

SUPERIOR COURT  
OF THE  
STATE OF DELAWARE

RICHARD F. STOKES  
JUDGE

1 THE CIRCLE, SUITE 2  
SUSSEX COUNTY COURTHOUSE  
GEORGETOWN, DE 19947

May 14, 2012

Scott G. Pletcher  
11344 Back Creek Road  
Bishopville, MD 21813

RE: ***Scott G. Pletcher v. Unemployment Insurance Appeal Board***  
C.A. No. S11A-10-004 RFS

Dear Mr. Pletcher:

This appeal arises from a claims deputy's finding that Claimant Scott Pletcher was liable to the Department of Labor ("DOL") for overpayment of benefits for various periods of time. The only issue before the Court is whether the Unemployment Insurance Appeal Board ("Board") abused its discretion in denying Claimant's application for further review on the merits. The Court finds no abuse of discretion, and the Board's decision is affirmed.

The record shows that the claims deputy's determination of overpayment was mailed to Claimant at his last address of record with the DOL on February 21, 2011. No mail was returned to the DOL. Although the last day to file an appeal was March 3, 2011, Claimant filed his appeal June 27, 2011. The claims deputy found the appeal to be untimely, and Claimant appealed. After a hearing on the issue of timeliness, the appeals referee affirmed.

On Claimant's application for further review, the Board reviewed the evidence and the prior determinations. The Board noted that Claimant did not argue to the appeals referee that there was any error committed by the DOL that prevented him from filing a timely appeal of the claims deputy's determination. Claimant argued instead that he never received the determination, although he acknowledged that the DOL used his correct address.

The Board found no evidence of departmental error and concluded that the late

appeal was not due to any factor within the DOL's control or subject to remedy by the Board. No severe circumstances or other grounds existed for the Board to exercise its discretion and open the record pursuant to 19 *Del.C.*, § 3320. The Board denied the application for review on the merits and affirmed the decision of the appeals referee. Claimant appealed to this Court.

This Court's role on appeal of a Board decision is limited to determining whether the Board's factual findings are supported by substantial evidence and whether the decision is free from legal error.<sup>1</sup> Here, the factual findings as to the timeliness of Claimant's appeal of the claims deputy's determination are undisputed, and those are the only relevant facts on this posture.

The Court finds no abuse of discretion or other legal error. The Board chose not to exercise its discretion because there was no evidence of DOL error or any extraordinary circumstances that warranted opening the record on the merits.<sup>2</sup>

The Board's decision denying the application for further review is **AFFIRMED** and Claimant's appeal is **DENIED**.

**IT IS SO ORDERED.**

Very truly yours,

Richard F. Stokes

Original to Prothonotary  
XC: Unemployment Insurance Appeals Board

---

<sup>1</sup>Title 19 *Del.C.* § 3323(a); *Kondzielawa v. Ferry*, 2003 WL 21350538 (Del.Super.).

<sup>2</sup>*See Brown v. Wood Co.*, 2010 WL 2125464 (Del.Super.).