

SUPERIOR COURT
OF THE
STATE OF DELAWARE

RICHARD F. STOKES
JUDGE

SUSSEX COUNTY COURTHOUSE
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Delaware Department of Justice
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RE: *Wisly Estiverne v. Unemployment Insurance Appeal Bd.*,
C.A. No. S13A-11-001 RFS

Date Submitted: February 21, 2014
Date Decided: May 23, 2014

Dear Messrs. Estiverne, Wakley, and Ellis,

Before the Court is the appeal of Wisly Estiverne (“Estiverne”) contesting the decision below rendered by the Unemployment Insurance Appeal Board (the “Board”). The Board’s decision is **AFFIRMED**.

FACTS & PROCEDURAL BACKGROUND

On May 3, 2013, a Claims Deputy/Agency Representative for the Delaware Department of Labor (“DOL”), Division of Unemployment Insurance (the “Division”) determined that due to non-fraudulent actions, an overpayment of Estiverne’s benefits had been established in the amount of \$4,814.00 for 19 weeks, beginning April 21, 2012 to December 29, 2013. This decision was memorialized on

a Notice of Determination form, which was mailed to Estiverne on May 3rd. The form stated that the established findings of fact would become final on May 13, 2013 unless a written appeal was filed. Further, it specified that an appeal must be received or postmarked on or before the date indicated (May 13th).

On May 15, 2013, Estiverne requested in writing an appeal against his previous employer, Mountaire Farms (“Mountaire”), based on the Division’s May 3rd decision. Estiverne claimed that he had documentation regarding the benefits he had received, and that he believed the decision made against him was based on false pretenses and untrue allegations. Estiverne filed his appeal in person at DOL’s office in Georgetown, DE on May 17, 2013.

On May 24, 2013, a DOL Claims Deputy/Agency Representative (“Claims Deputy”) determined that the Division’s May 3rd decision was final and binding due to Estiverne’s failure to file a timely appeal. This decision, memorialized on a separate Notice of Determination form, was based on several findings of fact. First, the Division’s May 3rd decision had been mailed to Estiverne’s address of record at the time; and there was no evidence that the decision was returned by the post office. Further, as the May 3rd decision indicated, Estiverne had until May 13th to file his appeal, after which time the decision would become final. Estiverne filed his appeal on May 17th; and therefore his appeal was considered late. The Claims Deputy

informed Estiverne that a hearing would be held to address only the issue of the timeliness of his appeal. The Claims Deputy's decision was mailed to Estiverne on May 24, 2013.

On June 12, 2013, a hearing was held before a Division appeals referee solely on the issue of whether Estiverne's appeal of the Division's May 3rd decision was timely. The referee heard testimony from a DOL representative who laid out the relevant facts. Estiverne testified through an interpreter that the Division's May 3rd decision was delivered to his home on May 15th, two days after the appeal period closed and the decision became final.

In a written opinion, the referee found as matters of fact that Estiverne was issued the Division's decision concerning overpayment of benefits on May 3rd, that he received this decision at his address of record, that the form memorializing the decision specified the date by which Estiverne was required to appeal it, that Estiverne did not appeal it on or before that date, that he received the decision two days after its date for appeal, and that Estiverne personally filed his appeal two days later. The referee stated that a claimant of a Division determination has a statutorily-specified period of time to file an appeal, and that late appeals could not be accepted absent administrative error on the part of DOL. The referee stated that the Division's decision was properly mailed to Estiverne. Any subsequent error in the decision's not

reaching Estiverne had to be borne by Estiverne, rather than DOL. Therefore, the referee found Estiverne's appeal untimely and affirmed the Division's decision, holding it to be final and binding.

Estiverne appealed the referee's decision to the Board. In its written opinion, the Board found no error in the determination reached by the referee, and adopted the referee's decision as its own. The Board denied application for further review, and affirmed the referee's decision. Estiverne's appeal to this Court followed.

STANDARD OF REVIEW

_____ When reviewing appeals from the Board, this Court examines only the record upon which the Board relied in making its decision.¹ This Court only determines whether substantial evidence supported the Board's decision, and whether the Board's decision lacked legal error.² The requisite degree of evidence is only "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion."³ Evaluating the evidence, deciding credibility issues, and determining

¹ *Burgos v. Perdue Farms, Inc.*, 2011 WL 1487076, at *2 (Del. Super. Apr. 19, 2011).

² *Id.*

³ *Id.*

factual questions are not within this Court’s purview.⁴ Ultimately, the Court only decides whether a sufficient basis supports the Board’s decision.⁵

Procedural decisions by the Board are reviewed for abuse of discretion.⁶ These decisions will not be considered “abuse[s] of discretion unless [they are] based on clearly unreasonable or capricious grounds or the Board exceeds the bounds of reason in view of the circumstances and . . . ignored recognized rules of law or practice so as to produce injustice.”⁷ If no abuse of discretion exists, the Court will affirm the Board’s decision. In cases involving untimely appeals, the Court first decides “if there are facts to support the finding that the appeal was untimely.”⁸ The Court then decides “whether the Board abused its discretion by not exercising, *sua sponte*, its power to review the record for an injustice despite the untimely appeal.”⁹

⁴ *Id.*

⁵ *Id.*

⁶ *Hartman v. Unemployment Ins. Appeal Bd.*, 2004 WL 772067, at *2 (Del. Super. Apr. 5, 2004) (citation omitted).

⁷ *Id.* (citation omitted) (internal quotation marks omitted).

⁸ *Anderson v. Comfort Suites*, 2004 WL 304359, at *2 (Del. Super. Feb. 12, 2004).

⁹ *Id.* (citation omitted).

ANALYSIS

Parties' Contentions

Estiverne states that he does not agree with the Board's decision against him. He states that he only filed a claim for unemployment insurance when he was not working; thus, he could not owe any overpayments. He claims that he was not allotted enough time from when the Division's decision was mailed on May 3rd to when it was received by him on May 15th. Estiverne claims that he was not sent any certified mail notifying him of the date to file an appeal until after the appellate period closed.

The Board asserts that the Court must affirm the Board's decision, reiterating the relevant sequence of events. The Board argues that there is substantial evidence in the record supporting its findings, which are free from legal error. It neither abused its discretion, nor act arbitrarily and capriciously.

In reply, Estiverne posits why the Division initially qualified him to collect unemployment insurance benefits, and now seeks repayment of those benefits. He charges that his former employer, Mountaire, has apparently given false information to the Division against him. He still does not understand why he was terminated from Mountaire, but claims he was wrongfully terminated, as opposed to quitting. He states that Mountaire first gave him three days off without pay. When he reported

back to work, a human resources representative told him to return home and he would be notified further. Three days later, he was informed that he was terminated.

Discussion

19 *Del. C.* § 3318 states that “[u]nless a claimant . . . files an appeal within 10 calendar days after [a] 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.”¹⁰ “The time for filing an appeal is an express statutory condition of jurisdiction that is both mandatory and dispositive.”¹¹ Without adherence to this statutory directive, an appellant cannot invoke appellate jurisdiction.¹²

If the statutory period runs, the appeal is considered untimely and, generally, the Board will not accept jurisdiction over it.¹³ However, under 19 *Del. C.* § 3220, the Board may act *sua sponte* and consider the merits of a procedurally barred

¹⁰ 19 *Del. C.* § 3318(b). A similar 10-day rule regarding appeals to the Board is also imposed by § 3318(c).

¹¹ *Duncan v. Delaware Dep’t of Labor*, 2002 WL 31160324, at *2 (Del. Super. Sept. 10, 2002) (citations omitted).

¹² *Lively v. Dover Wipes Co.*, 2003 WL 21213415, at *1 (Del. Super. May 16, 2003) (citation omitted) (internal quotation marks omitted).

¹³ *Id.* (citations omitted).

appeal.¹⁴ Nevertheless, the Board will only do this “in those cases where there has been some administrative error on the part of . . . [DOL] which deprived the claimant of the opportunity to file a timely appeal, or in those cases where the interests of justice would not be served by inaction.”¹⁵

The Court finds the Board’s decision regarding the untimeliness of Estiverne’s appeal to be supported by substantial evidence and free from legal error. It is undisputed that the Division’s decision was properly mailed to Estiverne’s correct address and was not returned as “undeliverable.” Under § 3318, the time for an appeal triggers on the date the Division mails its decision to the appellant “unless the mailing fails to reach the recipient because of a mistake made by [the] Claim’s Deputy. Delaware law presumes that a mailing with the proper address and postage has been received by the intended claimant.”¹⁶ This presumption must also encompass the presumption that a properly addressed mailing not only reaches the intended claimant, but reaches the claimant *on time* (*i.e.*, within a timeframe that is

¹⁴ *Funk v. Unemployment Ins. Appeal Bd.*, 591 A.2d 222 (Del. 1991).

¹⁵ *See id.* at 225–26 (quoting the reasoning given by the Board for not often reviving a defunct appeals *sua sponte*).

¹⁶ *Lively*, 2003 WL 21213415, at *1 (citations omitted).; *Anderson*, 2004 WL 304359, at *2 (“Properly addressed mail is presumed to be received by the addressee. The addressee’s mere denial of receipt of the notice is insufficient to rebut this presumption.”) (quoting another source (internal quotation marks omitted)).

relevant). Otherwise, the entire presumption itself would be meaningless. Thus, it is presumed that the Division's decision regarding Estiverne's overpayment of benefits, properly addressed and mailed to him, reached him on or before May 13th. Estiverne's bare assertion that he did not receive the decision until May 15th, without any further evidence, is not enough to overcome this presumption. This, coupled with the fact that the record contains no evidence of administrative error on the part of DOL, constitutes the substantial evidence supporting the Board's agreement with the referee that the Division's decision was properly mailed to Estiverne and that his subsequent appeal was untimely.

The Court also concludes that the Board did not abuse its discretion by failing to accept Estiverne's untimely appeal *sua sponte*.¹⁷ "Cases in which the [Board] assumes jurisdiction *sua sponte* to consider an untimely appeal are few and far between and involve severe circumstances."¹⁸ This is not one of those cases. Estiverne claims that he did not receive the Division's decision until May 15th, two days too late. Often times in cases involving untimely appeals to the Board, evidence exists that the untimeliness can be attributed to some sort of fault on the part on the

¹⁷ The Court notes that the Board, in its opinion, did not explicitly state that it was refusing to take *sua sponte* action. The Board did, however, deny application for further review, thereby implicitly refusing to take *sua sponte* action.

¹⁸ *Stacey v. People's Settlement*, 2009 WL 891054, at *2 (Del. Super. Mar. 31, 2009) (citation omitted) (internal quotation marks omitted).

appellant.¹⁹ “Where the lateness of the appeal is due to the claimant’s unintentional or accidental actions, and not due to an administrative error, the Claims Deputy’s determination will become final and § 3318(b) will jurisdictionally bar the claim from further appeal.”²⁰ In this case, the record is void of any evidence that Estiverne contributed, intentionally or unintentionally, to his untimely appeal. Estiverne simply claims that he did not receive the Division’s decision until it was too late. However, “[i]t has long been the position of the [Board] and this Court that absent a [Board] error, the mere assertion that one did not receive the decision is not a sufficient reason for the [Board] to assert jurisdiction of an untimely appeal.”²¹ On the same token, an appellant’s bare claim that he received the decision late, without any corroborating evidence, is likewise not a sufficient reason for the Board to assert jurisdiction over his untimely appeal. This, coupled with no evidence of administrative error on DOL’s part, supports the Board’s refusal to hear Estiverne’s appeal *sua sponte*.

¹⁹ See, e.g., *id.* at * 1–2 (affirming Board’s decision to not take up appeal because of no administrative error and appellant’s failure to timely appeal resulted from appellant’s misunderstanding of when she had to appeal and failure to read the spot on the DOL form stating when the appellate period closed).

²⁰ *Hartman v. Unemployment Ins. Appeal Bd.*, 2004 WL 772067, at *2 (Del. Super. Apr. 5, 2004) (citation omitted).

²¹ *Lively*, 2003 WL 21213415, at *1 (citations omitted).

Based on the foregoing, the Board's decision is **AFFIRMED**.

IT IS SO ORDERED.

Very truly yours,

/s/ Richard F. Stokes

Richard F. Stokes

Cc: Judicial Case Manager
Prothonotary