

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR KENT COUNTY

JOHN D. SHADE,	:	
	:	C.A. No. K14A-06-004 WLW
Appellant,	:	
	:	
v.	:	
	:	
FIRST STATE SIGNS and	:	
UNEMPLOYMENT INSURANCE	:	
APPEALS BOARD,	:	
	:	
Appellees.	:	

Submitted: September 15, 2014

Decided: December 3, 2014

ORDER

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

Affirmed.

John D. Shade, Appellant, *pro se.*

Catherine Damavandi, Esquire, State of Delaware Department of Justice, Wilmington,
Delaware; attorney for the Board.

WITHAM, R.J.

Before the Court is the *pro se* appeal of Appellant John Shade (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

On November 25, 2013, Appellant voluntarily quit his position at First State Signs. On February 5, 2014, a Claims Deputy with the Delaware Department of Labor (hereinafter “the Department”) issued a Notice of Determination informing Appellant that he was disqualified for receiving benefits due to leaving work voluntarily without good cause pursuant to 19 *Del.C.* § 3314(1). The Notice of Determination was mailed to Appellant’s address of record at that time in Harrington, Delaware, and stated that he had until February 15, 2014 to file an appeal. On April 7, 2014, Appellant filed an appeal challenging the Claims Deputy’s determination stating that the reason for filing late was that Appellant believed he “would find work.”

On April 14, 2014, the Claims Deputy issued a determination that Appellant’s appeal of the February 5, 2014 Notice of Determination was untimely. The Claims Deputy concluded that the appeal was untimely pursuant to 19 *Del. C.* § 3318(b). The Claims Deputy noted that the Harrington, Delaware address to which the Notice of Determination was mailed was Appellant’s address of record at the time.

On May 1, 2014, the Appeals Referee held a hearing solely on the timeliness of the appeal. Appellant stated he filed a late appeal because he thought he could find work. However, Appellant was unable to find work and thus was motivated to file the appeal.

By decision dated May 1, 2014, the Appeals Referee affirmed the Claims Deputy's determination that Appellant's appeal was untimely. The Appeals Referee noted that the Appellant verified his address on file is correct. Further, no evidence of improper service was introduced, as the Notice was never returned to the Department by the Post Office.

In the May 1, 2014 decision, Appellant was notified that the last day to file an appeal was May 11, 2014. Appellant untimely appealed the Appeals Referee's decision to the Board on May 15, 2014. On May 21, 2014, The Board found no error in the Appeals Referee's findings or conclusions. The Board concluded that both of the Appellant's appeals were untimely, through no fault of the Department. Accordingly, the Board affirmed the Appeals Referee's decision. Appellant timely appealed the Board's decision.

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.¹ 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.”² 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.³

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 (10) calendar days from when the decision was “mailed to the last known addresses of the claimant and the last employer. . . .”⁴ 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.”⁵

¹ *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)).

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

³ *Wilson v. Franciscan Care Ctr.*, 2006 WL 1134779, at *1 (Del. Super. Apr. 18, 2006) (citing *Funk*, 591 A.2d at 225)).

⁴ 19 *Del. C.* § 3318(b).

⁵ *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 appeal from the February 5, 2014 Claims Deputy's determination that Appellant was disqualified from receiving benefits, and from the May 1, 2014 Determination that was not appealed until May 15, 2014, three (3) days after the deadline. Each Notice of Determination explicitly stated that the first decision would become final on February 15, 2014, and the latter on May 11, 2014. Appellant filed his appeal from the first determination after the decision had already become final on April 7, 2014, and on May 15, 2014, after the Claims Referee concurred with the Claims Deputy. Thus, all of Appellant's appeals have been untimely, but for his appeal to this Court.

In Appellant's Opening Brief he admits that he filed a late appeal. Appellant does not contest that the address the Notice of Determination was mailed to is correct. The only reason given by Appellant for his untimely filing was that he was waiting to file the initial appeal because he was actively looking for work.

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. . . ." ⁶ However, barring extraordinary circumstances, "procedural requirements are not relaxed for any type of litigant. . . ." ⁷ The timely

⁶ *McGonigle v. George H. Burns, Inc.*, 2001 WL 1079036, at *2 (Sept. 4, 2001).

⁷ *Id.*

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filing of an appeal constitutes as a procedural requirement. Appellant has failed to show that extraordinary circumstances existed that prevented him from responding to the UIAB's decision prior to the February 15, 2014 deadline; thus, the Court cannot relax the ten (10) 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. The reason for the lateness of the appeal is simply not reasonable. 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