

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR KENT COUNTY

BRIA MILLER,	:	
Appellant,	:	K12A-06-005 WLW
	:	
v.	:	
	:	
HERSHA HOSPITALITY and	:	
EMPLOYMENT INSURANCE	:	
APPEALS BOARD,	:	
Appellee.	:	

**ORDER**

Before the Court is Claimant Bria Miller’s (“Appellant”) appeal from a June 17, 2012 decision of the Unemployment Insurance Appeal Board (“the Board” or “UIAB”). Appellant had appealed a March 16, 2012 decision by an Appeals Referee that disqualified Appellant from the receipt of unemployment benefits because she was not an unemployed person as contemplated by 19 *Del. C.* 3302(17). Appellant failed to appear at a scheduled hearing and the Board dismissed her appeal. For the foregoing reasons, Appellant’s appeal is dismissed pursuant to Superior Court Rule 72(i) for lack of jurisdiction.

**FACTS**

Appellant has been employed by Hersha Hospitality Management (“Hersha”) as a room attendant since August 3, 2010. Appellant was never discharged from this position. Rather, she continues to work on a part-time, as-needed basis with no guarantee of a set number of hours per week. When her hours were reduced in January 2012, Appellant filed a claim for unemployment benefits with the Delaware Department of Labor. A Claims Deputy from the Department of Labor found that

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Appellant was discharged by Hersha without just cause by virtue of the reduction of her hours and therefore deemed her eligible to receive unemployment benefits. Hersha appealed this decision on February 22, 2012, and a hearing was held before an Appeals Referee on March 15, 2012. In a written decision issued on March 16, 2012, the Appeals Referee modified and reversed the determination made by the Claims Deputy. The Appeals Referee found that Appellant was not discharged from her position of employment and is therefore not an unemployed individual within the plain meaning of 19 *Del C.* § 3302.

The Appellant then appealed the Referee's decision to the Board. A hearing before the Board was scheduled for June 5, 2012, and notice of this hearing was sent to Appellant's address on March 22, 2012. The notice set forth that the hearing would be held on June 5, 2012 at 11:20 a.m. The notice also informed Appellant that "[f]ailure to appear for your hearing in a timely manner can result in your appeal being dismissed." In spite of this notice, Appellant did not appear at the hearing to prosecute her appeal nor did she give a reason for her absence. The Board dismissed her appeal for failure to prosecute. On June 13, 2012, Appellant timely appealed the Board's decision to this Court. In her Notice of Appeal, Appellant explains her absence by contending that she never received notice of the hearing in the mail. She now seeks to argue the merits of her appeal. Neither Hersha nor the Board filed an answering brief in this matter.

### ***Discussion***

Judicial review of a decision of the Unemployment Insurance Appeal Board is

permitted only “after any party claiming to be aggrieved thereby has exhausted all administrative remedies as provided by this chapter.”<sup>1</sup> This statutory mandate requires that where a remedy before an administrative agency is available, the appellant must first exhaust this remedy before the Court will act.<sup>2</sup> Only after the completion of the administrative process may a court review the aggrieved party’s claim<sup>3</sup>

This Court has found that it lacks jurisdiction to address the merits of an administrative appeal when a party fails to exhaust its administrative remedies.<sup>4</sup> In *Griffin v. Daimler Chrysler*, on nearly identical facts, this Court declined to exercise jurisdiction over a claimant’s UIAB appeal because he had failed to appear at the hearing before the Board and the Board had not addressed the merits of the case.<sup>5</sup> The Court granted the Board’s motion to dismiss because the claimant did not exhaust all of his administrative remedies.<sup>6</sup> Moreover, the claimant did not address whether Board had abused its discretion in dismissing his appeal.<sup>7</sup> Thus, by failing

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<sup>1</sup> 19 *Del. C.* § 3322(a).

<sup>2</sup> *Griffin v. Daimler Chrysler*, 2000 WL 33309877, at \*1 (Del. Super. Ct. Apr. 27, 2001).

<sup>3</sup> *Id.*

<sup>4</sup> *See, e.g., Morales v. Red Oak Health Care Mgmt. Tilton Terrace*, 2008 WL 1726051, at \*2 (Del. Super. Ct. Mar. 25, 2008); *Griffin*, 2000 WL 33309877 at \*1.

<sup>5</sup> *Griffin*, 2000 WL 33309877, at \*2.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

to appear at the scheduled hearing before the Board, the Board found that the claimant forfeited his right to appeal the merits of the case.<sup>8</sup>

Similarly, here, the Court finds that it lacks jurisdiction to address the merits of Appellant's case. The Board did not render a decision on the merits of this case because Appellant, although duly noticed, failed to appear at the scheduled hearing to prosecute her appeal before the Board. Accordingly, judicial review of Appellant's appeal is not permitted under 19 *Del. C.* § 3322(a) because by failing to present the merits of her case to the Board, the Appellant has not exhausted her administrative remedies.

Pursuant to Superior Court Civil Rule 72(i), the Court may, "sua sponte, or upon a motion to dismiss by any party," order the dismissal of an appeal. The grounds for ordering a dismissal include untimely filing of an appeal, appealing an unappealable interlocutory order, failing to diligently prosecute an appeal, failing to comply with any rule, statute, or order of the Court, or for any other reason deemed by the Court to be appropriate.<sup>9</sup> As such, the Court hereby dismisses Appellant's

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<sup>8</sup> *Id.*

<sup>9</sup> *See* Super. Ct. Civ. R. 72(i). The rule further instructs: "If the Court concludes *sua sponte* that dismissal is warranted, the Prothonotary shall forward notice directing the Appellant to show cause why the appeal should not be dismissed within 10 days of her receipt of the notice." *Id.* It is unnecessary to issue a rule to show cause in the present matter because Appellant has explained the reasons for her absence from the Board hearing. In her opening brief, Appellant states that she never received notice of the June 5, 2012 hearing date by mail. But the record shows that proper and timely notice of the June 5, 2012 hearing was mailed to Appellant at her current mailing address, the same address at which she had received prior notices to appear. Appellant's failure to appear on the hearing date is, therefore, inexcusable.

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appeal pursuant to Rule 72(i), because, as a result of the Appellant's failure to exhaust her administrative remedies, the Court lacks jurisdiction to address the merits of the case, which were the sole grounds for the appeal.

**CONCLUSION**

For the foregoing reasons, Appellant's appeal is **DISMISSED** for lack of jurisdiction.

IT IS SO ORDERED this 17<sup>th</sup> day of April, 2013.

/s/ William L. Witham, Jr.  
Resident Judge

WLW/dmh

oc: Prothonotary  
xc: Ms. Bria Miller  
Hersha Hospitality  
Unemployment Insurance Appeal Board