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

KETURA JAMISON)	
Appellant,)	
V.)	C.A. No. N13A-01-001
)	
DELAWARE DEPARTMENT OF)	
LABOR, BENEFIT PAYMENT)	
CONTROL UNIT, AND)	
UNEMPLOYMENT INSURANCE)	
APPEAL BOARD)	
Appellees.)	

Submitted: May 1, 2013

Decided: October 31, 2013

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

OPINION

Ketura Jamison, 730 Townsend St., Wilmington, DE 19801, Pro Se Appellant.

James T. Wakley, Deputy Attorney General, 820 North French Street, 6th Floor, Carvel State Building, Wilmington, DE 19801, Attorney for Appellees.

RAPPOSELLI, J.

INTRODUCTION

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

FACTUAL AND PROCEDURAL BACKGROUND¹

Jamison was employed by the Kmart Corporation from March 31, 2010 to April 22, 2010, and subsequently opened a claim for unemployment insurance benefits. On April 1, 2011 a Claims Deputy issued two overpayment determinations against Jamison on the basis that she had unrightfully received wages from another employer in addition to her unemployment benefits. Notices of the determinations were sent to Jamison's correct address with a deadline date to file an appeal of April 11, 2011.

Nine months later, on January 19, 2012, Jamison appealed the two determinations. On February 23, 2012 Jamison participated in a phone hearing

¹Recitation of the facts and procedural history is adopted from the Decision of the Unemployment Insurance Appeal Board on Appeal from the Decisions of Rudolph J. Antonini, Jr., *Ketura Jamison v. None Involved*, Docket No. 50825974 and 50825975 (December 12, 2012) [hereinafter Board's Decision].

with a Department of Labor Appeals Referee on the sole issue of the timeliness of her January 19, 2012 Determinations' Appeals. During the hearing, Jamison claimed that she was the victim of identity theft and that the overpayment was a result of the alleged perpetrator's use of her social security number. Jamison acknowledged receiving the April 1, 2011 determination notices, but argued that the untimeliness of her appeal was excusable because she was told by an unknown Department of Labor employee that she should wait to file an appeal until she had more information regarding the identity theft.

The Appeals Referee held that the ten-day appeal deadline could only be excused by an administrative mistake by the Department of Labor and that there was no such evidence in Jamison's case. As such, the Appeals Referee found that Jamison's appeal was untimely and affirmed the decision of the Claims Deputy. A copy of the Referee's Decision was mailed to Jamison on March 2, 2012 with a deadline date to file an appeal of March 12, 2012. Eight months later, on November 29, 2012 Jamison mailed a Notice of Appeal to the Board which was dismissed as untimely on December 18, 2012.

On January 8, 2013, Jamison filed a Notice of Appeal with this Court and submitted her Opening Brief on May 1, 2013. The Board filed its Answering Brief on May 21, 2013. Jamison did not file a Reply Brief.

DISCUSSION

I. Jurisdictional Defects Regarding Jamison's Appeal to this Court

The Board argues that the deadline to file an appeal with this Court was December 28, 2012, and therefore Jamison's January 8, 2013 appeal was untimely and jurisdictionally barred.² While the Board is correct in asserting that a statutory deadline creates a jurisdictional bar, the Court finds that the Board erred in identifying December 28, 2012 as the relevant deadline.³

Title 19, Delaware Code §§ 3322 governs the finality of an administrative board decision:

§ 3322. Finality of Board's decision; duty to exhaust administrative remedies; position of Department in judicial review

(a) Any decision of the Unemployment Insurance Appeal Board shall become final 10 days after the date of notification or mailing thereof, and judicial review thereof as provided in this subchapter shall be permitted only after any party claiming to be aggrieved thereby has exhausted all administrative remedies as provided by this chapter.⁴

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² Draper King Cole v. Malave, 743 A.2d 672, 673 (Del. 1999).

³ Answering Brief of the Unemployment Insurance Appeal Board at 4, *Ketura Jamison v. Delaware Department of Labor et al.*, Case No. 13A-01-001 (Del. Super. May 21, 2013) [hereinafter Board's Answering Brief].

⁴ Del. Code Ann. tit. 19, § 3322.

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The Board Decision was mailed to Jamison on December 18, 2012 and became final on December 28, 2012.⁵ The Board claims that the date when Jamison should have filed an appeal was December 28. This is incorrect. The deadline to appeal to this Court is governed by § 3323:

§ 3323. Judicial review; procedure

(a) Within 10 days after the decision of the Unemployment Insurance Appeal Board has become final, any party aggrieved thereby may secure judicial review thereof by commencing an action in the Superior Court . . . ⁶

For the purpose of computing any period of time less than eleven (11) days under the Delaware Superior Court Rules of Civil Procedure, intermediate Saturdays, Sundays and other legal holidays are excluded in the computation.⁷ Therefore, Jamison was required to file her appeal with this Court by January 11, 2013. The record clearly shows and the Board does not contest that Jamison's Notice of Appeal was filed on January 8, 2013.8 Therefore, since Jamison filed her appeal with this Court within the statutorily prescribed period, it should be addressed on its merits.

⁵ Board's Decision, *supra* note 1 at 3.

⁶ Del. Code Ann. tit. 19, § 3323.

⁷ Del. Super. Ct. Civ. R. 6(a).

⁸ Notice of Appeal, Ketura Jamison v. Delaware Department of Labor et al., Case No. 13A-01-001 (Del. Super. Jan. 8, 2013); Answering Brief, supra note 3, at 2.

II. Standard of Review

The scope of review of this Court in an appeal from a decision of the Board is limited to a determination of whether there was substantial evidence to support the findings of the Board. Substantial evidence requires such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. The Court does not weigh the evidence, determine questions of credibility, or make factual findings. Rather, when making factual determinations, the Court defers to the experience and specialized competence of the Board.

III. Merits of this Appeal

In this case, the Board found that Jamison's appeal was untimely as she filed eight months after her deadline had passed. Therefore, the question before this Court is whether the Board abused its discretion in refusing to act *sua sponte* to address the merits of her appeal. ¹³

⁹ City of Newark v. Unemployment Ins. Appeal Bd., 802 A.2d 318, 323 (Del. Super. 2002).

¹⁰ Avon Products, Inc. v. Wilson, 513 A.2d 1315, 1317 (Del.1986).

¹¹ Arrants v. Home Depot, 65 A.3d 601, 605 (Del. 2013).

¹² 29 Del. C. § 10142(d); Histed v. E.I. DuPont de Nemours & Co., 621. A.2d 340, 342 (Del. 1993).

¹³ See Funk v. Unemployment Ins. Appeal Bd, 591 A.2d 222, 225 (Del. 1991) (finding that 19 Del C. § 3320 does not allow the Board to consider an appeal brought by a party after expiration of the ten-day appeal period, but could consider the appeal, by its own motion in certain situations more severe than those present in that case).

In Jamison's appeal to this Court, she admits that her November 29, 2012 appeal was filed after the deadline. However, she argues that the Board abused its discretion in refusing to exercise its authority under 19 Del C. § 3320 to consider the substance of an appellant's untimely appeal. Jamison specifically relies on *Funk v. Unemployment Ins. Appeal Bd*, where the Supreme Court of Delaware held that "in the discretion granted it by 19 Del.C. § 3320 [the Board] does have authority to act *sua sponte* beyond the ten-day appeal period to consider a case where no valid appeal has been filed by the parties, if . . . the situation . . . 'involved circumstances much more severe than those in [that] case.'"

Although the Board does have authority to act beyond the ten-day appeal period in exceptional circumstances, Jamison provided no evidence indicating that hers was such a case. Jamison's description of the above described identity theft incident is the only evidence presented in support of this argument. This evidence is unpersuasive because the identity theft claim was filed on January 27, 2012, long before the March 12, 2012 deadline. So too, during her February 23, 2012 hearing, Jamison acknowledged that she had all requisite identity theft information,

¹⁴ See Funk, 591 A.2d at 225.

¹⁵ *Id*.

¹⁶ R. 67.

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presumably, to file her appeal. Thus, although the alleged identify theft might

have affected the delay in Jamison's January 19, 2012 appeal, the record supports

the Board's finding that Jamison's subsequent eight month delay in filing her

appeal was not justified.

Upon review of the record, this Court finds that there is substantial evidence

to support the Board's findings of fact, and that there was no error of law.

Therefore, the decision of the Board is AFFIRMED.

IT IS SO ORDERED.

/s/Vivian L. Rapposelli Judge Vivian L. Rapposelli

cc:

Prothonotary

¹⁷ February 23, 2012 Administrative Hearing at 8, *Ketura Jamison v. None Involved*, Docket No. 50825974 and 50825975 (February 23, 2012) (TRANSCRIPT).

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