

SUPERIOR COURT
OF THE
STATE OF DELAWARE

E. SCOTT BRADLEY
JUDGE

SUSSEX COUNTY COURTHOUSE
1 The Circle, Suite 2
GEORGETOWN, DE 19947

April 25, 2012

Larry Parker
12331 Camellia Lane
Bridgeville, DE 19933

***RE: Larry Parker v. Wal-Mart Associates, Inc.
C.A. No. S11A-07-004-ESB***

Date Submitted: February 22, 2012

Dear Mr. Parker:

This is my decision on your appeal of the Unemployment Insurance Appeal Board's denial of your application for further review of the Claim Deputy's denial of your claim for unemployment benefits. You were employed by Wal-Mart Associates, Inc. Wal-Mart terminated you for taking a product off of the shelf without your manager's permission. You filed a claim for unemployment benefits on March 27, 2011. The Claims Deputy determined that Wal-Mart had met its burden of proving that you were discharged for "just cause" in a written decision dated April 18, 2011. The Claims Deputy's written decision became final on April 28, 2011. You received the Claims Deputy's written decision, but did not file an appeal of it until May 3, 2011. The Appeals Referee ruled that the Claims Deputy's decision was final and binding on you because you failed to file a timely appeal. The Board affirmed the Appeals Referee's decision, reasoning that the Claims Deputy's determination that you were ineligible for unemployment benefits had become final and that there was no evidence of error on the part of the Department of Labor that might have delayed your appeal of that determination. You then filed an appeal with this Court, arguing you were employed by Wal-Mart for six years without any problems and that you have a one-year-old baby you are struggling to care for.

STANDARD OF REVIEW

The Supreme Court and this Court repeatedly have emphasized the limited appellate review of the factual findings of an administrative agency. The Court must determine whether the Board's findings and conclusions are free from legal error and supported by substantial evidence in the record.¹ Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.² The appellate court does not weigh the evidence, determine questions of credibility, or make its own factual findings.³ It merely determines if the evidence is legally adequate to support the agency's factual findings.⁴ Absent an error of law, the Board's decision will not be disturbed where there is substantial evidence to support its conclusions.⁵

DISCUSSION

Unfortunately, the time for consideration of your argument by either the Board or this Court has passed. 19 *Del.C.* § 3318(b) provides that the decision of the Claims Deputy will become final "10 calendar days after such Claims Deputy's determination was mailed to the last known addresses of the claimant and the last employer..." The decision of the Claims Deputy was issued on April 18, 2011. Therefore, the written decision became final on April 28, 2011. You did not file an appeal until May 3, 2011, or until 5 days after the deadline to do so had passed. The 10-day-period for filing an appeal

¹ *Unemployment Insurance Appeal Board v. Martin*, 431 A.2d 1265, 1266 (Del. 1981).

² *Oceanport Ind. v. Wilmington Stevedores*, 636 A.2d 892, 899 (Del. 1994); *Battista v. Chrysler Corp.*, 517 A.2d 295, 297 (Del.1986), *app. disp.*, 515 A.2d 397 (Del. 1986)(TABLE).

³ *Johnson v. Chrysler Corp.*, 213 A.2d 64, 66 (Del. 1965).

⁴ 29 *Del.C.* § 10142(d).

⁵ *Dallachiesa v. General Motors Corp.*, 140 A.2d 137 (Del. Super. 1958).

is an express statutory condition of jurisdiction that is both mandatory and dispositive.⁶ The Claims Deputy's determination that you were ineligible for unemployment benefits is final and binding on you because you did not file a timely appeal of it.⁷ "Where the lateness of the appeal is due to the claimant's unintentional or accidental actions, and not due to an administrative error, the Claims Deputy's determination will become final and § 3318(b) will jurisdictionally bar the claim from further appeal."⁸ You acknowledged that you received the Claims Deputy's written decision in the mail in a timely manner and chose not to open the decision from the Claims Deputy right away, but instead set it aside. By the time you opened up the letter containing the Claims Deputy's decision and filed your appeal, the deadline for filing your appeal had passed. Your delay in filing the appeal was due solely to your inaction. Thus, the Board's finding that you did not file a timely appeal of the Claims Deputy's determination that you were not entitled to unemployment benefits is in accordance with the applicable law and supported by substantial evidence in the record.

CONCLUSION

The Unemployment Insurance Appeal Board's decision is **AFFIRMED**.

IT IS SO ORDERED.

Very truly yours,

/s/ E. Scott Bradley

cc: Prothonotary
Wal-Mart Associates, Inc.
c/o TALX UC Express
Unemployment Insurance Appeal Board

⁶ See *Lively v. Dover Wipes Co. and Unemployment Insurance Appeal Board*, 2003 WL 21213415 (Del. Super. May 16, 2003) and *Wilson v. Franciscan Care Center*, 2006 WL 1134779 (Del. Super. April 18, 2006).

⁷ 19 *Del.C.* § 3318(b).

⁸ *Hartman v. Unemployment Insurance Appeal Board*, 2004 WL 772067, at *2 (Del. Super. April 5, 2004).