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

DAVID SAFFORD,)
Appellant,)
V.) C.A. No. N13A-02-002 CLS
NONE INVOLVED and UNEMPLOYMENT INSURANCE APPEAL BOARD, Appellee.)))))
Date Submitted: Date Decided:	July 22, 2013 October 21, 2013

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

ORDER

David Safford, Newark, Delaware, 19711, Pro Se Appellant.

James T. Wakley, Esquire, Delaware Department of Justice, 820 North French Street, Wilmington, Delaware, 19801. Attorney for the Appellee, Unemployment Insurance Appeal Board.

Introduction

Before the Court is Appellant David Safford's ("Appellant") appeal from the decision of the Unemployment Insurance Appeal Board ("Board"). The Court has reviewed Appellant's and the Board's submissions and the record. For the following reasons, the Board's decision is **AFFIRMED.**

Background

Appellant was employed with HGDS Acquisition, LLC, d/b/a "Footprint Retail Services" from February 8, 2010. Appellant filed for unemployment benefits effective December 19, 2010, on a fund code 10 with a weekly benefit amount of \$165.00. On November 19, 2012, a Claims Deputy determined that pursuant to 19 *Del.C.* § 3325, Appellant received an overpayment of benefits for eight weeks beginning January 1, 2011 to April 23, 2011 in the amount of \$777.00.

Appellant appealed the Claims Deputy's decision in person on November 27, 2012 and a hearing was held before an Appeals Referee on December 19, 2012.⁴ Both Appellant and a representative for the department were present and gave testimony.⁵ Following the hearing, the

¹ Record at 28.

² *Id.* at 6;

 $^{^{3}}$ *Id.* at 1.

⁴ *Id.* at 2, 4-20.

⁵ *Id.* at 4-6. The sole issue discussed during the hearing was the overpayment of unemployment benefits. *Id.* at 6.

Referee concluded that there was an overpayment in the amount of \$777.00 to Appellant by the Department, as previously determined by the Claims Deputy, and affirmed the Claims Deputy's decision.⁶ The Referee's decision provided that the final date to appeal was December 30, 2012; however, because that date was a Sunday, Appellant actually had until Monday, December 31, 2012 to file an appeal.⁷

On January 3, 2013,⁸ three days past the final date to appeal the Referee's decision, Appellant filed an appeal to the Board explaining the reasons for his untimely appeal and why he believed the Referee's decision was made in error.⁹ On January 16, 2013, the Board determined that Appellant's appeal was three days past the final date to file and therefore, not timely.¹⁰

In declining to accept Appellant's appeal, the Board explained that both the Notice of the Hearing and the Referee's Decision and Dismissal were sent to Appellant's address of record with the Department and that because there was no evidence of departmental error which prevented the Appellant from filing a timely appeal, the Appellant was given notice and

⁶ *Id.* at 21, 23.

⁷ *Id.* at 37.

⁸ Appellant filed his appeal by mail in a letter dated January 2, 2013, which was postmarked on January 3, 2013 and received by the Board on January 4, 2013. *Id.* at 32-33.

⁹ *Id.* at 32-35.

¹⁰ *Id.* at 37.

opportunity to be heard sufficient to satisfy due process requirements.¹¹ As a result, the Board denied Appellant's application for further review and determined that Referee's decision to dismiss Appellant's case was final and binding.¹²

Appellant then filed a Notice of Appeal with this Court on February 4, 2013.¹³ Pursuant to this Court's briefing schedule, Appellant subsequently filed an opening brief on April 21, 2013 and the Board filed its reply brief on May 21, 2013.

Issues on Appeal

Appellant appeals the decision of the Board, asserting that his untimely appeal was a result of a nationally-observed holiday and a delay in postal delivery, which taken together, reduced the time allotted to prepare his appeal. Accordingly, Appellant asks this Court to reverse the decision of the Board because he was not provided the full ten days to appeal the Referee's decision in an accurate manner.

In response to Appellant's assertions, the Board contends that its decision was supported by substantial evidence and free from legal error.

The Board further argues, *inter alia*, that even if Appellant's assertions were

 12 Id

¹¹ *Id*.

¹³ *Id.* at 43.

considered, it should not have affected his ability to submit a timely appeal because "the Board routinely accepts notices of appeal posted—even if not received—during the appropriate period as timely." Accordingly, the Board concludes that Appellant waited until the time for filing his appeal expired and thus, notwithstanding his complaints, the Board was required to dismiss his appeal.

Standard of Review

This Court's review of a Board decision is limited to whether the Board's findings were supported by substantial evidence and whether the decision is free from legal error. The Court will not weigh evidence, determine questions of credibility, or make its own factual findings and conclusions. If there is substantial supporting evidence and no legal error, the Board's decision will be affirmed. If the Board renders a discretionary decision, the Court will not set aside that decision unless it is clearly unreasonable or capricious, and thus, an abuse of the Board's discretion."

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¹⁴ Thompson v. Christina Care Health Sys., 25 A.3d 778, 781-82 (Del. 2011).

¹⁵ *Id.* at 782.

¹⁶ Longobardi v. UIAB, 287 A.2d 690, 692 (Del. Super. Ct. 1972) aff'd. 293 A.2d 295 (Del. 1972).

¹⁷ Ramey v. Wal-Mart Stores E., LP, 2008 WL 2507173, at *2 (Del. Super. Ct. Aug., 13, 2009).

Discussion

Pursuant to 19 *Del.C.* § 3318(c), a Referee's decision "[s]hall be deemed to be final unless within 10 days after the date of the notification or mailing of such decision further appeal [to the Board] is initiated pursuant to §3320 of this title." In effect, § 3318(c) requires a claimant to file an appeal from the Referee's decision within 10 days for the appeal to be deemed timely. 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." In calculating the ten calendar days, "[t]he day of mailing shall be deemed to be the day of filing" and "when the day, or the last day, for [filing an appeal] falls on Saturday, Sunday or a holiday, [filing] may be done on the first ensuing day that is not a Saturday, Sunday or holiday."

Although the ten-day period for appeal is jurisdictional, the Board may exercise its discretion under 19 *Del.C.* § 3320 to accept an untimely appeal *sua sponte*, "[w]here there has been some administrative error on the

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¹⁸ See 19 Del.C. § 3318(c).

¹⁹ *Id*.

²⁰ See Martin v. UIAB, 2004 WL 772073, at *3 (Del. Super. Ct. Feb., 2, 2004).

²¹ See 19 Del.C. § 3304. See also Martin, 2004 WL 772073, at *3 (applying § 3304 to an appeal of the Referee's decision).

part of the Department . . . or in those cases where the interests of justice would not be served by inaction . . . "22

Moreover, a Board's discretionary decision to not accept an untimely appeal is a matter of procedure that cannot be an abuse of discretion "unless it is based on clearly unreasonable or capricious grounds" or "the Board exceeds the bounds of reason in view of the circumstances and had ignored recognized rules of law or practice so as to produce injustice."²³ Thus, absent abuse of discretion, the Board's judgment must be affirmed.

The Board's decision was supported by substantial evidence and free from legal error. The record establishes that Appellant's appeal was not filed within the ten-day limit set by statute. The Referee's decision was mailed on December 20th and Appellant admitted that he received the Referee's decision on a date that allowed him three days to review, one of those days being Christmas day. Appellant did not file his Appeal, dated January 2, 2013, until January 3, 2013.

There is also no evidence of administrative error which caused Appellant's appeal to be untimely. Both the notice of hearing and Referee's Decision and Dismissal were sent to the Appellant's address of record with the Department; therefore, under Delaware law, notice was sufficient to

²² Funk v. UIAB, 591 A.2d 222, 225 (Del. 1991).
²³ Hartman v. UIAB, 2004 WL 772067, at *2 (Del. Super. Ct. Apr., 5, 2004).

afford Appellant due process. The Referee's Decision and Dismissal contained a notice of the Appellant's right of appeal with instructions about how to appeal and stated the deadline to file an appeal. Moreover, although Appellant contends that he only had three days to review the Referee's decision and prepare an appeal after it arrived by mail, it is an unpersuasive dispute of timely notice absent a showing that the date he received the decision and the subsequent untimely appeal was a result of administrative error.

The Board's decision to not accept Appellant's untimely appeal was not an abuse of discretion. Not only is the record void of any evidence of administrative error, the circumstances do not rise to the level where the interests of justice would not be served by inaction. While the ten-day period in which Appellant was required to file an appeal included a national holiday, he was still provided adequate time to prepare an appeal and therefore, still required to file a timely appeal. Furthermore, pursuant to § 3304, Appellant's deadline to file an appeal was extended an extra day given that his original filing deadline was a Sunday. Thus, apart from § 3318(c), which sets forth the ten-day statutory filing requirement and § 3304, no other authority exists to support Appellant's contention that he must be excepted from the ten-day requirement because of the Christmas holiday. Ultimately,

Appellant's arguments are unpersuasive and insufficient to waive the timeliness requirement and warrant acceptance of his late appeal.²⁴

Under the circumstances, the Board's strict application of the time limit set forth in 19 *Del.C.* § 3318(c) and its denial of Appellant's untimely appeal was appropriate.

Conclusion

For the reasons stated above, the decision of the Board is

AFFIRMED.

IT IS SO ORDERED.

/s/Calvin L. Scott Judge Calvin L. Scott, Jr.

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²⁴ The Board denied Appellant's appeal of the Referee's decision because it was untimely; therefore, the only issue before this Court is whether the Board's decision to deny the appeal for untimeliness was appropriate. The Court cannot consider Appellant's other arguments in support of reversing the Board's decision because they concern the alleged miscalculation of the overpayment total of Appellant's unemployment benefits and not the timeliness of his appeal.