## SUPERIOR COURT OF THE STATE OF DELAWARE

RICHARD F. STOKES

JUDGE

SUSSEX COUNTY COURTHOUSE 1 THE CIRCLE, SUITE 2 GEORGETOWN, DE 19947 TELEPHONE (302) 856-5264

August 13, 2013

Denise L. DeVrieze 18622 Whaley's Corner Road Georgetown, DE 19947

Mountaire Farms of Delaware, Inc. Attn: Olga Anderson P.O. Box 1320 Millsboro, DE 19966

RE: Denise L. DeVrieze v. Mountaire Farms of Delaware, Inc. and Unemployment Ins. Appeal Bd. C.A. No. S13A-03-006 RFS

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

Decision Affirmed.

Dear Ms. DeVriez:

I have read your letter brief and the record of the proceedings as provided by the Department of Labor, Division of Unemployment Insurance ("Division"). Your employer, Mountaire Farms of Delaware, Inc. ("Mountaire") did not file an answering brief, and the Board took no position on the merits. Thus, your appeal is decided on the pleading filed and on the record below, as deemed necessary by the Court. Super.Ct.Civ. 107(f). I find that the Board's dismissal of your appeal and denial of your petition for a rehearing were correct both factually and legally.

A Division claims deputy granted your petition for unemployment benefits, and Mountaire appealed this decision. The appeals referee held a hearing and reversed the claims deputy's decision, finding instead that you were discharged for

just cause because of violation of Mountaire's attendance policy.

You appealed to the Board and were notified of the time and place of the Board's hearing. You failed to appear. For this reason, the Board dismissed your appeal on March 13, 2013. You requested a rehearing based on your statement that you appeared at the Georgetown location rather than the Dover office. In its discretion, the Board declined to rehear your case and declared its dismissal of your appeal dated March 13, 2013 to be the final and binding decision.

On appeal to this Court, you assert that you tried to attend the hearing but went to the wrong location. You also argue the merits of the case.

This Court addresses the merits of an appeal of an administrative decision only when administrative remedies have been exhausted. You concede that you did not attend the hearing that was scheduled to be held in Dover, and that you received written notice that presented the full address. The Board did not abuse its discretion in dismissing your appeal because you failed to appear. The case having been appropriately dismissed, this Court has no jurisdiction to consider the merits of your appeal.

You requested that the Board grant you a rehearing. When addressing a Board's authority to grant or deny a rehearing, the claimant must show "excusable neglect." This phrase means the kind of neglect which might have been the act of a reasonably prudent person under the same circumstances. A reasonably prudent person would have read and followed the instructions on the notice of the Board hearing, which you attached to your letter brief.

In rejecting your petition for a rehearing, the Board exercised its discretion pursuant to 19 Del.Admin.C. § 1201-7.2. The Board promulgates regulations to

<sup>&</sup>lt;sup>1</sup>Petrilli v. Discover Bank, 2012 WL 1415705, \*3 (Del.Super.)(citing Grifin v. Daimler Chrysler, 2000 WL 33309877, \*2 (Del.Super.); Archambault v. McDonald's Restaurant, 1999 WL 161137 (Del.Super.)).

 $<sup>^{2}</sup>Id$ .

<sup>&</sup>lt;sup>3</sup>Mullins v. Dover Downs, 1998 WL 278402 (Del.Super.).

 $<sup>^{4}</sup>Id$ .

ensure prompt determination of the parties' rights. The Board's decision is an abuse of discretion only if it is based on "clearly unreasonable or capricious grounds."<sup>5</sup>

The Board did not act unreasonably or capriciously in denying your petition for a rehearing. You had a copy of the notice which gave the correct address, and going to a different address does not constitute excusable neglect.

For these reasons, the Board's dismissal of your petition and denial of your request for a rehearing are **AFFIRMED**.

## IT IS SO ORDERED.

Very truly yours,

/s/ Richard F. Stokes

Richard F. Stokes

Original to Prothonotary

xc: Unemployment Insurance Appeals Board Mountaire Farms of Delaware, Inc.

<sup>&</sup>lt;sup>5</sup>Nardi v. Lewis, 2000 WL 303147, \*2 (Del.Super.).