

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

DANA WOODAL,)	
)	
Appellant,)	
)	
v.)	C.A. No. N12A-05-004 CLS
)	
UNEMPLOYMENT INSURANCE)	
APPEAL BOARD AND DIVISION OF)	
UNEMPLOYMENT INSURANCE,)	
)	
Appellees.)	
)	

Date Submitted: January 2, 2013
Date Decided: March 27, 2013

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

ORDER

Dana Woodal, Trainer, Pennsylvania. *Pro Se* Appellant.

Caroline Lee Cross, Esquire, Delaware Department of Justice, 820 North French Street, Wilmington, Delaware 19801. Attorney for Appellee, Unemployment Insurance Appeal Board.

Thomas H. Ellis, Esquire. Attorney for Appellee, Division of Unemployment Insurance.

Scott, J.

Introduction

Before this Court is the Appellant, Dana Woodal's ("Appellant") appeal from the decision of the Unemployment Insurance Appeal Board ("Board"). The Court has reviewed the parties' submissions. For the reasons that follow, the decision of the Board is **AFFIRMED**.

Background

A claim for unemployment benefits was filed on May 23, 2010 when Appellant left her employment with Comcast. Appellant was receiving benefits when she found part-time work at Direct Buy where she worked from September until November, 2010, when she left for purported medical reasons. The Board determined that Appellant was disqualified for benefits effective September 4, 2010 and sent a disqualification letter on July 15, 2011, which included an appeal deadline of July 25, 2011. Appellant filed her appeal on February 10, 2012.

The Appeals Referee held hearings on March 6, 2012 regarding the timeliness of the appeal and the overpayment issues. The decisions were mailed the following day, March 7, 2012, finding the appeal untimely and ordering appellant to repay \$12,206.05. Both decisions indicated that the Appellant had until March 17, 2012 to file her appeal with the Board.¹ Appellant filed her appeal one business day late on March 20, 2013. Her appeal simply stated, "I wish to file an

¹ March 17, 2012 was a Saturday, therefore Appellant had until the next business day, Monday, March 19, 2012 to file her appeal.

appeal”² The Board denied further review and upheld the Referee’s decision on April 11, 2012. Appellant then filed this appeal on November 14, 2012.

Issues on Appeal

Appellant argues that she was unable to timely file the appeal because her daughter was hospitalized. She further states that she spoke to a representative of the Board who advised her to turn her appeal in by March 20, 2012³ and thus, was not untimely in filing her appeal. Appellee, the Board argues that the it properly exercised its discretion in refusing to accept Appellant’s late appeal.

Standard of Review

The scope of review of an appeal from the Board is limited to errors of law and whether the decision is supported by substantial evidence.⁴ This standard requires more than a scintilla of evidence but less than a preponderance of evidence.⁵ This Court will not weigh evidence, determine the credibility of the witnesses, or make its own factual findings and conclusions.⁶ Evidence must be relevant such that a reasonable person mind would accept it to support a conclusion.⁷ When the board makes a discretionary determination, the “scope of

² R. at 71.

³ Appellant’s Reply Brief.

⁴ *Chester v. Adecco USA*, 2011 WL 1344740, at *2 (Del. Super. Ct. Apr. 6, 2011).

⁵ *Olney v. Cooch*, 425 A.2d 610, 614 (Del. 1981).

⁶ *Johnson v. Chrysler Corp.*, 213 A.2d 64, 66 (Del. 1965).

⁷ *Lively v. Dover Wipes Co.*, 2003 WL 21213415 (Del. Super.) (citing *Oceanport Indus. v. Wilmington Stevedores, Inc.*, 636 A.2d 892, 899 (Del. 1994)).

review . . . is whether the Board abused its discretion.”⁸ Absent an abuse of discretion, the decision of the Board must be upheld.⁹

Discussion

I. The Board’s Decision is Supported by Substantial Evidence.

The Board did not commit legal error in refusing to review the appeal due to Appellant’s failure to timely file her appeal with the Board. The decision of the Board is supported by substantial evidence in the record. Evidence is substantial when a reasonable person would think the evidence presented was adequate to support the conclusion.¹⁰ In determining whether substantial evidence exists to support the Board’s decision, this Court must view the record in the light most favorable to the prevailing party.¹¹ Under 19 *Del. C.* §3318(b), an appeal must be filed within 10 calendar days of the mailing of the Claim Deputy’s determination.¹² If an appeal is not filed within that time, the Claim Deputy’s determination is deemed final.¹³ The Board’s decision was mailed on March 7, 2012 and Appellant filed her appeal on March 20, 2012, one business day after the ten day period. Appellant attempts to argue that she filed her appeal late because of the extenuating medical needs of her daughter and upon the advice of a representative

⁸ *Funk v. Unemployment Ins. Appeal Bd.*, 591 A.2d 222, 225 (Del. 1991).

⁹ *Id.*

¹⁰ *Oceanport Ind. v. Wilmington Stevedores.*, 636 A.2d 892, 899 (Del. 1994).

¹¹ *Brommel v. Chrysler, LLC*, 2001 WL 4513086, at *3 (Del. Super. Ct. Oct. 28, 2010) (citing *E.I. DuPont De Nemours & Co. v. Fanpel*, 859 A.2d 1042, 1046-47 (Del. Super. Jan. 30, 2004).

¹² 19 *Del. C.* §3318(b).

¹³ *Id.*

of the Board. However, Appellant did not offer those explanations or any other explanations for the late filing of her appeal when she filed with the Board. Thus, based on the evidence present at the time of the Board's decision, the Board's determination was supported by substantial evidence.

II. The Board did not Abuse its Discretion granted pursuant to 19 Del. C. §3320 to Review an Appeal Sua Sponte.

The Board did not abuse its discretion in refusing to hear Appellant's untimely appeal. 19 Del. C. §3320 grants wide discretion to the Board to "affirm, modify or reverse any decision of an appeal tribunal" on its own motion.¹⁴ The Board may *sua sponte* act after the statutory ten day period to consider a case.¹⁵ The Board, however, exercises caution in using this power and does so "only in those cases where there has been some administrative error . . . or where the interests of justice would not be served by inaction."¹⁶ The Board did not abuse its discretion in refusing to hear the untimely appeal. There was no evidence presented to the Board at the filing of the appeal to indicate that there may have been an administrative error or extenuating circumstances that would prompt review for appeal. Although Appellant now argues that there were severe circumstances that gave rise to the late filing of her appeal and that the Board informed her that she could file her appeal one day late, this Court is limited to

¹⁴ 19 Del. C. §3320.

¹⁵ *Funk*, 591 A.2d at 225.

¹⁶ *Id.*

review on the record and cannot read additional facts into this case. For these reasons, the decision of the board is **AFFIRMED**.

Conclusion

Based on the forgoing, the decision of the Board is **AFFIRMED**.

IT IS SO ORDERED.

/S/CALVIN L. SCOTT
Judge Calvin L. Scott, Jr.