

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

LUIS DEJESUS )  
Appellant, )  
 )  
v. ) C.A. No. N13A-05-007 VLM  
 )  
CITY OF WILMINGTON, AND )  
UNEMPLOYMENT INSURANCE )  
APPEAL BOARD )  
Appellees. )

**OPINION**

Submitted: December 19, 2013  
Decided: March 31, 2014

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

Luis deJesus, 10 Cedar Street, Wilmington, DE 19805, *Pro Se* Appellant.

James T. Wakley, Deputy Attorney General, 820 North French Street, 6<sup>th</sup> Floor,  
Carvel State Building, Wilmington, DE 19801, Attorney for Unemployment  
Insurance Appeal Board, Appellee.

Tara M. DiRocco, Esquire, City of Wilmington Law Dept., 800 N. French Street,  
9<sup>th</sup> Floor, Wilmington, DE 19801, Attorney for City of Wilmington, Appellee.

**MEDINILLA, J.**

## INTRODUCTION

This is an appeal by Luis deJesus (“deJesus”)<sup>1</sup> from a decision of the Unemployment Insurance Appeal Board (“UIAB”). In the decision below, the UIAB dismissed deJesus’ appeal as untimely and affirmed a determination that deJesus was disqualified from receiving unemployment benefits. This Court finds that there exists substantial evidence to support the decision of the UIAB.

Therefore, the decision of the UIAB is **AFFIRMED**.

## FACTUAL AND PROCEDURAL BACKGROUND<sup>2</sup>

DeJesus’ employment as a plant mechanic with the City of Wilmington began on September 13, 2010. On November 15, 2012, a supervisor informed deJesus that he was being investigated for failing to “punch out of work.” In response, deJesus became belligerent and physically threatening towards coworkers. On December 3, 2012, as a result of the November 15, 2012 incident, deJesus was discharged for insubordination and violating the City of Wilmington’s harassment free work environment policy.

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<sup>1</sup> The correct spelling of Appellant’s name is unclear from the corresponding pleadings. This Court uses the name as provided by Appellant.

<sup>2</sup>Recitation of the facts and procedural history is adopted from the Decision of the Unemployment Insurance Appeal Board on Appeal from the Decisions of Theresa Matthews, *Luis deJesus v. City of Wilmington*, Docket No. 20881361(April 23, 2013).

DeJesus filed a claim for unemployment benefits on December 18, 2012. On January 2, 2013 a Claims Deputy issued a determination that deJesus was terminated for just cause and, consequently, disqualified from the receipt of unemployment benefits.<sup>3</sup>

DeJesus appealed the determination of the Claims Deputy. An Appeals Referee heard testimony from deJesus and his former employer on January 28, 2013. In a March 28, 2013 decision, the Appeals Referee found that deJesus' actions constituted willful and wanton misconduct, and affirmed the Claims Deputy's determination.

The Appeals Referee's decision was mailed to deJesus on March 28, 2013 which indicated that the last day to file an appeal with the UIAB was April 7, 2013.<sup>4</sup> DeJesus filed a notice of Appeal with the UIAB on April 9, 2013. In its April 23, 2013 Decision, the UIAB denied deJesus' appeal as untimely and affirmed the decision of the Appeals Referee.

DeJesus filed a Notice of Appeal with this Court on October 1, 2013. The City of Wilmington and the UIAB filed answering briefs on October 21, 2013.

DeJesus did not file a Reply Brief.

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<sup>3</sup> 19 Del.C. 3314(2).

<sup>4</sup> The Appeals Referee's Decision states that the last day to appeal was April 7, 2013. As noted in the Decision of the UIAB, April 7, 2013 was a Sunday, making the last day to file an appeal Monday, April 8, 2013.

## STANDARD OF REVIEW

In an appeal from a decision of the UIAB, this Court's review is limited to a determination of whether there was substantial evidence to support the findings of the UIAB and whether the decision was free from legal error.<sup>5</sup> Substantial evidence requires such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.<sup>6</sup> The Court does not weigh the evidence, determine questions of credibility, or make factual findings.<sup>7</sup> Rather, when making factual determinations, the Court defers to the experience and specialized competence of the Board.<sup>8</sup> Where an agency has interpreted and applied a statute, the Court's review is *de novo*.

## DISCUSSION

### I. *Applicable Law*

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.”<sup>9</sup>

In calculating the ten calendar days, “[t]he day of mailing shall be deemed to be

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<sup>5</sup> *City of Newark v. Unemployment Ins. Appeal Bd.*, 802 A.2d 318, 323 (Del. Super. 2002).

<sup>6</sup> *Avon Products, Inc. v. Wilson*, 513 A.2d 1315, 1317 (Del.1986).

<sup>7</sup> *Arrants v. Home Depot*, 65 A.3d 601, 605 (Del. 2013).

<sup>8</sup> 29 Del. C. § 10142(d); *Histed v. E.I. DuPont de Nemours & Co.*, 621. A.2d 340, 342 (Del. 1993).

<sup>9</sup> See 19 Del.C. § 3318(c).

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.”<sup>10</sup>

Although the ten-day period for appeal is jurisdictional, the UIAB 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 part of the Department . . . or in those cases where the interests of justice would not be served by inaction.”<sup>11</sup> 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.”<sup>12</sup>

## **II. *The UIAB Properly Dismissed deJesus’ Appeal as Untimely***

The UIAB decision was supported by substantial evidence and free from legal error. The Referee’s decision was mailed to deJesus at his correct address on

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<sup>10</sup> See *Martin v. UIAB*, 2004 WL 772073, at \*3 (Del.Super.Ct. Feb., 2, 2004) (applying § 3304 to an appeal of the Referee's decision).

<sup>11</sup> *Funk v. UIAB*, 591 A.2d 222, 225 (Del.1991) (finding that, in general, 19 Del C. § 3320 does not allow the Board to consider an appeal brought after the ten-day appeal period expires).

<sup>12</sup> *Hartman v. UIAB*, 2004 WL 772067, at \*2 (Del.Super.Ct. Apr., 5, 2004).

March 28, 2013. The last day to appeal to the UIAB was April 8, 2013. DeJesus' appeal was untimely filed on Tuesday, April 9, 2013.

DeJesus argues that an exemption to the ten-day requirement is warranted in this case because he was on vacation in Atlanta, Georgia from March 31, 2013 until April 8, 2013. This Court notes that the cause of deJesus' untimely filing was within his own control, not the control of the Department of Labor staff.<sup>13</sup> This Court is not persuaded that the interests of justice would be served by discharging statutory deadlines whenever a claimant has chosen to go on vacation or offers similarly random excuses to justify untimely filings.

Next, deJesus argues that there was an administrative error in this case because the Appeals Referee did not issue her determination within ten days of the January 28, 2013 hearing. This is not an administrative error because there is no such administrative requirement. DeJesus' reliance on 19 Del.C. § 3318(a) is misplaced because that section controls decisions of a Claims Deputy, not an Appeals Referee.

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<sup>13</sup> *Johnson v. Perdue Farms*, 2013 WL 6667355 (Del. Super. Dec. 6, 2013).

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For the reasons set forth above, this Court finds that there is substantial evidence to support the UIAB's findings of fact, and that there was no error of law.

Therefore, the decision of the UIAB is **AFFIRMED**.

**IT IS SO ORDERED.**

/s/Vivian L. Medinilla  
Judge Vivian L. Medinilla

cc: Prothonotary