

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

THOMAS DAVIS,)
)
 Appellant,)
)
 v.) C.A. No. N23A-11-049 JRJ
)
 STATE OF DELAWARE)
 UNEMPLOYMENT INSURANCE)
 APPEAL BOARD,)
)
 Appellee.)

Date Submitted: March 18, 2024
Date Decided: April 29, 2024

ORDER

This 29th day of April, upon appeal from the Unemployment Insurance Appeal Board (“Board”), the parties’ submissions, and the record below, **IT APPEARS THAT:**

(1) Appellant Thomas Davis (“Davis”) appeals a decision of the Board.¹ On November 20, 2023, the Board concluded that Davis’ appeal to the Board was untimely pursuant to 19 *Del. C.* § 3318, and so his appeal was denied.² On December 4, 2023, Davis filed a timely appeal of the Board’s decision to the Superior Court.³

¹ Davis’ Notice of Appeal, Trans. ID 71533298 (Dec. 4, 2023).

² State’s Resp., Trans. ID 72520973 (Mar. 14, 2024).

³ Davis’ Notice of Appeal.

(2) On February 28, 2024, Davis filed his “Opening Brief” in support of his appeal.⁴ Davis’ “Opening Brief” did not address any aspect of the Board’s November 20, 2023, decision, but instead, listed the dates Davis was out of work.⁵

(3) On March 14, 2024, the State filed its response, stating that Davis’ failure to address the untimeliness of the underlying appeal should be viewed as a ratification of the Board’s decision.⁶

(4) On March 18, 2024, the Court sent Davis a letter requesting that he re-file his Opening Brief and directly address the Board’s November 20, 2023 decision by April 1, 2024.⁷ As of today, April 29th, 2024, the Court has not received a response from Davis.

(5) Pursuant to Superior Court Rule 107(f), if any brief is not filed with the Court in the time prescribed by Court order or stipulation, then “the Court may, in its discretion, dismiss the proceeding if the plaintiff is in default, consider the motion as abandoned, or summarily deny or grant the motion”⁸ The Court notes that “there is no different set of rules for *pro se* plaintiffs, and the trial court should not sacrifice the orderly and efficient administration of justice to accommodate an unrepresented plaintiff.”⁹

⁴ Davis’ Op. Br., Trans. ID 72193106 (Feb. 28, 2024).

⁵ *Id.*

⁶ State’s Resp.

⁷ Court’s Letter, Trans. ID 72546516 (March 18, 2024)

⁸ Super. Ct. Civ. R. 107(f).

⁹ *Draper v. Medical Center of Delaware*, 767 A.2d 796, 799 (Del. 2001).

(6) When reviewing a decision on appeal from the Board, the Superior Court plays a limited role. The Court’s role on appeal is to determine whether the Board had substantial evidence to support its findings.¹⁰ Conclusions of law are reviewed *de novo*.¹¹ The Court will review the Board’s discretionary rulings on an abuse of discretion standard,¹² only disturbing its decisions where the Board “acts arbitrarily or capriciously, or exceeds the bounds of reason in view of the circumstances and has ignored recognized rules of law or practice so as to produce injustice.”¹³

(7) Pursuant to 19 *Del. C.* § 3318(b), a claimant has 15 days from the date of mailing a decision of a Claims Deputy to appeal. “The time for filing an appeal is an express statutory condition of jurisdiction that is both mandatory and dispositive.”¹⁴ Where the delay is not caused by an administrative error on the part of the Department of Labor (“DOL”), the decision of the Claims Deputy becomes final, and 19 *Del. C.* § 3318(b) creates a jurisdictional bar to further appellate review.¹⁵

¹⁰ *Gen. Motors Corp. v. Freeman*, 164 A.2d 686, 689 (Del. 1960).

¹¹ *LeVan v. Indep. Mall, Inc.*, 940 A.2d 929, 931-32 (Del. 2007).

¹² *Funk v. Unemployment Ins. Appeal Bd.*, 591 A.2d 222, 225 (Del. 1991).

¹³ *Ellicott v. Stericycle, Inc.*, 2015 WL 399212, at *1 (Del. Super. Jan. 27, 2015) (quoting *Straley v. Advanced Staffing, Inc.*, 2009 WL 1228572, at *2 (Del. Super. Apr. 30, 2009)).

¹⁴ *Lively v. Dover Wipes Co.*, 2003 WL 21213415, at *1 (Del. Super. May 16, 2003).

¹⁵ *Hartman v. Unemployment Ins. Appeal Bd.*, 2004 WL 772067, at *2 (Del. Super. Apr. 5, 2004).

(8) Further, under 19 *Del. C.* § 3320(a), the Board has broad discretion to consider an appeal and may, “on its own motion, affirm, modify, or reverse any decision of an appeal tribunal.”¹⁶ However, in the context of “untimely appeals, such discretion is exercised rarely and primarily *in cases of administrative error* that has the effect of depriving a claimant the opportunity to file a timely appeal.”¹⁷ Here, the Board declined to exercise its discretion to hear Davis’ appeal on the merits.

(9) Davis does not address the untimeliness of his appeal, nor does he present any evidence to suggest an error or wrongdoing on the part of the DOL.¹⁸ The Court finds the Board did not abuse its discretion when it declined to accept the appeal for review.

THEREFORE, IT IS HEREBY ORDERED that the decision of the Unemployment Insurance Appeal Board is **AFFIRMED**.

IT IS SO ORDERED.

/s/ Jan R. Jurden
Jan R. Jurden, President Judge

cc: Prothonotary
Thomas Davis, *pro se*
Matthew B. Frawley, DAG

¹⁶ 19 *Del. C.* § 3320(a).

¹⁷ *Hefley v. Unemployment Ins. Appeal Bd.*, 988 A.2d 937 (Del. Jan. 26, 2010) (TABLE) (citing *Funk v. Unemployment Ins. Appeal Bd.*, 591 A.2d 222, 225 (Del. 1991)) (emphasis added).

¹⁸ Davis’ Op. Br.