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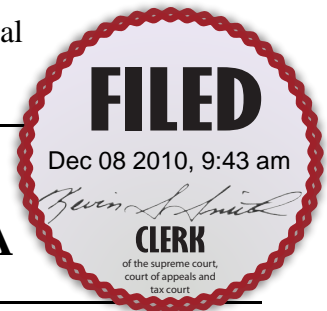
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**IN THE
COURT OF APPEALS OF INDIANA**

J.R.,

Appellant-Petitioner,

VS.

REVIEW BOARD OF THE INDIANA
DEPARTMENT OF WORKFORCE
DEVELOPMENT, et al.,

Appellee-Respondent.

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No. 93A02-1006-EX-606

APPEAL FROM REVIEW BOARD OF WORKFORCE DEVELOPMENT
Cause No. 10-R-02491

December 8, 2010

MEMORANDUM DECISION – NOT FOR PUBLICATION

BAKER, Chief Judge

Appellant-petitioner J.R. appeals the decision of the Review Board of Workforce Development (the Review Board) denying his petition for unemployment benefits. J.R. argues that the Review Board erred by finding that his appeal from the decision of the Administrative Law Judge (ALJ) was untimely. Finding that J.R.'s appeal from the ALJ's decision was untimely, we affirm.

FACTS

J.R. was employed as a full-time machine operator by an automobile manufacturer in Kokomo for approximately fifteen years. In late April 2009, J.R. accepted a buyout offer from his employer, and applied thereafter for unemployment benefits. A claims deputy denied J.R.'s claim, and J.R. submitted a timely appeal of that decision. A telephonic hearing was conducted by an ALJ on December 1, 2009, and on December 18, 2009, the ALJ affirmed the deputy's denial of J.R.'s claim. The ALJ's decision, which was mailed on December 18, 2009, indicates that it would become final unless appealed to the Review Board within eighteen calendar days after the mailing date, meaning that the appeal was due by January 5, 2010.

On January 11, 2010, J.R. faxed his appeal. Evidently, at some point, J.R. learned that there was a problem with the transmission of his appeal. Therefore, on April 30, 2010, J.R. re-sent his appeal. On May 12, 2010, the Review Board dismissed the appeal, finding that it was untimely. J.R. now appeals.

DISCUSSION AND DECISION

The only issue before us herein is whether the Review Board properly interpreted and applied the statutory timelines for appealing an ALJ decision. In other words, we must consider a pure question of law, which we review de novo. McClain v. Rev. Bd. of the Ind. Dep't of Workforce Dev., 693 N.E.2d 1314, 1316 (Ind. 1998).

Indiana Code section 22-4-17-3(b) states that an ALJ's decision is final unless the affected party files an appeal within fifteen days after the date of notification or mailing of such decision. Indiana Code section 22-4-17-14(c) provides that if notice of an ALJ's decision is served through the United States mail, "three days must be added to a period that commences upon service of that notice." Therefore, parties seeking to appeal an ALJ decision that was served by mail are statutorily required to file their appeal within eighteen days of the mailing of the decision. We strictly construe these statutory deadlines because when an appeal is untimely, the Review Board does not have jurisdiction to consider it. Szymanski v. Rev. Bd. of the Ind. Dep't of Workforce Dev., 656 N.E.2d 290, 293 (Ind. Ct. App. 1995).

Here, it is undisputed that the ALJ's decision was mailed on December 18, 2009. The decision clearly explained that any appeal must be filed within eighteen days of that date—by January 5, 2010. J.R. did not file his appeal until January 11, 2010. By virtue of these statutory timelines, therefore, J.R.'s appeal was untimely.

To the extent that J.R. complains that the eighteen-day appeal time is inadequate under certain circumstances, we note that we are bound by statutes. Therefore, he must address this issue to the General Assembly.

J.R. also complains that he did not have notice that the timeliness of his appeal would be problematic; consequently, he did not introduce evidence explaining the reason for the untimely filing. We cannot agree. The ALJ's decision clearly stated that it would become final unless appealed by January 5, 2010. Furthermore, the decision informed J.R. that he could submit additional information to the Review Board that was not available at the time of the ALJ hearing. J.R., however, failed to attempt to explain the untimely filing of his appeal. It was not until the instant appeal that J.R. attempted to submit an affidavit explaining the tardy filing. Inasmuch as J.R. did not submit that affidavit to the Review Board, we will not consider it at this time. See Miller v. Ind. Dep't of Workforce Dev., 878 N.E.2d 346, 353 (Ind. Ct. App. 2007) (holding that we will find waiver if a party raises an issue for the first time on appeal in administrative proceedings). Moreover, J.R. had multiple opportunities—starting with the filing of his appeal on January 11—and notice of those opportunities to explain his untimely filing. He failed to do so. Under these circumstances, we find that the Review Board properly dismissed J.R.'s appeal as untimely.

The judgment of the Review Board is affirmed.

VAIDIK, J., and BARNES, J., concur.