

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

BRYON HAUPT,	)	
	)	
Claimant Below,	)	C.A. No.: S26A-09-001 CAK
Appellant,	)	
	)	CITATION ON APPEAL FROM
v.	)	THE DECISION OF THE
	)	INDUSTRIAL ACCIDENT BOARD
STATE OF DELAWARE,	)	DATED 07/14/26.
	)	
Employer Below,	)	
Appellee.	)	

**Upon Appellee's Motion to Dismiss Appeal, Denied, and Case Remanded to
the Industrial Accident Board with Directions**

MEMORANDUM OPINION AND ORDER

Submitted: October 13, 2026

Decided: October 27, 2026

Patrick C. Wenk, Esquire, Kimmel, Carter, Roman, Peltz & O'Neill, P.A., 56 West
Maim Street, Suite 400, Christiana, DE 19702, Counsel for Appellant.

Nicholas E. Bittner, Esquire, Heckler & Frabizzio, 800 Delaware Avenue, Suite 200,
Wilmington, DE 19899-0128, Counsel or Appellee.

KARSNITZ, J.

BACKGROUND

Bryon Haupt, the employee and claimant below (“Appellant”) filed a Petition to Determine Additional Compensation Due before the Industrial Accident Board (the “Board”), relating to compensability of a single medical expense which had already been paid by the State of Delaware, the employer below (“Appellee”). However, Appellee had paid the expense without prejudice. Had this single medical expense not been challenged before the Board, the statute of limitations for the workers' compensation claim would have expired, thereby closing the claim forever and preventing future care. The Board issued a Decision dated June 5, 2026, finding in favor of Appellant. Appellee was ordered to convert the previously made payment for the subject medical expense to paid with prejudice as a compensable doctor's visit, thus extending the five-year statute of limitations.¹ The Board also ruled that the payment without prejudice for the office visit was improper and awarded Appellant's attorney an \$8,000.00 fee after considering all the *Cox*² factors addressed in an affidavit submitted by Appellant's counsel.

On June 24, 2026, Appellee filed a timely Motion for Reargument, which was granted in part by the Board in an order dated July 14, 2026 (the “Order”). The Board affirmed its decision regarding the method of payment for the office visit but

¹ 19 Del. C. § 2361.

² *General Motors Corp. v. Cox*, 304 A.2d 55 (Del. 1973).

amended its position on the original payment as improper. The Board also reduced the original \$8,000.00 attorney fee to \$100.00.

A copy of the Order was mailed to Appellee and Appellant, via his attorney, by way of certified mail.³ The letter to Appellant was date-stamped by the Post Office as of July 15, 2026. The letter to Appellant was returned to the Board as “not deliverable” for an unknown reason on or about July 24, 2026. Board personnel made no further attempt to notify Appellant of the decision. Neither Appellant nor his counsel ever received the decision from the Board.

Appellant and his counsel were notified of the decision by Appellee’s counsel via a letter dated September 1, 2026, and received it on September 3, 2026, indicating that Appellee was not appealing the decision. Appellant’s counsel immediately contacted Appellee’s counsel for further information. Upon receipt of the decision, Appellant’s counsel immediately filed an appeal with this Court within one day, on

September 4, 2026. Appellee filed a Motion to Dismiss the appeal on September 25, 2026. Appellant filed his response on October 1, 2026. This Court received the certified records from the Board on October 13, 2026.

This is my decision on Appellee’s Motion to Dismiss. The only issue before me is whether, on these facts, Appellant’s failure to file his appeal within thirty (30)

³ 19 *Del. C.* § 2348(k).

days from the date when the Order was mailed to the parties, which is mandatory, creates a jurisdictional defect that may not be excused. Put another way, can the appellate jurisdiction of this Court be invoked or properly exercised if this appeal was not perfected within the time period fixed by law?

STANDARD OF REVIEW

The appeal before me is on the record of the proceedings before the Board.⁴ My review is limited. I review the decision of the Board solely to determine whether there is substantial competent evidence in the record to support the Board's findings and whether its decision is free from legal error.⁵

I do not determine questions of credibility or make my own factual findings.⁶ I view the facts in the light most favorable to the Board.⁷ A ruling of the Board will not be disturbed on appeal unless it is based on unreasonable grounds. The "Court gives significant weight to the [Board] regarding its application of legal principles in the specialized context of our state's workers' compensation scheme, because the [Board] has the occasion to give life to that scheme on a weekly basis in the many cases that come before it."⁸

⁴ 29 Del. C. §10142.

⁵ *Johnson v. Chrysler Corp.*, 213 A.2d 64, 66 (Del. 1965); *General Motors Corp. v. Freeman*, 164 A.2d 686, 688 (Del. 1960); *General Motors Corp. v. Jarrell*, 493 A.2d 978, 980 (Del. Super 1985).

⁶ *Id.*

⁷ *Chudnofsky v. Edwards*, 208 A.2d 516, 518 (Del. 1965).

⁸ *Berry v. MIRT QSR KNE LLC*, 2021 WL 626944 (Del. Super. Feb. 16, 2021) citing *Christiana Care Health Services v. Davis*, 127 A.3d 391, 395 (Del. 2015).

THE PARTIES' ARGUMENTS

Appellee argues that there is no exception for when a party does not actually receive notice before the appeal period has elapsed, and because the time period is jurisdictional, only the General Assembly has the authority to create such an exception. Absent any action by the Legislature to allow for an appeal period to begin when a party *received* the Order, it is presumed this is intentional and not an oversight on the part of the Legislature;⁹

Appellee further argues that even if the error is attributable to Board personnel, if such defect does not cause the delay in filing the appeal, then it is irrelevant.¹⁰ Issues in receiving mail do not constitute an error attributable to Board personnel.¹¹

Finally, Appellee argues that this Court has rejected the argument that the appeal period should not begin until the recipient has actually received the underlying Order, as that “argument is arbitrary and would cause potential conflicts.”¹² If there is no provision for enlarging a jurisdictional time limitation based upon receipt of the underlying order, then there is no jurisdiction to consider the appeal.¹³

⁹See, e.g., *Meltzer v. City of Wilmington*, 2008 WL 4899230, at *5 (Del. Super. Aug. 6, 2008).

¹⁰See, e.g., *Johnson v. Delhaize America, LLC*, 13 A.3d 1149 (Del. May 5, 2016) (table).

¹¹See, e.g., *De Felice v. Nelson*, 2016 WL 615749 (Del. Com. Pl. Feb. 1, 2016).

¹²*Walls v. Department of Natural Resources and Environmental Controls*, 2025 WL 1473936, at *4 (Del. Super. May 22, 2025).

¹³See, e.g., *Stone Creek Custom Kitchens & Design v. Vincent*, 2016 WL 3960273 (Del. Super. Jul. 20, 2016).

Appellant argues that the Board was notified by the Post Office that the Order was not delivered to his attorney. Nonetheless, the Board did not exercise due diligence in sending the Order by any other means, despite having previously sent notices, orders, and other such documentation to Appellant's attorney via email in the past. Nor did the Board attempt to contact Appellant's attorney to confirm the address of the mailing or to attempt to rectify the mailing error in any way. Appellant argues that such failures on the part of the Board constitute "an error attributable to court personnel" within the meaning of the statutory exception. Appellant asks rhetorically: why would the statute require the Board to serve its decisions "personally on, by secure email with an electronic receipt, or sent by certified mail to each of the parties in interest or to the attorneys representing the parties" if proof that the mail was not delivered does not alert Board personnel to take further action?

Appellant points out that in one of the cases cited by Appellee, *Bey v. State*, the State attacked the appellant's appeal by motion to dismiss on the grounds of lack of jurisdiction based upon untimeliness in filing. However, the Court allowed the appeal to be heard although it was untimely because documentary evidence supported the appellant's position that he was prevented from properly perfecting his appeal by both the action and inaction of State agencies.¹⁴ Moreover, in *Anderson*

¹⁴ 402 A.2d 362, 363 (Del. 1979).

v. Comfort Suites,¹⁵ the appellant filed an untimely appeal with the Unemployment Insurance Appeal Board from a decision from a Claims Deputy denying an unemployment claim because the decision was not returned as “undeliverable” and the Court found no evidence of error by an employee of the Department of Labor.¹⁶ In this case, the Board’s decision *was* returned “undeliverable” and there was error by the Board in not seeking alternative delivery options.

Appellant further argues that, since this was a Motion for Reargument and subsequent Response to Motion for Reargument, there was no hearing scheduled to present pleadings and arguments. Thus, there was no expectation as to whether an oral argument would be scheduled or when an Order would be issued regarding the Motion. Moreover, the Board often takes more than fourteen days to issue a decision even when there is a hearing.¹⁷ Indeed, although the initial hearing to Determine Additional Compensation Due in this matter was held on May 20, 2026, the Board’s initial decision was not mailed until June 9, 2026, some twenty days after the hearing. Thus, a delay in receiving the response regarding the Motion for Reargument would not warrant further investigation, because Appellant and his attorney could not assume when an oral argument would be scheduled or an order

¹⁵ 2004 WL 304359, at *1 (Del. Super. Feb. 12, 2004).

¹⁶ *Id.* at *2.

¹⁷ 19 *Del. C.* § 2348(k) requires in part, “No later than 14 days after a hearing, the Board shall render a written decision that succinctly and clearly states its findings.”

would be issued.

ANALYSIS

19 *Del. C.* § 2349 provides that an award of the Board, in the absence of fraud, shall be final and conclusive between the parties unless, within 30 days of the day the notice of the award was mailed to the parties or electronically received by secured email, either party appeals to the Superior Court for the county in which the injury occurred. The statute thus contains two express bases for relief built into its text: (1) fraud, and (2) the requirement that the appeal be filed in the correct county. There is no evidence of fraud in this case, and the appeal was filed in the correct county.

Delaware case law is clear that the 30-day deadline to appeal a Board decision to the Superior Court is jurisdictional, and the circumstances under which the Superior Court can consider a late appeal are extremely narrow, such as situations involving fraud, unusual circumstances not attributable to the appellant, or cases filed in the wrong county. “When a party fails to perfect an appeal within the period mandated by statute, a jurisdictional defect is created that may not be excused in the absence of unusual circumstances that are attributable to court personnel[.]”¹⁸ “The timely filing of an appeal is mandatory and jurisdictional. The appellate jurisdiction of a court cannot be invoked or properly exercised unless an appeal is perfected

¹⁸ *Draper King Cole v. Malave*, 743 A.2d 672, 673 (Del. 1999).

within the time period fixed by law.”¹⁹ “Unless the appellant can demonstrate that the failure to file a timely notice of appeal is attributable to court-related personnel, his appeal cannot be considered.”²⁰

Similarly, the Superior Court has dismissed an appeal filed even one day past the statutory period, holding that the time allowances provided by Superior Court Civil Rule 6(e) -- allowing additional time when service is by mail -- do not apply to decisions mailed by the Board.²¹

Unusual Circumstances

Delaware courts have recognized a narrow equitable exception for unusual circumstances that are not attributable to the appellant or the appellant's attorney. In the analogous context of the 10-day deadline for judicial review of Unemployment Insurance Appeal Board decisions, the Delaware Supreme Court held that the failure by the Board to mail a copy of its decision directly to the appellant's legal counsel was not an “unusual circumstance” not attributable to the appellant or its counsel that would relieve the employer of the filing deadline.²² The Court asked:

Did the appellant comply with the statute conferring jurisdiction? We conclude that [it] did not. Because [it] failed to perfect its appeal within ten calendar days after the Board's decision became final, the Superior

¹⁹ *Id.*

²⁰ *Drummond v. State*, No. 181, 2006, at 3 & n.5 (Del. May 31, 2006) (ORDER) (citing *Bey v. State*, 402 A.2d 362, 363 (Del. 1979)).

²¹ *Justice v. Industrial Accident Board*, 2021 WL 1511264 (Del. Super. April 16, 2021).

²² *Imbragulio v. Unemployment Insurance Appeals Board*, 223 A.3d 875 (Del. 2019).

Court lacked subject matter jurisdiction to entertain the appeal, and its decision is rendered void.²³

Appellant had argued that, if its appeal was deemed to be untimely, its untimeliness should be excused by the Board's failure to mail a copy of its decision directly to its legal counsel.²⁴ But the appellant cited no authority for its contention that the Board's mailing of its decision to the appellant, rather than to its counsel, excused its failure to comply with the statute:

When a party fails to perfect his appeal within the ... period mandated by statute..., a jurisdictional defect is created which may not be excused in the absence of *unusual circumstances* which are not attributable to the appellant or the appellant's attorney.²⁵

The Court found no evidence that “unusual circumstances” not attributable to the appellant or its counsel were present.

In the instant case, however, we do have unusual circumstances. There is no dispute that the Board’s decision was never received by Appellant or his counsel. Nor did any delay stem from the appellant's or his counsel’s own inadvertence or neglect. Indeed, upon learning of the Board’s decision, Appellant filed his appeal in one day. Rather, it stemmed from circumstances wholly outside the appellant's and his counsel’s control. The Board knew that the decision was undelivered and

²³ *Id.* at 881.

²⁴ The record surrounding this contention was unclear. The Board, for its part, asserts that it sent a copy of its decision to the appellant’s legal counsel, and the appellant itself did not allege that its counsel only received a copy of the Board's decision after the appeal period had expired.

²⁵ *Riggs v. Riggs*, 539 A.2d 163, 164 (Del. 1988) (emphasis supplied).

apparently made no effort to rectify that situation. In my opinion, it would be an injustice not to decide this case on the merits.

Remand

The Delaware Supreme Court has, in certain circumstances, remanded cases to the Superior Court to reissue or re-enter a decision so that a party's appeal period could be properly triggered or preserved. For example, in *Storey v. Castner*,²⁶ the Superior Court judge filed a second letter opinion and order to substitute for a first opinion that counsel had never received. Our Supreme Court held that, although it has no power to enlarge the jurisdictional appeal time established by statute,²⁷ remanding to the Superior Court to reissue a decision may be used to cure situations where the appeal clock was never properly started. The Court held that the trial judge's substitution of the second opinion and order for the first, in an attempt to rectify a clerical mistake, oversight, or omission which resulted in failure of counsel to receive the first, was proper under the Superior Court rule authorizing relief from judgment or order in the event of a clerical mistake.²⁸ The appeal filed within 30 days of the second opinion and order but not of the first — was therefore not

²⁶ 306 A.2d 732 (Del. 1973).

²⁷ The Supreme Court stated that there is no defect in the Delaware appellate system by virtue of the fact that Delaware, unlike the federal courts, lacks an “excusable neglect” rule.

²⁸ Super. Ct. Civ. R. 60(a). The Court so held despite Super. Ct. Civ. R. 77(d), which provides in part that “[l]ack of notice of the entry by the Prothonotary does not affect the time to appeal or relieve or authorize the court to relieve a party for failure to appeal within the time allowed.”

untimely. In other words, the reissued order from the Superior Court resets the appeal clock where the original order was defective in its notice of entry.

Similarly, in *Salomon, Inc. v. Steuart Petroleum Co.*,²⁹ the Delaware Supreme Court addressed the question of when the 30-day appeal period begins to run, holding that the date of the judgment or decree within the meaning of the statute requiring filing of a notice of appeal within 30 days is the date that judgment was entered on the docket of the Superior Court. The Court discharged its order to show cause and denied the motion to dismiss the appeal, recognizing that the appeal period cannot run until a proper, docket-entered judgment exists. This case also supports the practice of remanding to the lower court to formally re-enter a decision so that the appeal period is properly triggered.

This Court has, in certain circumstances, remanded cases to the Board with directions to reissue its decision, effectively restarting the thirty-day appeal clock. For example, in *Johnson Controls, Inc. v. Barkley*,³⁰ the Board found in favor of the employer. The Superior Court remanded the matter to the Board to apply a different rule of law and reissue its decision. The employer appealed, but the Delaware Supreme Court held that a Superior Court order remanding a case to the Board – including an order to reissue its decision – is generally interlocutory and not a final,

²⁹ 576 A.2d 402 (Del. 1989).

³⁰ 2003 WL 187278 (Del. Super. Jan. 27, 2003).

appealable order.³¹ The Board reissued its decision on remand and found in favor of the claimant. The employer filed an untimely appeal of the new decision. The Superior Court held that, since the 30-day appeal period runs from the reissued decision on remand, it lacked jurisdiction over that appeal.³² The Delaware Supreme Court affirmed.³³

A Superior Court order remanding a workers' compensation case to the Board, including an order to reissue a decision, is generally interlocutory and not a final, appealable order.³⁴ The Delaware Supreme Court has consistently held that remand orders requiring the Board to take further action beyond purely ministerial functions are interlocutory in nature and cannot be immediately appealed to the Supreme Court.³⁵

CONCLUSION

I agree that the timely filing of an appeal from the Board's decision is jurisdictional, subject only to narrow circumstances. In my view, however, this is one of those circumstances. I need not address the claim that there was error by the Board's personnel. The plain fact is that the decision was returned as "undeliverable"

³¹ *Johnson Controls, Inc. v. Barkley*, 860 A.2d 810 (Del. 2004) (Table).

³² *Johnson Controls, Inc. v. Barkley*, Del. Super., C.A. No. 02A-01-003, Vaughn, R.J. (June 1, 2004) (Report of Findings on Remand).

³³ *Johnson Controls, Inc. v. Barkley*, 911 A.2d 803 (Del. 2006).

³⁴ *Taylor v. Collins and Ryan, Inc.*, 440 A.2d 990 (Del.1981); *DiSabatino Bros., Inc. v. Wortman*, 453 A.2d 102 (Del. 1982).

³⁵ *Id.*

by the Post Office to the Board and neither Appellant nor his attorney ever received the Board's decision. Unlike the Board's initial decision, its decision with respect to the Motion for Reargument was rendered without any pleadings or a hearing that would have put Appellant and his counsel on constructive notice of a pending decision.

For the foregoing reasons, Appellee's Motion to Dismiss Appellant's Appeal is **DENIED**. The case is **REMANDED** to the Board with instructions to redate and reissue its decision and mail it to Appellant and his counsel, who may then decide whether to appeal the decision to this Court.

To do otherwise is to ignore obvious injustice.

IT IS SO ORDERED.

/s/Craig A. Karsnitz
Craig A. Karsnitz

cc: Prothonotary