

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

LYMARIE TORRES-RODRIGUEZ,)

Appellant,)

v.)

C.A. No. N14A-10-009 FWW

YOUNG LEADER SUMMER CAMP)

(MANNA ACADEMY) &)

UNEMPLOYMENT INSURANCE)

APPEALS BOARD,)

Appellees.)

Submitted: April 8, 2015

Decided: May 22, 2015

Upon Appellant's Appeal of the Unemployment Insurance Appeals Board's
Decision:
AFFIRMED.

OPINION AND ORDER

Lymarie Torres-Rodriguez, *pro se*, 618-A N. Harrison St., Wilmington, Delaware 19805; Appellant.

Paige Schmittinger, Esquire and Victoria Counihan, Esquire, Delaware Department of Justice, 820 N. French St., Wilmington, Delaware 19801; Attorneys for Appellee Unemployment Insurance Appeal Board.

Young Leader Summer Camp (Manna Academy), 1200 Northeast Blvd., Wilmington, Delaware 19805; Appellee Young Leader Summer Camp (Manna Academy).

WHARTON, J.

I. INTRODUCTION

Lymarie Torres-Rodriguez (“Appellant”) filed a Notice of Appeal on October 17, 2014 requesting judicial review of the October 13, 2014 decision of the Unemployment Insurance Appeals Board (“UIAB”). Appellant contends that the UIAB erred in dismissing her appeal on jurisdictional grounds.

In considering the appeal, the Court must determine whether the UIAB’s decision to dismiss Appellant’s appeal is supported by substantial evidence and free from legal error. Upon consideration of the pleadings before the Court and the record below, the Court finds that there is substantial evidence to support the UIAB’s ruling and the UIAB did not err in dismissing Appellant’s appeal on jurisdictional grounds. Accordingly, the UIAB’s decision is **AFFIRMED**.

II. FACTUAL AND PROCEDURAL CONTEXT

Appellant was employed as a full-time teacher by Young Leader Summer Camp (“Manna Academy”) from December 18, 2013 until June 17, 2014.¹ Appellant applied for unemployment insurance through the Department of Labor (“DOL”) and was notified on August 11, 2014 that she was disqualified from receiving benefits under 19 *Del. C.* § 3314(1) because she left work voluntarily

¹ Tr., D.I. 5, at 6:4-15.

without good cause.² Appellant appealed the determination and a hearing was scheduled before an Appeals Referee (“Referee”).

At the September 4, 2014 hearing before the Referee, representatives of Manna Academy and Appellant testified. Appellant testified that she was terminated from her job supervising the infant classroom at Manna Academy on June 17, 2014.³ Appellant asserted that she did not voluntarily quit but was fired.⁴ Appellant explained that she believed she had been terminated because she was asked to move from the infant group classroom to supervise another classroom.⁵

Representatives of Manna Academy disagreed and asserted that Appellant voluntarily quit her job. The director of Manna Academy, Anne Forde, testified that on June 17, 2014, Forde asked Appellant to supervise a different Manna Academy classroom based upon staffing needs at the time.⁶ Forde asserted that Appellant refused to move from the infant classroom⁷ and that Appellant’s refusal to be reassigned resulted in an argument between Forde and Appellant after which Appellant left the Manna Academy premises and did not return.⁸ Forde testified

² R. at 5.

³ Tr. at 7:11-16.

⁴ Tr. at 7:21.

⁵ Tr. at 9:6-11 (“The Referee: Okay now how did they inform you that your employment was terminated? Ms. Rodriguez [*sic*]: ...once they moved me from the infant room to another group they were basically terminating me at that point because I wasn’t hired for that position.”).

⁶ Tr. at 10:10-13.

⁷ Tr. at 10:17-11:2.

⁸ Tr. at 16:15-17 (“Ms. Forde:...I did not ask you to leave. You chose to leave after the argument we had in the hallway and I didn’t see you after that.”).

that Appellant was not terminated by Manna Academy but that Appellant left voluntarily following the argument.⁹

By letter dated September 10, 2014, the Referee notified Appellant that Appellant was ineligible for unemployment insurance benefits under 19 *Del. C.* § 3314(1) because the Referee found that Appellant voluntarily quit her job.¹⁰ The Referee noted that “[d]uring the hearing, Claimant conceded that the Employer did not inform her that her employment was to be terminated.”¹¹ Additionally, the cover page of the Referee’s letter decision designates “9/20/2014” as the “Last Day to File Appeal” and Appellant’s address listed is “618A Harrison St., Wilmington, Delaware 19805.”¹²

On September 26, 2014, Appellant filed an “Appeal Request Notification” with the UIAB. Appellant challenged the Referee’s letter decision on the grounds that Appellant did not agree with the Referee’s decision; specifically, because the Referee “refused to listen to [Appellant] when [Appellant] tried to explain the connection between Manna/Young Leader Summer Camp.”¹³ The UIAB did not

⁹ Tr. at 11:3-11 (“The Referee: Okay and then what happened, was her employment terminated or did she quit? Ms. Forde: No she just, she left...The Referee: Okay and then what happened was there any further contact, explanation? Ms. Forde: No, I didn’t see her after that.”).

¹⁰ R. at 34-35.

¹¹ *Id.* at 34.

¹² *Id.* at 33.

¹³ *Id.* at 38.

hold a hearing on Appellant’s appeal but mailed its written decision to Appellant on October 13, 2014.¹⁴

A. The UIAB’s Written Decision

The UIAB rejected Appellant’s appeal as untimely filed because Appellant did not file her appeal until September 26, 2014, nearly a week after the time to file an appeal had expired.¹⁵ The UIAB determined that, pursuant to 19 *Del. C.* § 3318(c), the time limit to appeal the Referee’s decision is jurisdictional and that the Referee’s decision became final on September 20, 2014.¹⁶ The UIAB declined to accept the appeal *sua sponte* under 19 *Del. C.* § 3320 because there was no showing of “severe circumstances” and affirmed the Referee’s decision.¹⁷

The UIAB found that the Referee’s decision contained a notice of the right of appeal, instructions detailing how to appeal the Referee’s decision and that the decision displayed the following notice: “Last Day to File Appeal: 09/20/2014.”¹⁸ The UIAB also found that the Referee’s letter decision was sent to Appellant’s address of record and the letter decision was not returned.¹⁹ Based upon those findings, the UIAB concluded that there was no evidence of DOL error which prevented Appellant from filing a timely appeal of the Referee’s decision and,

¹⁴ *Id.* at 40.

¹⁵ *Id.* at 39.

¹⁶ *Id.*

¹⁷ *Id.* at 40.

¹⁸ *Id.*

¹⁹ *Id.*

because Appellant received proper notice, the requirements of due process had been satisfied.²⁰

On October 17, 2014, Appellant appealed the UIAB's decision to the Superior Court based upon the following grounds: "(1) Not received Mr. Morrison letter; (2) Sumer Camp is over and I should received [*sic*] unemployment benefits; (3) They should not count weekends unless they sent Official Appeal Paper; and (4) They should not count since date letter was sent unless they call me to pick it up."²¹

III. THE PARTIES' CONTENTIONS

Appellant submitted to the Court the following as an Opening Brief:

To whom this concern:

I, [Appellant], truly affirm that I was last employed at Young Leader Summer Camp (Manna Academy). Summer Camp is over, therefore I am entitled to my benefits. Truthful answering is highly honorable.

Sincerely,

[Appellant]

Counsel for the UIAB indicated via letter to the Court that the UIAB stands on the record of the case for purposes of this matter.²² Appellee Manna Academy failed

²⁰ *Id.*

²¹ *Id.* at 48.

²² D.I. 9, at 1.

to respond to Appellant’s Opening Brief after a “Final Delinquent Brief Notice”²³ was sent by the Prothonotary’s Office on March 4, 2015. Therefore, pursuant to the Court’s April 2, 2015 Order, the Court will make a determination of the issue on the papers which have been filed.²⁴

IV. STANDARD OF REVIEW

The UIAB’s decision must be affirmed so long as it is supported by substantial evidence and free from legal error.²⁵ Substantial evidence is that which a reasonable mind might accept as adequate to support a conclusion.²⁶ While a preponderance of evidence is not necessary, substantial evidence means “more than a mere scintilla.”²⁷ Questions of law are reviewed *de novo*²⁸ but because the Court does not weigh evidence, determine questions of credibility, or make its own factual findings, it must uphold the decision of the UIAB unless the Court finds that the UIAB “acts arbitrarily or capriciously” or its decision “exceeds the bounds of reason.”²⁹

²³ D.I. 10.

²⁴ D.I. 11.

²⁵ *Unemployment Ins. Appeal Bd. of Dep’t. of Labor v. Duncan*, 337 A.2d 308, 309 (Del. 1975).

²⁶ *Oceanport Indus. v. Wilmington Stevedores*, 636 A.2d 892, 899 (Del. Super. 1994) (citing *Olney v. Cooch*, 425 A.2d 610, 614 (Del. 1981)).

²⁷ *Breeding v. Contractors-One-Inc.*, 549 A.2d 1102, 1104 (Del. 1988).

²⁸ *Ward v. Dep’t of Elections*, 2009 WL 2244413, at *1 (Del. Super. July 27, 2009).

²⁹ *PAL of Wilmington v. Graham*, 2008 WL 2582986, at *4 (Del. Super. June 18, 2008).

IV. DISCUSSION

Pursuant to 19 *Del. C.* § 3318(b), a Referee’s decision that is not appealed within 10 days becomes final.³⁰ If the appeal is filed after 10 days, the UIAB lacks appellate jurisdiction over the matter.³¹ However, 19 *Del. C.* § 3320 permits the UIAB to exercise its discretion to hear untimely appeals *sua sponte*.³² The UIAB accepts untimely appeals *sua sponte* in cases of “severe circumstances.”³³

The UIAB recognized the jurisdictional time bar but declined to exercise its discretion to hear the appeal *sua sponte* because the UIAB found that no severe circumstances existed.³⁴ The UIAB found that there was “no evidence of D[OL] error which prevented [Appellant] from filing a timely appeal of the Referee’s Decision.”³⁵ The UIAB also found that the “face of the Referee’s Decision displayed a notice of the right of appeal and instructions about how to appeal. It also displayed the following notice: ‘Last Day to File Appeal: 09/20/2014.’”³⁶

³⁰ 19 *Del. C.* § 3318(b) provides that “[u]nless a claimant...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.”).

³¹ See *Flowers-Nichols v. Tri-State Waste Solutions*, 2011 WL 2296307, at *3 (Del. Super. May 31, 2011)(“The Board does not have the power to hear an untimely appeal brought by a party.”).

³² 19 *Del. C.* § 3320 provides that “[t]he Unemployment Insurance Appeal Board [UIAB] may on its own motion, affirm, modify, or reverse any decision of an appeal tribunal...”

³³ *Tribbett v. Unemployment Ins. Appeal Bd.*, 2014 WL 4674394, at *2 (Del. Super. Sept. 17, 2014)(citing *Funk v. Unemployment Ins. Appeal Bd.*, 591 A.2d 222, 225 (Del. 1991).

³⁴ R. at 40.

³⁵ *Id.*

³⁶ *Id.*

Appellant's Opening Brief fails to address the untimeliness issue. However, Appellant asserts in her "Notice of Appeal" to the Court that she did not receive the Referee's letter decision. Delaware law presumes that notice that is correctly stamped, addressed and mailed has been received by the party to whom it was addressed.³⁷ The presumption of receipt may be rebutted where the party asserting lack of notice can show that the mail was never in fact received.³⁸ "Mere denial of receipt is insufficient to rebut the presumption."³⁹ Appellant bears the burden of establishing that she was "free from fault in [her] failure to receive notice of the referee's decision within the ten-day appeal period."⁴⁰ Due process is denied only when the UIAB is at fault for the undeliverable mail.⁴¹

Appellant merely denies receipt of the Referee's letter decision without further explanation. Appellant has failed to meet her burden to show that the letter never in fact received because she has presented no evidence other than her denial of receipt. Additionally, Appellant has failed to show that she is free from fault in her failure to receive the Referee's decision that was addressed and sent to Appellant's address of record. Therefore, Appellant has not rebutted the presumption that she received the Referee's letter decision.

³⁷ *Windom v. Ungerer*, 903 A.2d 276, 282 (Del. 2006).

³⁸ *Hall v. Camper*, 347 A.2d 137, 139 (Del. Super. 1975).

³⁹ *Straley v. Advance Staffing, Inc.*, 2009 WL 3451913, at *2 (Del.).

⁴⁰ *Funk v. Unemployment Ins. Appeal Bd.*, 591 A.2d 222, 226 (Del. 1991).

⁴¹ *See, e.g., McGonigle v. George H. Burns, Inc.*, 2001 WL 1079036, at *2 (Del. Super. Sept. 4, 2001)(holding that the Board is at fault where notice was addressed to a substantially different address than that which was provided).

Because the Court finds that Appellant failed to meet her burden to show that she is free from fault in her failure to receive the Referee's decision and because the Court finds that the UIAB's decision complies with 19 *Del. C.* § 3318 and 19 *Del. C.* § 3320, the Court finds that the UIAB's dismissal is free from legal error. Furthermore, the Court finds that the UIAB's decision is supported by substantial evidence. 19 *Del. C.* § 3318 provides that a Referee's decision will be final absent an appeal within 10 calendar days. Appellant had until September 20, 2014 to file her appeal and did not do so until September 26, 2014. Therefore, there is substantial evidence that Appellant's appeal was untimely.

When considering Appellant's other issues raised in the "Notice of Appeal," the Court recognizes that *pro se* litigants should be afforded some leniency in presenting their case to the Court; however, there is no different set of rules for *pro se* litigants to follow.⁴² Moreover, "the [*pro se* litigant's] brief at the very least must assert an argument that is capable of review."⁴³ The Court finds that Appellant's remaining grounds for appeal asserted in the "Notice of Appeal" are incomprehensible and incapable of review in light of the lack of arguments set forth in Appellant's Opening Brief.

⁴² *Draper v. Med. Ctr. of Del.*, 767 A.2d 796, 799 (Del. 2001).

⁴³ *In re Estate of Hall*, 882 A.2d 761, at *1 (Del. 2005)(Table).

V. CONCLUSION

The Court finds that the UIAB's decision is supported by substantial evidence and free of legal error. Therefore, the decision of the UIAB is hereby **AFFIRMED.**

IT IS SO ORDERED.

/s/ Ferris W. Wharton, Judge