

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

ROBERT SIMMENS,)	
)	
Appellant,)	
)	
V.)	
)	
GENERAL MOTORS CORP.)	C.A. No. N11A-06-006 JRS
and the UNEMPLOYMENT)	
INSURANCE APPEAL BOARD,)	
)	
Appellees.)	

Date Submitted: January 26, 2012
Date Decided: April 10, 2012

*Upon Consideration of
Appeal From the Unemployment Insurance Appeal Board.*
AFFIRMED.

ORDER

This 10th day of April, 2012, upon consideration of the *pro se* appeal of Robert Simmens (“Mr. Simmens”) from the decision of the Unemployment Insurance Appeal Board (“the Board”), denying his claim for unemployment benefits against his former employer, General Motors Corp. (“General Motors”), it appears to the Court that:

1. Mr. Simmens was hired by General Motors as a quality coordinator on July 10, 1981 and worked there until August 1, 2009, when he became separated from his employment.¹

2. On April 25, 2010, Mr. Simmens filed a claim for RTAA² benefits in which he referenced a “plant closing” as his reason for being unemployed.³ Mr. Simmens received RTAA benefits beginning with the week ending May 1, 2010 through September 1, 2010.⁴

3. Subsequent to Mr. Simmens’ approval to obtain RTAA benefits, the Department of Labor (“DOL”) received information from General Motors that Mr. Simmens had voluntarily participated in a pre-retirement program, effective August 3, 2009, by which Mr. Simmens was to receive a weekly salary until he reached thirty (30) years of employment with General Motors.⁵ In light of this information, on April

¹ Record (“R.”) at 13.

² See Re-employment Trade Adjustment Assistance Program, 19 U.S.C.A. § 2318. Workers in an eligible worker group who are at least 50 years of age, who earn not more than \$50,000 each year in wages from re-employment, who obtain employment of at least 20 hours per week and whose re-employment wages are less than those earned in the adversely-affected employment are potentially eligible for RTAA. 19 U.S.C.A. § 2318(a)(3)(B). The eligible worker may receive up to half of the difference between the worker’s old wage and the new wage. 19 U.S.C.A. § 2318(a)(2)(A).

³ R. at 1.

⁴ *Id.* at 6.

⁵ *Id.* at 7.

6, 2011, the DOL determined that Mr. Simmens was no longer eligible to receive RTAA benefits.⁶ The decision was mailed to Mr. Simmens on April 6, 2011, to the address provided by Mr. Simmens: 27 East Dartmouth Road, Pennsville, New Jersey, 08070.⁷ The last day for Mr. Simmens to file an appeal of that decision was ten days from the date of mailing, or April 16, 2011. Since April 16, 2011 fell on a Saturday, Mr. Simmens had until April 18, 2011 to file his appeal.⁸ Mr. Simmens filed an appeal by email to the DOL on April 24, 2011 at 9:54pm.⁹ The DOL did not consider the appeal to be timely filed and issued a late appeal determination on April 25, 2011.¹⁰

4. On May 18, 2011, the parties presented testimony at a DOL hearing held solely to address the issue of whether Mr. Simmens had filed a timely appeal. Mr. Simmens confirmed that the DOL had his correct mailing address and that he received the DOL determination of April 6, 2011 in the mail.¹¹ He also acknowledged that he

⁶ *Id.*

⁷ *Id.* at 13.

⁸ *Id.*

⁹ *Id.* at 9.

¹⁰ *Id.* at 13.

¹¹ *Id.* at 14.

mistakenly believed that he had until April 25, 2011 to file his appeal.¹² After hearing testimony from both parties, the Referee decided that Mr. Simmens had failed to file a timely appeal, that the Referee's tribunal, therefore, had "no jurisdiction to entertain the merits of the claimant's appeal" and that the decision of the DOL Claims Deputy was final and binding.¹³

5. Mr. Simmens appealed the Referee's decision to the Board by email dated May 23, 2011, and again by letter dated May 27, 2011.¹⁴ On May 25, 2011, the Board denied the application and affirmed the Referee's determination that Mr. Simmens failed to file a timely appeal to the DOL's April 6, 2011 decision.¹⁵ The Board noted that the claimant had not argued that the DOL, through error or otherwise, had impeded his ability to file a timely appeal of the disqualification determination.¹⁶ And, upon its own review, the Board found that Mr. Simmens' delay in filing an appeal was unrelated to any factor within the control of the DOL or

¹² *Id.*

¹³ *Id.* at 14.

¹⁴ *Id.* at 33. It should be noted that the record does not contain Mr. Simmens' May 23, 2011 email; only the May 27, 2011 letter in which he makes reference to the email. The May 27, 2011 letter was not received by the DOL until June 1, 2011.

¹⁵ *Id.* at 35.

¹⁶ *Id.* at 54.

subject to remedy by the Board.¹⁷

6. Mr. Simmens filed his appeal with this Court on May 31, 2011.¹⁸ He argues that the original notice of determination that he received on April 9, 2011, did not leave him with sufficient time to find counsel.¹⁹ He notes that there were no union officials available to offer him advice regarding the appeals process and cites this, as well as access to a telephone, as reasons why he failed timely to appeal the DOL's decision.²⁰ Mr. Simmens admits, however, that during a telephone conversation with a supervisor of the DOL on April 12, 2011, he mistakenly wrote down that he had until April 25, 2011 to file his appeal when, in fact, the deadline was April 18, 2011.²¹ He also argues that the Board engaged in a review of his appeal on May 25, 2011, without providing him with adequate notice.²² Neither General Motors nor the Board filed oppositions to Mr. Simmens' appeal and, instead, rest upon the record before the Court.

¹⁷ R. at 54.

¹⁸ *Id.* at 40-42.

¹⁹ *Id.* at 41.

²⁰ *Id.* at 42.

²¹ *Id.* at 13.

²² *Id.*

7. On appeal from the Board, the Superior Court’s review is limited to determining whether the Board’s decision was supported by substantial evidence and free from legal error.²³ Substantial evidence is defined as “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.”²⁴ The Court considers the record in the light most favorable to the prevailing party before the Board.²⁵ The Court does not weigh evidence, assess credibility, or make independent factual findings.²⁶ Legal determinations by the Board are reviewed for abuse of discretion.²⁷

8. Mr. Simmens was denied unemployment benefits under the provisions of 19 *Del. C.* § 3318(b) which provides that “[u]nless a claimant or a last employer . . . files an appeal within 10 calender days after such Claims Deputy’s determination was mailed to the last known address of the claimant . . . the Claims Deputy’s

²³ *Morgan v. Anchor Motor Freight, Inc.*, 506 A.2d 185, 188 (Del. Super. 1986).

²⁴ *Histed v. E.I. duPont Nemours & Co.*, 621 A.2d 340, 342 (Del. 1993) (citing *Olney v. Cooch*, 425 A.2d 610, 614 (1981)).

²⁵ *See Thompson v. Unemployment Ins. Appeal Bd.*, 25 A.3d 778, 782 (Del. 2011) (citing *Pochvatilla v. United States Postal Serv.*, 1997 WL 524062, at *2 (Del. Super. June 9, 1997)).

²⁶ *Thompson*, 25 A.3d at 782 (quoting *Falconi v. Coombs & Coombs, Inc.*, 902 A.2d 1094, 1098 (Del. 2006)).

²⁷ *Funk v. Unemployment Ins. Appeal Bd.*, 591 A.2d 222, 225 (Del. 1991).

determination shall be final.”²⁸ The Board’s discretion to assume jurisdiction in cases of an untimely appeal has been exercised rarely, mostly in cases involving departmental error.²⁹ The Board found no evidence of departmental error by the DOL and no other basis upon which it should exercise its discretion under 19 *Del. C.* § 3320 to permit Mr. Simmens to prosecute an untimely appeal.³⁰

9. The Court can find no abuse of discretion by the Board; it is abundantly clear from the overwhelming evidence in the Record that Mr. Simmens’ own failure to abide by deadlines imposed by Delaware law precipitated his inability to present the merits of his claims.

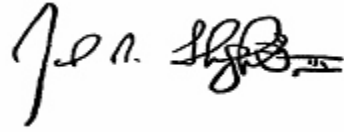
10. Based on the foregoing, the Court is satisfied that the Board applied the correct legal standards and that its decision is supported by substantial evidence. Accordingly, the decision of the Board denying Mr. Simmens’ application for unemployment compensation must be **AFFIRMED**.

²⁸ See 19 *Del. C.* § 3318(b); R. at 53.

²⁹ See, e.g., *Funk v. UIAB*, 591 A.2d at 225; *Chrysler Corp. v. Dillon*, 327 A.2d 604 (Del. 1974).

³⁰ R. at 35. See 19 *Del. C.* § 3320(a) (“The Unemployment Insurance Appeal Board may on its own motion, affirm, modify, or reverse any decision of an appeal tribunal on the basis of the evidence previously submitted to the appeal tribunal or it may permit any of the parties to such decision to initiate further appeal before it.”). See also 19 *Del. Admin. C.* § 1201-6.3 (“The Board may *sua sponte* affirm, modify or set aside any decision of an appeal tribunal on the basis of evidence previously submitted, without further hearing, or direct the taking of additional evidence or may permit any of the parties to the decision to initiate further appeal before it.”).

IT IS SO ORDERED.

A handwritten signature in black ink, appearing to read "Joe R. Slights, III". The signature is written in a cursive style with a horizontal line at the end.

Joseph R. Slights, III, Judge

Original to Prothonotary