

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR KENT COUNTY

OLIVIA SPENCER,	:	
	:	C.A. No. K14A-03-005 WLW
Appellant,	:	
	:	
v.	:	
	:	
UNEMPLOYMENT INSURANCE	:	
APPEALS BOARD,	:	
	:	
Appellee.	:	

Submitted: July 30, 2014
Decided: September 25, 2014

ORDER

Upon an Appeal from the Decision of the
Unemployment Insurance Appeals Board.
Affirmed.

Olivia Spencer, *pro se*

Catherine Damavandi, Esquire, Department of Justice, Wilmington, Delaware;
attorney for the Unemployment Insurance Appeals Board.

WITHAM, R.J.

INTRODUCTION

Before the Court is the *pro se* appeal of Appellant Olivia Spencer (hereinafter “Appellant”) from the decision of the Unemployment Insurance Appeals Board (hereinafter “the Board” or “the UIAB”) denying Appellant’s appeal as untimely pursuant to 19 *Del. C.* § 3318(b). The Court has reviewed the record in this matter and the parties’ submissions. For the following reasons, the Board’s decision is affirmed.

BACKGROUND

This matter stems from a decision by the Delaware Department of Labor (hereinafter “the Department”) to Appellant finding her disqualified for benefits per 19 *Del. C.* § 3314(6) and 3325.¹ On September 6, 2012, the Department mailed the Notice of Determination informing Appellant she had been disqualified from receiving benefits due to fraudulent actions. The notice stated that the decision would become final on September 16, 2012, unless an appeal was filed. Appellant received the notice on September 7, 2012, and claims she faxed a request for an appeal on the same date. However, no such fax was received nor does a record of one exist. Appellant did not file an appeal until January 31, 2013.

In November 2012, Appellant contacted the Benefit Payment Control Unit and was told she would be receiving the date of a hearing shortly, however, this was in

¹Although neither the Appeals Referee nor the Board needed to decide the issue of Appellant’s fraudulent receipt of benefits, this Court notes that even if Appellant had timely appealed the decision, the decision to terminate her unemployment benefits still would not have been reversed.

regards to an overpayment claim, and not the fraudulent claim against Appellant from September 2012. In January 2013, Appellant attended the hearing regarding overpayment of benefits, believing its purpose was to address the September claim. On January 31, 2013, Appellant subsequently filed an appeal of the September 6, 2012 decision.

On February 28, 2013 the Appeals Referee issued a decision affirming the determination by the Claims Deputy that the appeal was untimely. The Referee noted at the hearing that the address to which Appellant's notice was sent was her address of record at the time of the mailing. The Appeals Referee also noted that nothing was returned by the Post Office to indicate service of process had not been successful. The Appeals Referee concluded that the appeal was untimely pursuant to 19 *Del. C.* § 3318(b).

Appellant timely appealed the Appeals Referee's decision to the Board. The Board found no error in the Appeals Referee's findings or conclusions, and on March 18, 2013, issued its decision affirming the Referee, finding the appeal was untimely according to 19 *Del. C.* § 3318(b).

STANDARD OF REVIEW

When this Court reviews a procedural decision of the UIAB—which is a discretionary decision, as opposed to a factual decision that would trigger substantial evidence review—the Court must determine whether the UIAB abused its discretion

in rendering its decision.² There is no abuse of discretion unless the Board based its procedural decision “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 practices so as to produce injustice.”³ If there is no abuse of discretion, the Court must affirm the Board’s decision if the Board did not otherwise commit an error of law.⁴

DISCUSSION

Section 3318(b) of title 19 of the Delaware Code provides that a Claims Deputy’s determination becomes final unless a claimant for unemployment benefits has filed an appeal from the determination within ten calendar days from when the decision was “mailed to the last known addresses of the claimant and the last employer. . . .”⁵ Under 19 *Del. C.* § 3320, the Board has discretion to consider an untimely appeal “if the lateness of the filing can be traced back to an error of the UIAB, or in those cases where the interests of justice would not be served by inaction.”⁶

² *Hartman v. Unemployment Ins. App. Bd.*, 2004 WL 772067, at *2 (Del. Super. Apr. 5, 2004) (citing *Funk v. Unemployment Ins. App. Bd.*, 591 A.2d 222, 225 (Del. 1991)).

³ *Powell v. Unemployment Ins. App. Bd.*, 2013 WL 3834045, at *1 (Del. Super. July 23, 2013) (citing *Hartman*, 2004 WL 772067, at *2)).

⁴ *Wilson v. Franciscan Care Ctr.*, 2006 WL 1134779, at *1 (Del. Super. Apr. 18, 2006) (citing *Funk*, 591 A.2d at 225)).

⁵ 19 *Del. C.* § 3318(b).

⁶ *Powell*, 2013 WL 3834045, at *2 (citing *Funk*, 591 A.2d at 225).

The only issue that was before the Board throughout this appeals process was the timeliness of Appellant's original appeal from the September 6, 2012 Claims Deputy's determination that Appellant was disqualified from receiving benefits. The Notice of Determination explicitly stated that the decision would become final on September 16, 2012. Appellant filed her appeal from that determination on January 2013, after the decision had already become final. Thus, Appellant's appeal was untimely.

Appellant testified that she received the Notice of Determination at her home address, indicating service of process was completed. The only reason given by Appellant for the untimely filing was that she believed she filed an appeal on time, because she sent a fax noting her desire to appeal on September 7, 2012 (one day after her receipt of the Claims Deputy's decision). However, the Department of Labor does not have said fax or any record of one sent by Appellant.

The Court is conscious of the fact that Appellant is litigating this appeal *pro se*. Courts are at liberty to reasonably interpret a *pro se* litigant's filings, pleadings and appeals "in a favorable light to alleviate the technical inaccuracies typical in many *pro se* legal arguments. . . ." ⁷ However, barring extraordinary circumstances, "procedural requirements are not relaxed for any type of litigant. . . ." ⁸ The timely filing of an appeal constitutes as a procedural requirement. Appellant has failed to

⁷ *McGonigle v. George H. Burns, Inc.*, 2001 WL 1079036, at *2 (Sept. 4, 2001).

⁸ *Id.*

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show that extraordinary circumstances existed that prevented her from responding to the UIAB's decision prior to the September 16, 2012 deadline; thus, the Court cannot relax the ten-day filing period for Appellant.

The Board's decision denying Appellant's untimely appeal was neither clearly unreasonable nor capricious, nor did the Board otherwise exceed the bounds of reason. Accordingly, the Board did not abuse its discretion.

CONCLUSION

In light of the absence of any error of law or abuse of discretion, the decision of the UIAB must be, and is, hereby **AFFIRMED**.

IT IS SO ORDERED.

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

WLW/dmh