

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE  
IN AND FOR NEW CASTLE COUNTY**

LEONARD L. BROCHU	)	
	)	
Appellant,	)	
	)	
v.	)	
	)	C.A. No. N12A-06-001 CLS
ELANCO, INC.,	)	
	)	
Appellee.	)	
	)	

Date Submitted: December 13, 2012

Date Decided: March 22, 2013

On Appeal from the Unemployment Insurance Appeal Board. **AFFIRMED.**

**ORDER**

Leonard L. Brochu. Rising Sun, Maryland. *Pro Se* Appellant.

Niel R. Lapinski, Esq., Gordon Fournaris & Mammarella, Wilmington, Delaware.  
Attorney for Elanco, Inc.

Caroline Lee Cross, Esq. Deputy Attorney General. Department of Justice.  
Wilmington, Delaware. Attorney for the Unemployment Insurance Appeal Board.

**Scott, J.**

## Introduction

Before the Court is Appellant Leonard L. Brochu's ("Appellant") appeal from the decision of the Unemployment Insurance Appeal Board (the "Board"). For the following reasons, the Board's decision is **AFFIRMED**.

## Background

Appellant worked as a welder for Elanco, Inc. ("Employer") from 1991 until November 3, 2011.<sup>1</sup> On November 6, 2011, Appellant filed a claim for unemployment insurance benefits<sup>2</sup> and the claims deputy determined that Appellant was discharged without just cause and was eligible to receive benefits pursuant to 19 *Del. C.* § 3314(2).<sup>3</sup> Employer filed an appeal maintaining that Appellant was discharged with cause.<sup>4</sup> A hearing was held on January 24, 2012 and the Referee allowed testimony from Employer's witnesses.<sup>5</sup> Despite being notified of the hearing, Appellant did not attend.<sup>6</sup> The Referee reversed the decision of the claims deputy and found that Appellant was discharged for just cause, he was disqualified from receiving benefits, and that overpayment would be established.<sup>7</sup>

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<sup>1</sup> Record at 35.

<sup>2</sup> *Id.* at 3.

<sup>3</sup> *Id.* at 8.

<sup>4</sup> *Id.* at 10.

<sup>5</sup> *Id.* 16.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.* at 36.

Appellant filed an appeal explaining why he could not attend the hearing.<sup>8</sup> The Board accepted Appellant's reason and remanded the case to the Referee. A second hearing was held on March 20, 2012. Employer's witnesses attended the hearing and Appellant was present via telephone.<sup>9</sup> In a second decision, the Referee again reversed the decision of the claims deputy and found that Appellant was discharged for cause.<sup>10</sup>

Appellant appealed the second decision and a hearing for this appeal was noticed for May 23, 2012 at 1:20 p.m. in Wilmington, Delaware.<sup>11</sup> On the date of the hearing, at 1:32 p.m., "[a] diligent search of the premises [] revealed that the claimant [had] not appeared to prosecute the appeal..."<sup>12</sup> The Board dismissed the appeal based on Appellant's failure to appear.<sup>13</sup>

Appellant filed a Notice of Appeal with this Court on June 1, 2012 stating the following grounds for appeal: that Appellant called in sick and was let go after working there for 20 years, paid into the Insurance Fund for 20 years, came to the hearing five minutes late, and wasn't given a drug or alcohol test before he was terminated.

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<sup>8</sup> *Id.* at 38-39.

<sup>9</sup> *Id.* at 42-53.

<sup>10</sup> *Id.* at 54-58.

<sup>11</sup> *Id.* at 69.

<sup>12</sup> *Id.* at 71.

<sup>13</sup> *Id.* at 73.

The Court issued a briefing schedule requiring Appellant to file an answering brief by September 26, 2012. No opening brief was filed and, on October 2, 2012, the Court sent a Final Delinquent Brief Notice to Appellant informing Appellant that the Court would dismiss the appeal if no further action was taken within ten days.

Appellant replied to the notice with a short letter dated October 10, 2012.<sup>14</sup> In the letter, Appellant requested a decision on the matter and stated that he received benefits and was turned down without just cause. Appellant further stated that he paid employment insurance benefits for over 20 years and that the Court already had the facts about the case.

Employer filed a Motion to Dismiss based on Appellant's failure to file an opening brief. On December 20, 2012, counsel for the Board submitted a letter to the Court requesting that the Court accept the letter as the Board's answering brief and asserting that the Board "acted within its permitted regulatory and statutory discretion in dismissing Claimant's case before the Board when Claimant failed to appear to prosecute."<sup>15</sup>

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<sup>14</sup> This filing was initially accepted, later rejected, and re-filed on December 13, 2012.

<sup>15</sup> Board Letter to the Court dated Dec. 20, 2011.

## Discussion

In this instance, the Court will consider the contents of Appellant's short letter as Appellant's brief. The Court may, on a motion, or on its own accord, order dismissal for "for failure of a party diligently to prosecute the appeal".<sup>16</sup> Delaware Superior Court Civil Rule 72(g) requires that an appellant serve and file a brief 20 days after the administrative record is filed.<sup>17</sup> *Pro se* litigants are expected to adhere to the rules and requirements of this Court, including the rules governing the filing of briefs;<sup>18</sup> however, in administrative appeals cases, this Court has recognized that it may "exhibit some degree of leniency toward a *pro se* litigant to see his case is fully and fairly heard."<sup>19</sup> For example, where a litigant filed a brief as a one page submission, this Court considered that submission in determining an appeal.<sup>20</sup> Therefore, the Court will consider Appellant's one page letter, dated October 10, 2012, and the grounds set forth in the Notice of Appeal and will not dismiss the appeal for failure to prosecute.

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<sup>16</sup> Super. Ct. Civ. R. 72(i).

<sup>17</sup> Super. Ct. Civ. R. 72(g).

<sup>18</sup> See *Von Fegyverneky v. CFT Ambulance Serv.*, 2012 WL 2700464, at \*3, n.17 (Del. Super. June 28, 2012) (citing *Draper v. Medical Center of Delaware*, 767 A.2d 796, 799 (Del.2001)).

<sup>19</sup> *Jackson v. Unemployment Ins. Appeal Bd.*, 1986 WL 11546, at \*2 (Del. Super. Sept. 24, 1986).

<sup>20</sup> *Sewell v. Volt Services Group*, 1997 WL 718637, at \*2, n. 16 (Del. Super. July 22, 1997).

The Court’s review of a Board decision is limited to errors of law and whether the decision is supported by substantial evidence.<sup>21</sup> Before appealing to this Court for review, a party must exhaust the administrative remedies available.<sup>22</sup> Where a party does not appear at a hearing before the Board, he has failed to exhaust all administrative remedies, as required by 19 *Del. C.* § 3322 (a), and he “forfeits his appellate rights to this Court.”<sup>23</sup> Appellant did not appear at the hearing within the ten-minute window required by Board regulations.<sup>24</sup> Therefore, the appeal from the Unemployment Insurance Board is **AFFIRMED**.

**IT IS SO ORDERED.**

/S/CALVIN L. SCOTT  
Judge Calvin L. Scott, Jr.

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<sup>21</sup> *Chester v. Adecco USA*, 2011 WL 1344740 (Del. Super. Ct.).

<sup>22</sup> 19 *Del. C.* § 3322(a); *See also Bell v. Ne. Treatment Centers, Inc.*, 2003 WL 21500336, \*1 (Del. Super. Ct.).

<sup>23</sup> *Bell*, 2003 WL 21500336 at \* \*1; *Tolson v. Solvay Solexis*, 2011 WL 7452786, at \*2 (Del. Super. Oct. 25, 2011); *Baker v. Hosp. Billing & Collection Serv., Ltd.*, 2003 WL 21538020 (Del. Super. Apr. 30, 2003).

<sup>24</sup> 19 *Del. Admin. C.* §1201-4.2.