

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY**

THOMAS BRYANT,	)	
	)	
Appellant,	)	
	)	C.A. No. 08A-11-002 MJB
	)	
v.	)	
	)	
BERRY VAN LINES and	)	
UNEMPLOYMENT	)	
INSURANCE APPEAL BOARD	)	
	)	
Appellees.	)	

Submitted: June 3, 2009
Decided: August 20, 2009

*Upon Appeal of the Decision of the Unemployment Insurance Appeal Board.
REMDANDED to the Unemployment Insurance Appeal Board.*

OPINION AND ORDER

Thomas Bryant, Newark, DE, pro se.

Phillip G. Johnson, III, Deputy Attorney General, Wilmington, DE, for Appellee
Unemployment Insurance Appeal Board.

Berry Van Line, 747 N. DuPont Hwy., Dover, DE 19901.

BRADY, J.

INTRODUCTION

Before the Court is the appeal of Thomas Bryant (“Bryant”) from a decision of the Unemployment Insurance Appeal Board (the “Board”), affirming the Claims Referee’s decision. The Board found that Bryant’s appeal was untimely and refused to hear the matter. The Court has reviewed the record and has determined that there is genuine question whether Bryant’s appeal letter was received by the Department of Labor (“DOL”) on or before the date when the appeal period expired. Therefore, the Board **REMANDS** this case to the Board with instructions to conduct an evidentiary hearing to determine when the appeal letter was received by the DOL.

FACTUAL AND PROCEDURAL BACKGROUND

Bryant was employed as a truck driver by Berry Van Lines from January 3, 1995, until February 15, 2008, when he was discharged. Bryant was discharged because he was convicted of Driving Under the Influence (“DUI”), was beginning a four month long prison sentence, and, as a result of the DUI, had his license suspended for one year. A Claims Deputy determined that Bryant was disqualified from the receipt of benefits by decision dated June 30, 2008. The decision was mailed that day to Bryant’s address of record. Bryant filed an appeal on July 7, 2008. A hearing before the Appeals Referee was scheduled for July 24, 2008, but Bryant failed to appear. As a result, his case was dismissed. The decision was

mailed to Bryant on July 25, 2008. The last day to file an appeal of the Referee's decision was August 4, 2008.

On August 20, 2008, the DOL claims it received a facsimile of Bryant's appeal letter, which Bryant dated as August 4, 2008. In the letter of appeal, which arrived without a cover sheet, Bryant expressed his disagreement with the Referee's decision and indicated that he was hospitalized at the moment, but provided no corroborative documentation. The Board viewed the letter as having been received on August 20, 2008, and refused to exercise jurisdiction over the appeal, given its untimeliness. The Board found that there was no evidence of error on the part of the DOL that might have delayed Bryant's response to the Referee's decision.

Upon receiving the file from the Prothonotary, the Court noticed that a portion the photocopy of Bryant's letter included with the file was illegible because a post-it note was attached to the letter when it was copied. The Court contacted the Prothonotary and informed them that the record was incomplete because a portion of the letter was illegible. The Prothonotary's office contacted the UIAB and obtained a copy of the letter that was fully legible. That copy was provided to the Court.

The Court has reviewed the materials submitted to the Board, including the legible copy of the letter. Upon viewing the second copy of letter, the Court

observed that a facsimile “header” was visible on that copy, which had not been present on the previous copy. That “header” indicates that the DOL faxed a copy of the letter to an unknown phone number on August 5, 2009, at 2:52 p.m. The letter also includes a notation “not ours,” which does not appear to have been written by Bryant.

ANALYSIS AND CONCLUSION

The Board’s finding that the letter was received by the DOL on August 20, 2008, appears to be inaccurate given the fact that the letter was in the possession of the DOL at least by August 5, 2008. It is possible, therefore, that the letter was received by the DOL on or before August 4, 2008, the final day to appeal the Referee’s decision. The Court hereby **REMANDS** this case to the Board with instructions to determine when, in fact, the correspondence from Bryant was received and if the correspondence was filed with the proper office. The Board should make explicit findings for the record.

Additionally, given the new information raising questions about the timeliness of Bryant’s letter, the Board should consider whether Bryant’s hospitalization provides cause for the Board to exercise jurisdiction, *sua sponte*, to hear the case on the merits despite the untimeliness of Appellant’s appeal.¹ The

¹ The Delaware Supreme Court has interpreted 19 Del. C. §3320 as providing the Board with the authority to act *sua sponte* beyond the ten-day appeal period to consider a case where no valid

Board should set forth its reasoning in the record with regard to whether the facts presented in this case warrant the exercise of jurisdiction *sua sponte*.

IT IS SO ORDERED.

_____/s/____

M. Jane Brady
Superior Court Judge

appeal has been filed by the parties under certain limited and severe circumstances. *Funk v. Unemployment Ins. Appeal Bd.*, 591 A.2d 222, 225 (Del. 1991).