

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

MARK STELLA,)
)
 Appellant,)
)
 v.) C.A. No. N13A-05-008 CLS
)
 UNEMPLOYMENT)
 INSURANCE APPEAL)
 BOARD,)
)
 Appellee.)
)

ORDER

On this 27th Day of February and upon consideration of *pro se* Appellant Mark A. Stella’s (“Appellant”) appeal of the decision of the Unemployment Insurance Board (the “Board”), the Court finds that:

1. On February 13, 2013, the Claims Deputy determined that Appellant was ineligible for unemployment benefits, pursuant to 10 *Del. C.* § 3315(3),¹ “because he was not able to work without restriction as verified with a medical certificate.”² Appellant appealed the Claims

¹ To be eligible for unemployment compensation, it is required that a person be “able to work and [] available for work and [] actively seeking work”. § 3315(3).

² Record, at p. 10, “Notice of Determination.”

Deputy's decision and a hearing was held. The Referee affirmed the decision of the Claims Deputy because Appellant had not shown medical documentation demonstrating that he was released by his doctor or able to work without restriction.³ Appellant appealed the Referee's decision by arguing that he was capable of working⁴ and by submitting a letter written by licensed professional counselor, Christopher L. Morkides, stating that Appellant was no longer under his care.⁵

2. A hearing before the Board was scheduled for April 24, 2013 at 10:00 a.m.⁶ On March 21, 2013, a notice containing hearing information was mailed to Appellant.⁷ The notice advised Appellant to "arrive at least 15 minutes before the time of [the] hearing is scheduled to begin" and cautioned that "[f]ailure to appear for [the] hearing in a timely manner can result in [the] appeal being dismissed."⁸ At 10:12 a.m. on the day of the hearing, the Board dismissed the appeal after "a diligent search of the premises [] revealed that claimant ha[d] not appeared to prosecute the appeal".⁹

³ R. at p. 26-27, "Referee's Decision."

⁴ R. at p. 32, "Appeal Request Notification."

⁵ R. at. 7, Letter.

⁶ R. at p. 33, "Notice of Hearing before the Unemployment Insurance Appeal Board."

⁷ *Id.*

⁸ *Id.*

⁹ R. at p. 35:9-12, Board Hr'g Trans.; R., at p. 36, "Decision of the Appeal Board on Appeal from Decision of Theresa Matthews."

3. Appellant now appeals the Board's decision on the following grounds. First, Appellant was unable to provide a therapist's release because he is no longer receiving treatment due to the loss of medical benefits. Second, his condition was related to a mental, not physical, condition. Third, he is entitled to benefits because the previous employer is not disputing the claim. Fourth, Appellant has maintained that he is able to work. Lastly, and most important to this appeal, Appellant explains that he was late for the hearing before the Board, but he "did call because [he] was late due to getting lost."¹⁰ On September 13, 2013, the Board filed a letter in response to the appeal, arguing that the decision should be affirmed because Appellant failed to exhaust his administrative remedies by failing to appear at the hearing.¹¹

4. The scope of 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.¹² "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."¹³

¹⁰ "Notice of Appeal," dated May 5, 2013.

¹¹ No reply brief was filed.

¹² *Thompson v. Christina Care Health Sys.*, 25 A.3d 778, 781-82 (Del. 2011).

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

5. This Court may conduct judicial review of a Board decision “only after any party claiming to be aggrieved thereby has exhausted all administrative remedies as provided by [Title 19, Chapter 33 of the Delaware Code].”¹⁴ This Court has viewed the failure to appear at a Board hearing as an appellant’s failure to exhaust all administrative remedies.¹⁵ Pursuant to a Board administrative rule, the “[f]ailure to appear within 10 minutes of the time indicated on the Notice may result in the Board hearing the appeal in absence of the delinquent party or, if the delinquent party is the appellant, dismissal of the appeal.”¹⁶ This Court has recognized the Board’s discretion to enforce this administrative rule because the rule helps the Board to “efficiently manage and dispose of cases before them.”¹⁷

6. As stated above, Appellant asserted various reasons as to why he should be found able to work and, thus, eligible to receive unemployment benefits in his submissions to this Court. Those issues are related to the merits of his claim and were decided upon by the Claims Deputy and Referee. When he appealed the Referee’s decision, the

¹⁴ 19 Del. C. §3322(a).

¹⁵ See *Stewart v. King’s Creek Country Club*, 2011 WL 5627392, at * 2 (Del. Super. Nov, 4, 2011)(“This Court is without jurisdiction to hear the merits of a case where a party has not exhausted his administrative remedies because he failed to appear at a Board hearing that he requested”).

¹⁶ 19 Del. Admin. C. § 1201-4.2.

¹⁷ *Perego v. Delaware Hospice*, 2011 WL 3812246, at * 2 (Del. Super. Aug., 12, 2011).

Board did not reach the merits of his appeal because it dismissed his appeal for the procedural reason of failure to appear within ten minutes of the time scheduled. Therefore, the only issue before this Court is whether that dismissal was an abuse of discretion.

7. The Board did not abuse its discretion by dismissing Appellant's appeal twelve minutes after the time scheduled for the hearing. Appellant has not claimed that he failed to receive the notice of the hearing which warned him that the appeal could be dismissed for failure to appear in a timely manner. In addition, at 10:12 a.m., the Board stated that a search of the premises indicated that he had not appeared. Although Appellant that he did inform someone that he was running late because he was lost, there is nothing in the record to support this assertion. Therefore, the decision of the Board is **AFFIRMED**.¹⁸

IT IS SO ORDERED.

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

¹⁸ See *Archambault v. McDonald's Rest.*, 1999 WL 1611337 (Del. Super. March 22, 1999)(The Court found that the Board did not abuse its discretion, even where the appellant argued that she was given the wrong directions and was lost).