

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR KENT COUNTY

FABIALA ELISCA,)
) C.A. No. K11A-01-004 JTV
Appellant,)
)
v.)
)
DOVER DOWN,)
)
Appellee.)

Submitted: October 25, 2011
Decided: January 31, 2012

Fabiala Elisca, *Pro Se*.

Katisha D. Fortune, Esq., Department of Justice, Wilmington, Delaware.
Attorney for Appellee.

Upon Consideration of Appellant's
Appeal From Decision of the
Unemployment Insurance Appeal Board
AFFIRMED

VAUGHN, President Judge

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ORDER

Upon consideration of the record of the case, it appears that:

1. The appellant, Fabiala Elisca, was employed by Dover Downs until June 30, 2010. She claims she was fired on that date. Dover Downs claims she voluntarily quit due to her pregnancy and was not eligible for any medical leave benefits. She filed for unemployment benefits, and on October 28, 2010 a Claims Deputy found for Dover Downs and denied her benefits. Due notice of the decision was mailed to the appellant at her address notifying her that the decision would become final and binding unless she filed an appeal by November 7. Since November 7 was a Sunday, her final appeal day was, in fact, November 8. She filed an appeal on November 12, 2010.

2. An Appeals Referee held a hearing to determine whether her appeal should be denied as untimely. At the hearing, the appellant agreed that the notice of the Claims Deputy's decision had been sent to her proper address, but claimed she did not receive it in the mail until November 7. She also gave as additional reasons for the late filing of the appeal that she did not have a ride and did not know where to go. The Appeals Referee concluded that it was undisputed that notice of the Claims Deputy's decision had been properly sent to the appellant on October 28, 2010, that there was no evidence that her late appeal was related to any error on the part of the Department of Labor, and that her appeal must be denied as untimely.¹ She appealed

¹ The dialog before the Appeals Referee proceeded as follows:

THE REFEREE: Okay, let me ask you this; are you still at 140 Haman Drive
Apartment 203 in Dover?
MS. ELISCA: Yes.

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to the Unemployment Insurance Appeal Board, which affirmed the Appeals Referee. She then appealed to this Court.

3. The appellant contends that she was terminated while under the doctor's care—even though she had an excuse; that a hearing is necessary to understand what is going on in her case; and that she did not receive timely notice and is entitled to a hearing.

4. The limited function of this Court in reviewing an appeal from the Board is to determine whether the Board's decision is supported by substantial evidence and free from legal error.² The appellate court does not weigh the evidence, determine questions of credibility of the witnesses, the weight to be given to their testimony, and the inferences to be drawn from them.³ The court merely determines if the evidence is legally adequate to support the agency's factual findings.⁴

THE REFEREE:	You haven't recently moved or anything have you?
MS. ELISCA:	No, I still living there.
THE REFEREE:	Okay. Did you get the decision?
MS. ELISCA:	Yes, I got the decision.
THE REFEREE:	Okay the decision that said that you quit work without good cause?
MS. ELISCA:	No, I get terminate for they say I not come to work. They terminate me.
THE REFEREE:	Okay, but it sounds like you're saying that you did get that decision though, okay. And you did get it before November the 7 th ? Do you remember when you got that decision?
MS. ELISCA:	It was November 7 th .

² *Oceanport Indus., Inc. v. Wilmington Stevedores, Inc.*, 636 A.2d 892, 899 (Del. 1994); *Battista v. Chrysler Corp.*, 517 A.2d 295, 297 (Del. Super. 1986).

³ *Behr v. Unemployment Ins. Appeal Bd.*, 1995 WL 109026 (Del. Super. Feb. 7, 1995).

⁴ 29 Del. C. § 10142(d).

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5. Under Delaware law, a decision of a Claims Deputy becomes final “[u]nless a claimant . . . files an appeal within 10 calendar days after such Claims Deputy’s determination was mailed to the last known addresses of the claimant and the employer . . .”⁵ The Board in its discretion may hear an untimely appeal if “there has been some administrative error on the part of the Department of Labor which deprived the claimant of the opportunity to file a timely appeal, or in those cases where the interest of justice would not be served by inaction.”⁶ A late appeal, however, “may only be excused in extraordinary circumstances.”⁷

6. This case does not present any evidence of administrative error on the part of the Department of Labor and does not rise to the level of “extraordinary circumstances” to excuse the untimeliness of the appeal. Therefore, the decision of the Board is ***affirmed***.

IT IS SO ORDERED.

/s/ James T. Vaughn, Jr.

President Judge

cc: Prothonotary
Order Distribution
File

⁵ 19 *Del. C.* § 3318(b); 19 *Del. C.* §3220.

⁶ 19 *Del. C.* § 3318 (c).

⁷ *Bailey v. MBNA Am. Bank*, 1991 WL 1304159, at *2 (Del. Super. Aug. 12 1991).