

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE**

TUAN J. HUYNH-BA,

Appellant,

V.

UNEMPLOYMENT INSURANCE  
APPEAL BOARD

Appellee.

C.A. No. N22A-01-002 CLS

Date Submitted: March 31, 2022

Date Decided: April 27, 2022

*Upon Unemployment Insurance Appeal Board's Motion to Dismiss. GRANTED.*

## ORDER

Tuan J. Huynh-Ba, Newark, DE, 19711, *Pro Se*, Appellant.

Victoria Groff, Esquire, Delaware Department of Justice, Wilmington, Delaware,  
19801, Attorney for Appellee, Delaware Unemployment Insurance Appeal Board.

**SCOTT, J.**

## INTRODUCTION

Before the Court is Appellee the Unemployment Insurance Appeals Board's ("Board") Motion to Dismiss the appeal of Appellant Tuan J. Huynh-Ba's ("Mr. Huynh-Ba"). The Board claims the appeal is untimely and seeks dismissal pursuant to Superior Court Civil Rule 72(i). Mr. Huynh-Ba has appealed a decision of the Board, which denied reconsideration of an ineligibility/overpayment decision requiring Mr. Huynh-Ba to repay his benefits. The Court has reviewed the record in this matter and the parties' submissions. For the following reasons, the Board's Motion to Dismiss is **GRANTED**.

## FACTS AND PROCEDURAL BACKGROUND

Mr. Huynh-Ba was employed with Pharmayltik LLC from January 2020 to April 2020, when his work was temporarily stopped due to the COVID-19 pandemic. Mr. Huynh-Ba made an unemployment claim and received benefits of \$133 per week from April 18, 2020, to May 8, 2021. Mr. Huynh-Ba's claim was investigated and on June 28, 2021, a Claims Deputy determined during the time he received benefits he was not eligible. There is nothing in the record to indicate Mr. Huynh-Ba appealed the Claims Deputy's ineligibility decision.

On August 25, 2021, the Board issued a decision, based on the Claims Deputy's ineligibility decision, that Mr. Huynh-Ba was ineligible for the benefits he

received and as a result, needed to pay the benefits back. Mr. Huynh-Ba timely appealed and requested reconsideration of the August 2021 determination made by the Board. In an opinion issued on October 19, 2021, the Board, after conducting a hearing with Mr. Huynh-Ba present, declined to exercise its discretion to rehear Mr. Huynh-Ba's appeal. The Board declined to rehear the appeal because the arguments raised were already considered previously. An appeal to this decision was to be filed by October 29, 2021.

### **STANDARD OF REVIEW**

Under Delaware Superior Court Civil Rule 72(i) “[t]he Court may order an appeal dismissed ... for untimely filing of an appeal.”<sup>1</sup> Our Supreme Court has found that “[t]he timely filing of an appeal is mandatory and jurisdictional” and an untimely filing “may not be excused in the absence of unusual circumstances that are attributable to court personnel.”<sup>2</sup> “[T]he Court lacks jurisdiction to decide a direct appeal that is untimely, and jurisdictional defects cannot be waived.”<sup>3</sup> It is well

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<sup>1</sup> Del. Super. Ct. Civ. R. 72(i).

<sup>2</sup> *Draper King Cole v. Malave*, 743 A.2d 672, 673 (Del. 1999); see also *Yeager v. Fisher*, 258 A.3d 833 (Table), 2021 WL 3578626, at \*1 (Del. 2021) (dismissing an incarcerated individual's appeal after finding the prison lockdown delaying his ability to file his appeal was not attributable to court personnel).

<sup>3</sup> *Cooper v. Del. Dep't of Health & Soc. Services, Div. of Long Term Care Residents Prot.*, 2018 WL 6333952, at \*1 (Del. Super. Dec. 4, 2018).

established under Delaware case law that “barring extraordinary circumstances, ‘procedural requirements are not relaxed for any type of litigant.’ ”<sup>4</sup>

## DISCUSSION

An aggrieved party may secure judicial review of a decision of the Board by commencing an action in the Superior Court within ten days of the Board's decision becoming final.<sup>5</sup> “Failing to file an appeal within those ten days creates a jurisdictional defect that can only be excused by unusual circumstances attributable to court personnel, not the appellant.”<sup>6</sup> Because the time for filing an appeal is an express statutory condition of jurisdiction, it is both mandatory and dispositive.<sup>7</sup>

In addressing the Board's motion to dismiss, the only issues before the Court are those dealing with the timeliness of the appeal. Unless the Court finds that the appeal was filed in a timely manner, or that the untimely filing was due to court error, it lacks jurisdiction to consider the merits of the appeal.

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<sup>4</sup> See, e.g., *Wyatt v. Unemployment Ins. Appeals Bd.*, 2016 WL 552882, at \*2 (Del. Super. Feb. 9, 2016) (quoting *McGonigle v. George H. Burns, Inc.*, 2001 WL 1079036, at \*1 (Del. Super. Sept. 4, 2001)).

<sup>5</sup> 19 Del. C. § 3323(a).

<sup>6</sup> *Ortiz v. Adecco USA, Inc.*, 2015 WL 5120986, at \*1 (Del. Super. Aug. 11, 2015) (citing *Draper King Cole v. Malave*, 743 A.2d 672, 673 (Del. 1999)).

<sup>7</sup> *Lively v. Dover Wipes Co.*, 2003 WL 21213415, at \*1 (Del. Super. May 16, 2003) (citing *Duncan v. Delaware Dep't of Labor*, 2002 WL 31160324, at \*1 (Del. Super. 2002)).

Mr. Huynh-Ba filed his appeal on January 10, 2022. The deadline for filing an appeal of the Board's decision was on October 29, 2021. Mr. Huynh-Ba has made no allegation or showing that court personnel were in any way responsible for the late filing. Thus, there is no showing of court error. Without some assertion of court error, accompanied by substantive evidence supporting that assertion, the Court must find that the appeal was untimely.

### **CONCLUSION**

Based on the foregoing reasons, the Board's Motion to Dismiss is  
**GRANTED.**

**IT IS SO ORDERED.**

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