

**SUPERIOR COURT
OF THE
STATE OF DELAWARE**

RICHARD R. COOCH
RESIDENT JUDGE

NEW CASTLE COUNTY COURTHOUSE
500 North King Street, Suite 10400
Wilmington, Delaware 19801-3733
(302) 255-0664

Nancy L. Fuller-Hickman
6 Fort Donelson Road
Pennsville, New Jersey 08070
Appellant

Comcast Cable
C/O Adp Ucs
P.O. Box 6000
San Dimas, California 91773
Appellee

Re: Nancy L. Fuller-Hickman v. Comcast Cable
C.A. No. 11A-04-018 RRC

Submitted: December 1, 2011
Decided: February 21, 2012

On Appeal from a Decision of the Unemployment Insurance Appeal Board.
REVERSED and REMANDED.

Dear Ms. Fuller-Hickman and Comcast Cable:

INTRODUCTION

Appellant Nancy L. Fuller-Hickman (“Employee”) appeals from the April 20, 2011 decision of the Unemployment Insurance Appeal Board (“the Board”) holding that Employee was discharged by her employer for just cause, thereby disqualifying her from unemployment benefits. Although the Division of Unemployment Insurance Appeals and Comcast Cable (“Employer”) received a copy of the Court’s briefing schedule by letter of September 2, 2011, Employer failed to file an

Answering Brief.¹ On November 8, 2011, this Court issued a “Final Delinquent Brief Notice” and received no response from Employer. Accordingly, this Court will reverse the determination of the Board due to Employer’s failure to respond, in violation of Superior Court Civil Rule 107.

FACTS AND PROCEDURAL HISTORY

This case arises from Employee’s disqualification from receipt of unemployment benefits in January 2010. Prior to her termination in November 2010 for attendance and job performance issues, Employee had worked for Employer for six years. The Appeals Referee determined that Employee was discharged from employment with just cause.² Therefore, the Appeals Referee disqualified Employee from receiving unemployment insurance benefits immediately upon her discharge.³

The Board affirmed the Appeals Referee’s decision. The Board noted that the Employee was terminated for poor job performance and for violating the Employer’s authentication policies and code of ethics.⁴ Furthermore, The Board found that Employee was aware that her job was in jeopardy because she had received a final written warning regarding her performance, and because the Employee testified regarding her familiarity with her Employer’s policies.⁵ The Board found it notable that Employee provided no new evidence at her administrative hearing.⁶

On appeal to this Court, Employee filed a brief alleging that her attendance issues were related to various health problems, that her performance write-ups were unmerited, and, finally, that despite her employer’s contentions to the contrary, she never received the final written warning allegedly provided by Employer.⁷

¹ This Court notes that while a Comcast representative was present at the Appeal Board hearing, no administrative or legal personnel has responded to this appeal. As a result, the Court has addressed this opinion to Employer generally. No address was provided in the record for contacting the representative personally. Prior notices and this opinion have been sent to the address that the Department of Labor began using in December 2010.

² Division of Unemployment Appeals Referee’s Decision at 3.

³ *Id.*

⁴ Decision of the Unemployment Insurance Appeal Board on Appeal from the Decision of Andrew S. Morrison, Appeal Docket No. 20751597 (Apr. 20, 2011).

⁵ *Id.*

⁶ *Id.*

⁷ Employee’s Br. of September 18, 2011 at 1.

Employer has never responded to this Appeal, or to the “Final Delinquent Brief Notice.” Counsel for the Board has stated its intention not to file an answering brief in this matter because it is the Employer’s obligation to defend the Board’s decision.

STANDARD OF REVIEW

This Court’s review of an Unemployment Insurance Appeal Board decision is defined by statute. Pursuant to 19 Del. C. § 3323(a), “the findings of the Unemployment Insurance Appeal Board as to the facts, if supported by evidence and in the absence of fraud, shall be conclusive, and the jurisdiction of the Court shall be confined to questions of law.” Superior Court review, “is limited to a determination of whether there was substantial evidence sufficient to support the [Board’s] findings.”⁸ Substantial evidence requires “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.”⁹ [REDACTED] This Court does not weigh evidence or make determinations based on credibility or facts.¹⁰ An abuse of discretion will be found only if “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.’”¹¹

DISCUSSION

In this case, the Appeals Referee reviewed the record and found that the Employee was terminated for just cause and thereby disqualified from receiving unemployment benefits. This determination was affirmed by the Board. Though this Court ordinarily would be limited to determining whether the Board’s decision was supported by substantial evidence, Employer’s unexplained and inexcusable failure to comply with this Court’s scheduling order requires a contrary result. Despite receiving a briefing schedule and a “Final Delinquent Brief Notice,” Employer made no efforts to comply with this Court’s requirements, nor did Employer proffer any explanation for its procedural default.

As provided in Superior Court Civil Rule 107(e):

⁸ *Unemployment Ins. Appeals Bd. v. Duncan*, 337 A.2d 308, 309 (Del 1975).

⁹ *Oceanport Industries, Inc. v. Wilmington Stevedores, Inc.*, 636 A.2d 892, 899 (Del. 1994) (citing *Olney v. Cooch*, 425 A.2d 610, 614 (Del. 1981).

¹⁰ *Johnson v. Chrysler Corp.*, 213 A.2d 64, 66 (Del 1965).

¹¹ *Straley v. Advanced Staffing, Inc.*, 2009 WL 1228572 * 2 (Del. Super. 2009) (citations omitted).

If any brief, memorandum, deposition, affidavit, or any other paper which is or should be a part of a case pending in this Court, is not served and filed within the time and in the manner required by these Rules or in accordance with any order of the Court or stipulation of counsel, the Court may, in its discretion. . . consider the motion as abandoned, or summarily deny or grant the motion, such as the situation may present itself, or take such other action as it deems necessary to expedite the disposition of the case.

Sprung v. Selbyville Cleaners,¹² held that, when an employer “has been afforded every opportunity to respond to [a] claim and has failed to do so,” this Court is “left with no other alternative but to reverse the Board’s decision.”¹³ In reaching this conclusion, this Court noted:

The efficiency and effectiveness of our judicial system relies heavily on the diligent actions of those involved in legal disputes. Filing deadlines are in place to promote such judicial efficiency. Because of this, the inexcusable failure of a party to respond when required to do so cannot be treated lightly by this Court.¹⁴

“Upon [a] showing of good cause in writing, the Court may permit late filing.”¹⁵ Employer has made no efforts to file any of the required submissions with this Court, despite being afforded notice of the relevant proceedings. Thus, this Court finds that Employer failed to respond to this claim, without good cause, despite being “afforded every opportunity” to respond. Although reversal of the Board’s decision no doubt affects Employer’s rights, Employer’s due process rights were fully respected at every stage of this claim.¹⁶ Put simply, Employer’s failure to properly defend its interests in this case constitutes “one of those rare instances when a party’s

¹² 2007 WL 1218683 *2 (Del. Super. 2007).

¹³ *Id.* at *1.

¹⁴ *Id.*

¹⁵ Super. Ct. Civ. Rule 107(f).

¹⁶ *Hunter v. First USA/Bank One*, 2004 WL 838715*6 (Del. Super. Apr. 15, 2004) (“Due process requirements mandate that in any appeal from an administrative agency, the Court must make certain that the agency action satisfies the constitutional requirements of due process. . . . The Court, and the Prothonotary’s Office, have made considerable efforts to provide notice to the Appellee. Additionally, it is an undeniable fact that Appellee’s representative did receive amended notice of the appeal. Thus, procedural due process has been aptly served.”).

unexplained inaction proves both disadvantageous to its cause, and results in a windfall for its adversary.”¹⁷

CONCLUSION

Accordingly, for all the reasons stated above, the decision of the Unemployment Insurance Appeal Board is **REVERSED**. This case is **REMANDED** to the Unemployment Insurance Appeal Board, and the employer is henceforth estopped from contending that Employee’s termination was predicated upon just cause related to Defendant’s poor job performance, absenteeism, and violations of Employer’s authentication policies and code of ethics.¹⁸

Richard R. Cooch, R.J.

oc: Prothonotary
Unemployment Insurance Appeal Board

¹⁷ *Id.*; see also *Cohen v. Allied Barton Security Servs.*, 2007 WL 2430062, *1 (Del. Super. 2007) (“This Court has held that ‘Rule 107(e) inextricably vests in the Court the power to reverse the Board’s decision for failure of the Appellee to file its answering brief.’ Despite adequate notice, Appellee has not filed an answering brief, nor has it provided any explanation for its inaction. Therefore, due to ‘Appellee’s failure to diligently prosecute and file its brief pursuant to Rule 107(e)’ the April 5, 2006 decision of the Board is reversed.”) (quoting *Hunter*, 2004 WL at *4); See also *Byrd v. Westaff USA, Inc.*, 2011 WL 3275156 (Del. Super. July, 29 2011); *Crews v. Sears Roebuck & Co.*, 2011 WL 2083880 (Del. Super. May, 11, 2011).

¹⁸ 19 Del. C. §3314(2).