SUPERIOR COURT OF THE STATE OF DELAWARE

T. HENLEY GRAVES
RESIDENT JUDGE

SUSSEX COUNTY COURTHOUSE 1 THE CIRCLE, SUITE 2 GEORGETOWN, DE 19947 (302) 856-5257

December 6, 2013

James T. Wakley, Esquire Thomas H. Ellis, Esquire Delaware Department of Justice 820 N. French Street, 6th Floor Wilmington, DE 19801 Shawn D. Johnson 12301 North Old State Rd. Ellendale, DE 19941

RE: Johnson v. Perdue Farms and the Unemployment Insurance Appeal Board, C.A. No. S13A-01-005 (THG)

Upon Consideration of Appellant's
Appeal of Decision of the
Unemployment Insurance Appeal Board, AFFIRMED.

Submitted: December 3, 2013 Decided: December 6, 2013

Dear Counsel and Mr. Johnson:

This is an appeal by Shawn Johnson (hereinafter, "Johnson") from a Decision of the Unemployment Insurance Appeal Board (hereinafter, the "Board") in which Johnson's appeal was dismissed as untimely. The Court finds there was substantial evidence to support the Board's decision. Therefore, the decision of the Board is **AFFIRMED.**

PROCEDURAL HISTORY¹

On November 5, 2012, a Department of Labor Claims Deputy determined that Johnson had been terminated without just cause and was, consequently, entitled to receive unemployment benefits. Subsequently, Employer Perdue Farms appealed that determination. On December 11, 2012, a hearing was held before a Department of Labor Appeals Referee. On December 13, 2012, by letter, the Appeals Referee reversed the determination of the Claims Deputy and held that Johnson had in fact been terminated for just cause and was thereby barred from receiving further unemployment benefits. The letter, dated December 13, 2012, clearly indicated Johnson's right to further appeal the Appeals Referee's decision and included a date of December 23, 2012, as Johnson's last day to file an appeal.² Johnson did not file his appeal until December 27, 2012. As a result, on January 18, 2013, the Board dismissed Johnson's appeal. Consequently, Johnson has timely appealed the Board's decision to this Court.

STANDARD OF REVIEW

When reviewing the decisions of the Board, this Court must determine whether the Board's findings and conclusions of law are free from legal error and are supported by substantial evidence in the record.³ "Substantial evidence" is "such relevant evidence as a reasonable mind might accept

¹ Recitation of the procedural history is adopted from the Division of Unemployment Insurance Appeals from the Decision of R. Eric Hacker, *Johnson v. Perdue Farms*, Docket No. 70872960 (December 13, 2012); Division of Unemployment Insurance Appeal Board on Appeal from the Decision of R. Eric Hacker, *Johnson v. Perdue Farms*, Docket No. 70872960 (January 18, 2013).

² Because December 23, 2012 was a Sunday, the appeal would have been deemed timely if filed by December 24, 2012.

³ Unemployment Ins. Appeal Bd. v. Martin, 431 A.2d 1265 (Del. 1981); Pochvatilla v. United States Postal Serv., 1997 WL 524062 (Del. Super. Jun. 9, 1997); 19 Del. C. § 3223(a)

as adequate to support a conclusion."⁴ The Court's review is narrow: "It is not the appellate court's role to weigh the evidence, determine credibility questions or make its own factual findings, but merely to decide if the evidence is legally adequate to support the agency's factual findings."⁵

DISCUSSION

The Appeals Referee's decision was dated December 13, 2012, and mailed to Johnson that same day. The letter was mailed to Johnson at the address he had provided to the Department of Labor. A letter that is correctly addressed and stamped is presumed to be received by the addressee.⁶ Included within the December 13, 2012 letter was notice that Johnson had 10 days to file an appeal with the Board. The 10-day timeframe for filing an appeal is jurisdictional. Specifically, Title 19 of the Delaware Code, Section 3318, states "... the opinion of the Referee 'shall be deemed to be the final decision of the Department of Labor unless within 10 days after the date of notification or mailing of such decision further appeal is initiated..." It is important to note that this 10-day timeframe is calculated based on calendar days and not business days.⁸ Thus, the last day Johnson

^{(&}quot;In any judicial proceeding under this section, the findings of the [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.").

⁴ Gorrel v. Division of Vocations Rehab., 1996 WL 453356, at *2 (Del. Super. July 31, 1996).

⁵ McManus v. Christiana Serv. Co., 1197 WL 127953, at *1 (Del. Super. Jan. 31, 1997).

 $^{^6}$ Lively v. Dover Wipes, 2003 WL 21213415 (Del. Super. May 16, 2003).

⁷ 19 *Del. C.* § 3318.

⁸ Safford v. Unemployment Insurance Appeal Board, 2013 WL 6039334, at *2 (Del. Super. Oct. 21, 2013). "While § 3318(c) specifies a ten-day timeframe without reference to calendar days or business days, 'the logical presumption is that [this section] is based on calendar days."

could file his appeal with the Board was December 24, 2012. However, Johnson failed to file his appeal by this date and did not file until December 27, 2012. Consequently, the Board dismissed Johnson's appeal as untimely.

Furthermore, the Board does not have the authority to act "sua sponte beyond the ten-day appeal period to consider a case where no valid appeal had been filed by the parties." However, the Board may do this "only in those cases where there has been some administrative error on the part of the Department of Labor which deprived the claimant of the opportunity to file a timely appeal, or in those cases where the interests of justice would be served by inaction." In the case at bar, the Board found no evidence of Department of Labor error which would have prevented Johnson from timely filing his appeal. The Board claimed that the cause for Johnson's untimely filing was within his control, as opposed to being caused by the Department of Labor staff, and as a result the Board had no authority but to dismiss his untimely appeal. The Court finds substantial evidence in the record sufficient to support the Board's finding. Additionally, the Board's decision not to hear Johnson's appeal because it was untimely is in accordance with the applicable law.

CONCLUSION

Based on the foregoing, the Board's decision not to hear Johnson's appeal is **AFFIRMED.**IT IS SO ORDERED.

⁹ Funk v. Unemployment Insurance Appeal Board, 591 A.2d 222, 225 (Del. 1991).

¹⁰ *Id*.

Very truly yours,

/s/ T. Henley Graves

T. Henley Graves

cc:

Prothonotary's Office Unemployment Insurance Appeal Board cc: