

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR KENT COUNTY**

MELISSA THOMAS,

:

:

C.A. No: 13A-04-006 (RBY)

_____ **Appellant,**

:

:

v.

:

:

BAYHEALTH MEDICAL CENTER,

:

:

Appellee.

:

Submitted: September 12, 2013

Decided: November 1, 2013

*Upon Consideration of Appellant's
Motion for Summary Judgment and to Stay the
Briefing Schedule; and Motion to Strike and to Dismiss the Case*
DENIED IN PART and REMANDED IN PART

ORDER

Mary F. Higgins, Esq., Wilmington, Delaware for Appellant.

James H. McMackin, III, Esq., and Allyson Britton DiRocco, Esq., Morris James, LLP, Wilmington, Delaware for Appellee.

James T. Wakley, Esq., Department of Justice, Wilmington, Delaware for Unemployment Insurance Appeals Board.

Young, J.

SUMMARY

Appellant/Claimant, Melissa Thomas (“Appellant”), has appealed the determination of the Unemployment Insurance Appeal Board (“Board”) that Appellant was not entitled to unemployment benefits pursuant to 19 *Del. Code* § 3314 (2) on the basis that her termination was for just cause.

A spate of motions has been filed: Appellant’s Motion for Summary Judgment, along with a Motion to Reverse the Decision of the Board; Appellee’s Motion (contained within a Response to Appellant) to have the matter remanded.

Because genuine issues of material fact exist regarding the content and consideration of documentary evidence, the matter is **REMANDED** to the Board for determination thereof.

DISCUSSION

Appellant appeals the Board’s decision and contends that she should be entitled to benefits, because Bayhealth did not return the Employer Separation Notice within the required 7 day period pursuant to 19 *Del. Code* § 3317 (b). This section states:

Any...employer who fails to timely return a separation notice or who fails to complete a separation notice within the period prescribed above shall be barred from claiming subsequently that the individual claimant...shall be disqualified under any provisions of Section 3314 of this Title 19.

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The statute, however, contains an exception where the Department of Labor may release the employer from a late response for reasons that are found to constitute good cause.

Appellee contends that, because Appellant failed to raise this argument concerning the Employer Separation Notice in the previous administrative proceedings, there is no finding by the Claims Deputy, Appeals Referee, or the Board in the record concerning whether Bayhealth's reasons constituted good cause under 19 *Del. Code* § 3317 (b). A review of the record shows that this determination was never made.

Appellee cites *Bailey v. Printpack, Inc.*, in which, this Court was faced with a similar situation. The issue of the employer's late response was raised by the employee for the first time in the Superior Court, but the issue had not been considered by the Claims Deputy, Appeals Referee, or the Board. Therefore, the Court remanded the case to the Board to make a determination on the good cause issue. Appellee, on that basis, requests the Court to remand the present case to the Board to determine whether Bayhealth's reasons constituted good cause.

CONCLUSION

Since there was no finding by the Board about the Employer Separation Notice in the previous proceeding, this is a genuine issue of material fact. It is, therefore, inappropriate for any final determination. Accordingly, Appellant's various Motions are **DENIED**. The issue of Employer's late response is **REMANDED** to the Unemployment Insurance Appeal Board for a determination.

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IT IS SO ORDERED.

/s/ Robert B. Young

J.

RBY/lmc

oc: Prothonotary

cc: Counsel

Opinion Distribution

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