

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

DANA HOCKENSMITH,

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C.A. No: K14A-03-006 RBY

_____ Appellant,

:

:

v.

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:

UNEMPLOYMENT INSURANCE
APPEAL BOARD,

:

:

:

Appellee.

:

Submitted: July 30, 2014
Decided: September 17, 2014

*Upon Consideration of Appellant's Appeal from
the Unemployment Insurance Appeal Board*
AFFIRMED IN PART and REMANDED IN PART

ORDER

Dana Hockensmith, *Pro se*.

Stacey Stewart, Esquire, Deputy Attorney General, Department of Justice,
Wilmington, Delaware for Appellee.

Young, J.

SUMMARY

This is an appeal from a decision of the Unemployment Insurance Appeal Board (“the Board”) holding that Dana Hockensmith’s (“Appellant”) appeal from a decision by the Department of Labor (“the Department”) was untimely. The Department’s decision barred Appellant from receiving unemployment benefits for one year, following a determination that she had defrauded the Department by underreporting her income from at least April 2013 to January 2014. Appellant argues that her untimely appeal should be excused due to a series of unintentional errors that prevented her from filing the appeal within the allotted time frame. The Court finds that the Board properly reached its decision as it was in keeping with the statute concerning the timely filing of appeals. Moreover, the Board’s decision was based upon the uncontroverted evidence that Appellant failed to file her appeal according to the time frame set out by the Department. That the error was unintentional is of no consequence. Therefore, the decision of the Board is **AFFIRMED**.

The Appellant has further included among her papers two decisions by the Department establishing the overpayment amount stemming from the purported fraud committed by Appellant. To the Court’s knowledge, these decisions have not yet been reviewed by an Appeals Referee or the Board. The Court, therefore, **REMANDS** the decision of the Department regarding the amount of overpayment owed by Appellant.

FACTS AND PROCEDURAL POSTURE

On January 16, 2014, the Department issued a decision finding that Appellant had committed fraud by underreporting her earnings, while collecting unemployment

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insurance benefits. The period in question was roughly from April 2013 to January 2014. The Department's findings were based upon a wage audit investigation through which it received information from Jevs Supports for Independence ("Jevs"), that Appellant had been paid wages from April 6, 2013 to May 25, 2013. Pursuant to 19 *Del. C.* § 3314(6) and § 3325, the Department held that the Appellant was barred from receiving unemployment benefits for a period of one year and would be liable to the Department for the amount of overpayment she received. At the time of the Department's decision, the overpayment amount had not been established and the Department reserved this finding for a later time. The decision further stated that this determination was final unless Appellant filed a written appeal by January 26, 2014.

Allegedly, as a result of her husband's failing to inform her of receipt of the decision, the Appellant did not see the document until January 26, 2014, the date her appeal was officially due. However, as the 26th fell on a Sunday, Appellant had until Monday the 27th to file a timely appeal. Appellant attempted to hand deliver her appeal to the Local Office on the 27th, but arrived after the office had closed. Appellant contends she was under the impression the office was open until 5 p.m. She left a copy of her appeal in the Local Office's mailbox, but it was not received by the Local Office until the 28th – one day past the due date.

On February 28, 2014, a hearing on Appellant's appeal was held before an Appeals Referee. On February 26, 2014, the Referee issued a decision dismissing the appeal as having been untimely filed pursuant to 19 *Del. C.* § 3318(b). Appellant filed an appeal of the Referee's decision with the Board on March 1, 2014. The Board affirmed the decision of the Referee on March 20, 2014.

The Department further issued two decisions regarding the amount of overpayment owed by Appellant on April 11, 2014 and May 8, 2014. The April decision found the Appellant owed \$2,640.00 and the May decision found the Appellant owed an additional \$660.00. The Appellant appears to attempt an appeal of these two decisions by her filings with this Court.

STANDARD OF REVIEW

For administrative board appeals, this Court is limited to reviewing whether the Board's decision is supported by substantial evidence and free from legal errors.¹ Substantial evidence is that which "a reasonable mind might accept as adequate to support a conclusion."² It is "more than a scintilla, but less than preponderance of the evidence."³ An abuse of discretion will be found if the board "acts arbitrarily or capaciously...exceeds the bounds of reason in view of the circumstances and has ignored recognized rules of law or practice so as to produce injustice."⁴ Where an agency has interpreted and applied a statute, the court's review is *de novo*.⁵ In the absence of an error of law, lack of substantial evidence or abuse of discretion, the

¹ 29 Del. C. §10142(d); *Avon Prods. v. Lamparski*, 203 A.2d 559, 560 (Del. 1972).

² *Olney v. Cooch*, 425 A.2d 610, 614 (Del. Super. 1981) (citing *Consolo v. Fed. Mar. Comm'n*, 383 U.S. 607, 620 (1966)).

³ *Id.* (quoting *Cross v. Calfano*, 475 F.Supp. 896, 898 (M.D. Fla. 1979)).

⁴ *Delaware Transit Corp. v. Roane*, 2011 WL 3793450, at *5 (Del. Super. Ct. Aug. 24, 2011) (quoting *Straley v. Advanced Staffing, Inc.*, 2009 WL 1228572, at *2 (Del. Super. Ct. Apr. 30, 2009)).

⁵ *Lehman Brothers Bank v. State Bank Commissioner*, 937 A.2d 95, 102 (Del. 2007).

Court will not disturb the decision of the board.⁶

DISCUSSION

_____ The Board affirmed the decision of the Appeals Referee pursuant to 19 *Del. C.* § 3220(a), finding that no error had been committed in the Referee's determination. The Referee's decision was based upon 19 *Del. C.* § 3318(b) which states in relevant part:

Unless claimant or a last employer who has submitted a timely and completed separation notice in accordance with § 3317 of this title file an appeal within 10 calendar days after such Claims Deputy's determination was mailed to the last known address of the claimant and the last employer, the Claims Deputy's determination shall be final and benefits shall be paid or denied in accordance therewith.⁷

From the record, the Referee determined that Appellant delivered her appeal from the Department's decision on January 27, 2014, but that it was not received until the 28th, one day after it was due. As per the statute, Appellant's failure to file her appeal in a timely manner resulted in the Department's decision's becoming final. The Referee further found that the error resulting in the untimely filing was *personal* to Appellant and not as a result of an administrative error: Appellant's husband had neglected to give Appellant her mail. As a result, the Department's decision was final and not appealable.

Appellant's only argument against the Board's and the Referee's rulings is that the envelope in which she received the Department's initial decision was not dated.

⁶ *Anchor Motor Freight v. Ciabattoni*, 716 A.2d 154, 156 (Del. 1998).

⁷ 19 *Del. C.* § 3318(b).

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She, therefore, suspects some delay in sending it to her. Moreover, she argues that the time in which to file an appeal is unreasonably short. The Court understands this to be an equitable argument. Lastly, Appellant stresses that a series of unintentional errors –namely her husband’s neglect and her own innocent mistake regarding the office hours of the Department – led to the untimely filing of her appeal.

Although sensitive to the Appellant’s predicament, the Court agrees with the Board’s finding that there was no error in the Referee’s ruling. Turning first to the legal analysis⁸, the Referee’s findings were plainly in line with the call of the statute. Appellant’s appeal was filed after the ten day period enumerated in the statute. She clearly missed the deadline. As a result the statute deems the Department’s decision final and not appealable. With respect to the factual findings of the Referee, there is no indication that they were based on anything other than substantial evidence.⁹ The uncontroverted record shows that the appeal should have been filed on January 26, 2014. The record further shows that Appellant filed her appeal, at best, on January 27, 2014 – outside the required time period. In line with the plain language of the statute, any appeal filed beyond the allotted time is ineffective.

Although Appellant was affected by unintentional and innocent errors, these were entirely personal in nature. There is no evidence that the appeal was untimely due to an administrative error by the Department.¹⁰ These errors are unfortunate, but

⁸ *Avon Prods*, 203 A.2d at 560 (court reviews whether Board’s decision is free from legal error).

⁹ *Id.* (court reviews Board’s decision to ensure it is based on substantial evidence).

¹⁰ *See e.g. McGonigle v. George H. Burns, Inc.*, 2001 WL 1079036 at *3 (Del. Super. Ct. Sept. 4, 2001) (appeal was not untimely where belated filing resulted from administrative error).

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the statute requires strict procedure be followed. The Court finds the decision of the Board to be based on substantial evidence and free from legal error.

Regarding the two additional decisions Appellant included with her filing, the Court remands determination to an Appeals Referee. Pursuant to 19 *Del. C.* § 3322(a), an Appellant must first “exhaus[t] all administrative remedies as provided by this chapter” before she may appeal a decision to this Court.¹¹ As has been stated, there is no indication these decisions were reviewed either by an Appeals Referee or the Board. At present, these decisions are not properly before this Court.

CONCLUSION

The record is clear that Appellant missed the deadline to file her appeal from the Department’s decision. As such, this decision is final and not appealable. The decision of the Board is **AFFIRMED**. The two additional decisions regarding overpayment amount are **REMANDED** as they are not properly before this Court at this time.

IT IS SO ORDERED.

/s/ Robert B. Young
J.

RBY/lmc
oc: Prothonotary
cc: Stacey Stewart, Esq.
Dana Hockensmith, *Pro se* (via U.S. mail)
Opinion Distribution
File

¹¹ *Miller v. Hersha Hospitality*, 2013 WL 2296307, at * 1 (Del. Super. Ct. Apr. 7, 2013).