

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR KENT COUNTY**

CHARLES E. TRIBBETT, JR.,	:	
	:	C.A. No: K14A-02-002 RBY
_____ Appellant,	:	
	:	
v.	:	
	:	
UNEMPLOYMENT INSURANCE	:	
APPEAL BOARD,	:	
	:	
Appellee.	:	

*Submitted: August 8, 2014
Decided: September 17, 2014*

*Upon Consideration of Appellant's Appeal from
the Unemployment Insurance Appeal Board*
AFFIRMED

ORDER

Charles E. Tribbett, Jr., *Pro se.*

Stacey Stewart, Esquire, Deputy Attorney General, Department of Justice,
Wilmington, Delaware for Appellee.

Young, J.

SUMMARY

This is an appeal from a decision of the Unemployment Insurance Appeal Board (“the Board”) holding that Charles E. Tribbett, Jr.’s (“Appellant”) appeal from a decision by the Appeals Referee was untimely. Given the indisputable facts set forth in the record, this Court finds that the decision of the Board was proper. Appellant’s appeal was filed thirteen days past the deadline set out by the Referee. Appellant has not provided any justification for the delay. Moreover, the Board’s decision is founded in both the appropriate statute governing timely appeals and the substantial evidence in the record. There is, further, no evidence of an abuse of discretion on the part of the Board. Accordingly, the decision of the Board is **AFFIRMED**.

FACTS AND PROCEDURAL POSTURE

On November 18, 2013, the Department of Labor (“the Department”) issued a decision finding that, as Appellant was dismissed from his position at the Rockford Center for just cause, pursuant to 19 *Del. C.* § 3314(2), he was barred from receiving further unemployment insurance benefits. The decision also indicated Appellant would become eligible to receive benefits again, upon being employed for a period of at least 4 subsequent weeks. The reason for Appellant’s dismissal from the Rockford Center was that he had failed to report to work on both October 15, 2013 and October 16, 2013, without notifying his employer of the justification for his absence. As it turns out, Appellant was being held at the James T. Vaughn Correctional Center at this time, due to a D.U.I. arrest.

Appellant timely filed his appeal of the Department’s decision with the Appeals Referee on November 26, 2013 – two days before the deadline set forth in the

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Department's decision. The hearing date for the appeal was set for December 23, 2013. However, on the set date, Appellant failed to appear before the Referee. Therefore, the matter was dismissed.

Appellant was given until January 3, 2014, to appeal the Referee's dismissal. Otherwise, pursuant to 19 *Del. C.* § 3318, the decision would become final. The Appellant did not file his appeal of the Referee's decision with the Board until January 16, 2014. On January 29, 2014, the Board issued its decision dismissing Appellant's appeal as untimely, given its being thirteen days overdue.

STANDARD OF REVIEW

For administrative board appeals, this Court is limited to reviewing whether the Board's decision is supported by substantial evidence and free from legal errors.¹ Substantial evidence is that which "a reasonable mind might accept as adequate to support a conclusion."² It is "more than a scintilla, but less than preponderance of the evidence."³ An abuse of discretion will be found if the board "acts arbitrarily or capaciously...exceeds the bounds of reason in view of the circumstances and has ignored recognized rules of law or practice so as to produce injustice."⁴ Where an

¹ 29 *Del. C.* §10142(d); *Avon Prods. v. Lamparski*, 203 A.2d 559, 560 (Del. 1972).

² *Olney v. Cooch*, 425 A.2d 610, 614 (Del. Super. Ct. 1981) (citing *Consolo v. Fed. Mar. Comm'n*, 383 U.S. 607, 620 (1966)).

³ *Id.* (quoting *Cross v. Calfano*, 475 F.Supp. 896, 898 (M.D. Fla. 1979)).

⁴ *Delaware Transit Corp. v. Roane*, 2011 WL 3793450, at *5 (Del. Super. Ct. Aug. 24, 2011) (quoting *Straley v. Advanced Staffing, Inc.*, 2009 WL 1228572, at *2 (Del. Super. Ct. Apr. 30, 2009)).

agency has interpreted and applied a statute, the court's review is *de novo*.⁵ In the absence of an error of law, lack of substantial evidence or abuse of discretion, the Court will not disturb the decision of the board.⁶

DISCUSSION

_____The Board dismissed Appellant's appeal of the Referee's decision for being untimely. Pursuant to 19 *Del. C.* § 3318, where an Appellant does not file his appeal within ten days of the Referee's decision, the decision becomes final and is not appealable. Indeed, the appellate jurisdiction of the Board relies upon the timely filing of an appeal.⁷ Otherwise, the Board lacks jurisdiction.⁸

In its decision, the Board recognized its ability, pursuant to 19 *Del. C.* § 3320, to exercise its discretion and hear untimely appeals. However, the Board declined to do this as such discretionary action is limited to "severe circumstances."⁹ Moreover, finding no evidence of departmental error, the Board concluded that Appellant's overdue filing resulted entirely from his own neglect. Thus, the Board declined to review Appellant's appeal.

Appellant's opening brief misguidedly speaks to the underlying case – that is

⁵ *Lehman Brothers Bank v. State Bank Commissioner*, 937 A.2d 95, 102 (Del. 2007).

⁶ *Anchor Motor Freight v. Ciabattoni*, 716 A.2d 154, 156 (Del. 1998).

⁷ *Flowers-Nichols v. Tri-State Waste Solutions*, 2011 WL 2296307, at *3 (Del. Super. Ct. May 31, 2011) ("The Board does not have the power to hear an untimely appeal brought by a party").

⁸ *Wilson v. Masten Lumber*, 1993 WL 590326 (Del. Super. Ct. Dec. 21, 1993).

⁹ *Funk v. Unemployment Ins. Appeal Bd.*, 591 A.2d 222, 225 (Del. 1991).

the Department's decision to deny Appellant's receipt of unemployment benefits. This is not the issue presently before the Court. Subsequent to filing his opening brief, Appellant also contacted this Court via written letter dated August 5, 2014, in which he spoke to his failure to attend the scheduled hearing before the Appeals Referee. Again, this is not the issue presently before the Court. Appellant has further failed to address the reasons for his having filed the appeal to the Board thirteen days past the due date. In addition, the Court does not find any evidence in the record that the overdue filing resulted from agency error.¹⁰

The Board acted properly in dismissing Appellant's appeal as untimely. This decision was within the bounds of the statute controlling timely filing and was based on substantial evidence.¹¹ 19 *Del. C.* § 3318 plainly states that a decision will be final absent an appeal within 10 days. The Referee's decision expressly stated that Appellant had until January 3rd to file his appeal. Appellant did not do so until the 16th – well past the stated deadline. Appellant has not provided any justification for the delay; and the record does not show the Department was at fault.¹² The Board's decision was based solely on the sufficient evidence before it and according to the controlling statute. The Court sees no indication this decision was based in caprice

¹⁰ See e.g., *McGonigle v. George H. Burns, Inc.*, 2001 WL 1079036 at *3 (Del. Super. Ct. Sept. 4, 2001) (appeal was not untimely where belated filing resulted from administrative error).

¹¹ *Avon Prods.*, 203 A.2d T 560 (court is limited to reviewing whether the Board's decision is supported by substantial evidence and free from legal errors).

¹² *McGonigle* 2001 WL 1079036 at *3.

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or was arbitrary.¹³ Thus, neither did the Board abuse its discretion.¹⁴ _____

CONCLUSION

Due to Appellant's untimely filing of his appeal, the Board correctly determined that it lacked jurisdiction, declining review. The decision of the Board is **AFFIRMED.**

IT IS SO ORDERED.

/s/ Robert B. Young
J.

RBY/lmc

oc: Prothonotary
cc: Stacey Stewart, Esq.
Charles E. Tribbett, Jr. (*via U.S. mail*)
Rockford Center (*via U.S. mail*)
Opinion Distribution
File

¹³ *Delaware Transit Corp.*, 2011 WL 3793450 at *5.

¹⁴ *Id.*