or facts.[12] An abuse of discretion will be found only if "the Board '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.'"[13]

DISCUSSION

In this case, the Appeals Referee reviewed the record and found that the Employee was terminated for just cause and thereby disqualified from receiving unemployment benefits. This determination was affirmed by the Board. Though this Court ordinarily would be limited to determining whether the Board's decision was supported by substantial evidence, Employer's unexplained and unexcused failure to comply with this Court's scheduling order requires a contrary result. Despite receiving a briefing schedule and a "Final Delinquent Brief Notice," Employer made no efforts to comply with this Court's requirements, nor did Employer proffer any explanation for its procedural default.

As provided in Superior Court Civil Rule 107(f):

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[9] *Id.*
[10] *Unemployment Ins. Appeals Bd. v. Duncan*, 337 A.2d 308, 309 (Del. 1975).
[11] *Oceanport Industries, Inc. v. Wilmington Stevedores, Inc.*, 636 A.2d 892, 899 (Del. 1994) (citing *Olney v. Cooch*, 425 A.2d 610, 614 (Del. 1981).
[12] *Johnson v. Chrysler Corp.*, 213 A.2d 64, 66 (Del. 1965).
[13] *Straley v. Advanced Staffing, Inc.*, 2009 WL 1228572, at * 2 (Del. Super. Apr. 30, 2009) (citations omitted).

> If any brief, memorandum, deposition, affidavit, or any other paper which is or should be a part of a case pending in this Court, is not served and filed within the time and in the manner required by these Rules or in accordance with any order of the Court or stipulation of counsel, the Court may, in its discretion. . . consider the motion as abandoned, or summarily deny or grant the motion, such as the situation may present itself, or take such other action as it deems necessary to expedite the disposition of the case.

Sprung v. Selbyville Cleaners[14] held that, when an employer "has been afforded every opportunity to respond to [a] claim and has failed to do so," this Court is "left with no other alternative but to reverse the Board's decision."[15] In reaching this conclusion, this Court noted:

> The efficiency and effectiveness of our judicial system relies heavily on the diligent actions of those involved in legal disputes. Filing deadlines are in place to promote such judicial efficiency. Because of this, the inexcusable failure of a party to respond when required to do so cannot be treated lightly by this Court.[16]

"Upon [a] showing of good cause in writing, the Court may permit late filing."[17] Employer has made no efforts to file any of the required submissions with this Court, despite being afforded notice of the relevant proceedings. Thus, this Court finds that Employer failed to respond to this claim, without good cause, despite being "afforded every opportunity" to respond. Although reversal of the Board's decision no doubt affects Employer's rights, Employer's due process rights were fully respected at every stage of this claim.[18] Put simply, Employer's failure to properly defend its interests in this case constitutes "one of those rare instances when a party's unexplained inaction proves both disadvantageous to its cause, and results in a windfall for its adversary."[19]

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[14] 2007 WL 1218683, at *2 (Del. Super. Apr. 23, 2007) (This is how the business entity is identified in the record.).
[15] *Id.* at *1.
[16] *Id.*
[17] Super. Ct. Civ. Rule 107(f).
[18] *See Hunter v. First USA/Bank One,* 2004 WL 838715, at *6 (Del. Super. Apr. 15, 2004) ("Due process requirements mandate that in any appeal from an administrative agency, the Court must make certain that the agency action satisfies the constitutional requirements of due process. . . .The Court, and the Prothonotary's Office, have made considerable efforts to provide notice to the Appellee. Additionally, it is an undeniable fact that Appellee's representative did receive amended notice of the appeal. Thus, procedural due process has been aptly served.").
[19] *Id. See also Cohen v. Allied Barton Sec. Servs.*, 2007 WL 2430062, at *1 (Del. Super. Aug. 24, 2007) ("This Court has held that '[Rule 107(f)] inextricably vests in the Court the power to reverse the Board's decision for failure of the Appellee to file its answering brief.' Despite adequate notice, Appellee has not filed an answering brief, nor has it provided any explanation for its inaction. Therefore, due to 'Appellee's failure to diligently prosecute and file its brief pursuant to [Rule 107(f)]' the April 5, 2006 decision of the Board is reversed.") (quoting

CONCLUSION

Accordingly, for all the reasons stated above, the decision of the Unemployment Insurance Appeal Board is **REVERSED**. This case is **REMANDED** to the Unemployment Insurance Appeal Board, and the employer is henceforth estopped from contending that Employee's termination was predicated upon just cause related to Employee's violation of Employer policies.[20]

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Richard R. Cooch, R.J.

oc: Prothonotary
Unemployment Insurance Appeal Board

Hunter, 2004 WL 838715, at *4). *See also Byrd v. Westaff USA, Inc.*, 2011 WL 3275156 (Del. Super. July 29, 2011); *Crews v. Sears Roebuck & Co*., 2011 WL 2083880 (Del. Super. May 11, 2011).

[20] 19 Del. C. §3314(2).