

SUPERIOR COURT
OF THE
STATE OF DELAWARE

E. SCOTT BRADLEY
JUDGE

1 The Circle, Suite 2
GEORGETOWN, DE 19947

November 9, 2012

Erik C. Grandell, Esquire
1473 Spruce Avenue
Wilmington, DE 19805

RE: *Angela Edmundson v. Dover Arby's t/a Laurel Goose Creek*
C.A. No. S12A-01-002

Dear Mr. Grandell:

This is my decision on Angela Edmundson's appeal of the Unemployment Insurance Appeal Board's decision not to exercise jurisdiction over her untimely appeal of the Claims Deputy's denial of her claim for unemployment benefits. Edmundson worked as a manager at a convenience store. She was fired for falsifying the store's records to conceal inventory shortages. After being fired, Edmundson filed a claim for unemployment benefits. The Claims Deputy denied Edmundson's claim for unemployment benefits, reasoning that Edmundson was fired for just cause. The Claims Deputy mailed her decision to Edmundson on November 3, 2011, to the address Edmundson provided to the Department of Labor. The decision contained instructions on how to file an appeal and the due date for filing an appeal. The letter containing the decision was returned to the DOL the following day marked "undeliverable." Pursuant to 19 *Del.C.* § 3318(b), the last day for Edmundson to file an appeal of the Claims Deputy's decision was November 13, 2011. Edmundson did not file an appeal until November 18, 2011, or five days past the cutoff date. When Edmundson came into the DOL office on November 18th to file her appeal, she provided the office with the same mailing

address as she did when she filed her claim for unemployment benefits.

The Appeals Referee held a hearing to consider whether there was a good reason to consider Edmundson's late appeal. Edmundson testified that she failed to file her appeal on time because she did not receive the Claims Deputy's decision in the mail. Edmundson explained that she had been in the process of moving from Dagsboro, Delaware, to Salisbury, Maryland, and had filled out a change-of-address form with the Post Office. Edmundson did not inform the DOL about her address change. Edmundson also never moved to Salisbury, Maryland.

The Appeals Referee affirmed the Claims Deputy's decision, concluding that while Edmundson clearly did not receive the Claims Deputy's decision in the mail, it was not due to any administrative error on the part of the DOL. The decision was properly addressed and mailed. The Appeals Referee found that it was Edmundson's duty to inform the DOL if she wanted to receive mail from the DOL at an address different from the one she had originally provided to the DOL.

Edmundson filed an appeal of the Appeals Referee's decision with the Board. The Board affirmed the Appeals Referee's decision, finding that there was no evidence of departmental error in the mailing and no adequate grounds to exercise jurisdiction *sua sponte*. Edmundson then filed an appeal of the Board's decision with this Court.

STANDARD OF REVIEW

The Supreme Court and this Court repeatedly have emphasized the limited appellate review of the factual findings of an administrative agency. On appeal from a decision of the Board, this Court is limited to a determination of whether there is substantial evidence in the record sufficient

to support the Board’s findings, and that such findings are free from legal error.¹ Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.² The Board’s findings are conclusive and will be affirmed if supported by “competent evidence having probative value.”³ The appellate court does not weigh the evidence, determine questions of credibility, or make its own factual findings.⁴ It merely determines if the evidence is legally adequate to support the agency's factual findings.⁵ Absent an error of law, the Board's decision will not be disturbed where there is substantial evidence to support its conclusions.⁶

DISCUSSION

Edmundson argues that the Board (1) abused its discretion when it failed to conduct an evidentiary hearing or remand the case to the Appeals Referee so she could supplement the record, (2) erred as a matter of law when it held that her filing of her untimely appeal was unrelated to any factor within the control of the DOL, and (3) abused its discretion in failing to exercise jurisdiction over her appeal pursuant to 19 *Del.C.* § 3320.

I. Supplementing the Record

Edmundson argues that the Board abused its discretion when it failed to conduct an

¹ *Unemployment Ins. Appeals Board of the Dept. of Labor v. Duncan*, 337 A.2d 308, 309 (Del. 1975).

² *Oceanport Ind. v. Wilmington Stevedores*, 636 A.2d 892, 899 (Del. 1994); *Battista v. Chrysler Corp.*, 517 A.2d 295, 297 (Del. Super. 1986), *app. dismiss.*, 515 A.2d 397 (Del. 1986).

³ *Geegan v. Unemployment Compensation Commission*, 76 A.2d 116, 117 (Del. Super. 1950).

⁴ *Johnson v. Chrysler Corp.*, 213 A.2d 64, 66 (Del. 1965).

⁵ 29 *Del.C.* §10142(d).

⁶ *Dallachiesa v. General Motors Corp.*, 140 A.2d 137 (Del. Super. 1958).

evidentiary hearing or to remand the case to the Appeals Referee so that she could supplement the record. 19 *Del.C.* § 3320(a) states:

The Unemployment Insurance Appeal Board [UIAB] may on its own motion, affirm, modify, or reverse any decision of an appeal tribunal on the basis of the evidence previously submitted to the appeal tribunal or it may permit any of the parties to such decision to initiate further appeal before it. The [UIAB shall remand a case to the appeal tribunal to supplement the existing evidence when it is determined to be insufficient to form a substantial basis for a decision...

Edmundson argues that the Board should have allowed her the opportunity to provide additional testimony to explain why she never received the Claims Deputy's decision. In reaching its decision, the Board had the complete record before it. That included the Claims Deputy's and Appeals Referee's decisions, the transcript from the hearing before the Appeals Referee, and Edmundson's appeal to the Board. During the December 14th hearing, Edmundson explained to the Appeals Referee that she did not receive the Claims Deputy's decision because she had filed a change-of-address form with the Post Office. Edmundson never ended up moving to Salisbury, Maryland, which resulted in her mail not going to either place. The sole issue before the Board was the timeliness of Edmundson's appeal to the Appeals Referee. The explanation that Edmundson seeks to further explain was already fully set forth in the record. The Board simply did not find Edmundson's explanation adequate. There was substantial evidence in the record for the Board to find that (1) no DOL error existed in the mailing of the Claims Deputy's decision to Edmundson, and (2) that Edmundson failed to notify the DOL about her address change. There is simply no reason for concluding that the Board abused its discretion when it declined to conduct an evidentiary hearing or remand the case to the Appeals Referee for further proceedings.

II. The DOL's Actions

Edmundson argues that the Board erred as a matter of law when it held that the filing of her untimely appeal was unrelated to any factor within the control of the DOL. Indeed, Edmundson places the entire blame on the DOL, stating the Appeals Referee's decision was "returned to the Board in the first instance because of factors exclusively within the Board's control." Edmundson argues that because the DOL was aware that her notice was returned as 'undeliverable' that it should have made other arrangements to notify her, whether by telephone or using another method of mail delivery.

The Board has the right to promulgate its own rules for hearings and appeals. The Legislature has created a method for notice to be supplied by the DOL to a Claimant. That method is through the mail.⁷ The statute does not provide for any other method of notice. Edmundson was aware of this rule and knew that the notice and findings would arrive in the mail. Even though she was aware of this rule, Edmundson changed her address with the Post Office, but failed to inform the DOL of her address change. The law is clear that the Board's administrative process should not be circumvented by a claimant's lack of diligence concerning the mail.⁸ The Claims Deputy's Notice was not returned to the DOL in the first instance because of factors exclusively within the control of the Board, but due to Edmundson's actions. A claimant that is expecting an important decision in the mail should make all efforts to receive that decision. Edmundson did not do that. It was Edmundson's duty to inform the DOL about her address change. The DOL properly mailed

⁷ 19 *Del.C.* §3318(b) states that "[u]nless a claimant or a last employer who has submitted a timely and completed separation notice in accordance with §3317 of this title files an appeal within 10 calender after such Claims Deputy's determination was **mailed** to the last known addresses of the claimant and the last employer..." (Emphasis added).

⁸ *Flowers-Nichols v. Tri-State Waste Solutions*, 2011 WL 2176515, at *4 (Del. Super. May 31, 2011).

Edmundson's notice to the address she provided. It was not the DOL's responsibility to figure out another way to reach Edmundson. Edmundson claims that she did not sit idly by waiting for the decision to arrive and called the DOL every couple of days to check on the status of her claim. While this may be true, it is irrelevant. The DOL does not give out a verbal decision to a claimant. It mails the decision to the claimant as provided for in §3318(b). Edmundson simply failed to do the one thing that would have guaranteed her receipt of the Claims Deputy's decision, and that was inform the DOL about her change of address. I find no error in the Board's finding that fault rested solely with Edmundson.

III. Jurisdiction

Edmundson argues that the Board abused its discretion when it failed to exercise jurisdiction over her appeal. The Board can avoid the jurisdictional requirement in certain situations.⁹ This is not one of those situations. In *Funk*, the Board explained its caution when exercising its power under 19 *Del.C.* §3320:

...in a situation where a party has filed a late appeal from an administrative decision, the Board is extremely cautious in assuming jurisdiction over the matter. It does so 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 not be served by inaction. Such cases have been few and far between and involved circumstances much more severe than those in this case.¹⁰

There is no evidence in the record of DOL error. In fact, all of the evidence in the record indicates that the DOL mailed the Claims Deputy's decision to the address provided by Edmundson. It was Edmundson's actions in changing her mailing address without notifying the DOL that caused her to

⁹ *Funk v. UIAB*, 591 A.2d 222 (Del. 1991).

¹⁰ *Funk*, 591 A.2d at 225.

not receive the Claims Deputy's decision. There were no circumstances that would require the Board to act in the "interests of justice." Therefore, the Board did not abuse its discretion by declining to hear Edmundson's appeal *sua sponte*.

CONCLUSION

The Unemployment Insurance Appeal Board's decision is **AFFIRMED**.

IT IS SO ORDERED.

Very truly yours,

/s/ E. Scott Bradley

E. Scott Bradley