

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Wayne A. Reed,	:	
	:	
Petitioner	:	
	:	
v.	:	
	:	
Unemployment Compensation	:	
Board of Review,	:	No. 1005 C.D. 2011
	:	
Respondent	:	Submitted: October 28, 2011

BEFORE: HONORABLE BERNARD L. MCGINLEY, Judge
HONORABLE MARY HANNAH LEAVITT, Judge
HONORABLE JOHNNY J. BUTLER, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION BY
JUDGE BUTLER

FILED: December 1, 2011

Wayne A. Reed (Claimant) petitions this Court for review of the May 3, 2011 order of the Unemployment Compensation Board of Review (UCBR) dismissing Claimant's appeal under Section 502 of the Unemployment Compensation Law (Law).¹ The dispositive issue before this Court is whether Claimant's appeal should be considered timely filed. For the reasons that follow, we affirm the UCBR's order.

Claimant was employed by Pyramid Healthcare Center from August of 2006 until he was discharged on October 18, 2010. Claimant filed an application for unemployment compensation (UC) benefits with the Altoona UC Service Center, which deemed him ineligible for benefits by determination mailed November 5, 2010. Claimant appealed and a hearing on the merits was held by a Referee. On

¹ Act of December 5, 1936, Second Ex.Sess., P.L. (1937) 2897, *as amended*, 43 P.S. § 822.

December 17, 2010, the Referee mailed his decision affirming the determination of the Altoona UC Service Center. The Referee's decision specifically stated: "You have the right to file a further appeal to this decision within fifteen (15) days of the date of mailing." Referee Decision at 4. The decision also specified, in at least two places, that the last date for Claimant to file an appeal thereto was January 3, 2011. Claimant's appeal from the Referee's decision was filed by fax with the UCBR on January 7, 2011, together with a request that the appeal be accepted as timely.

In order for Claimant to set forth the reasons why his appeal should be deemed timely, a hearing was held on March 3, 2011 at which Claimant and his counsel, Catherine Miller (Miller), testified. The undisputed testimony was that on either December 27 or 28, 2010, Claimant met with Miller and signed the appeal form, and it was determined that Miller would file the document on Claimant's behalf. Miller testified that she placed the appeal in her briefcase, and it remained there on December 28 and 29, 2010 because she did not have time to file it. On December 30, 2010, she was sick in bed. On December 31st, she was still sick, but the filing office was also closed. She returned to her office on Monday, January 3, 2011, but it was January 6th before she caught up with her work and discovered that she had missed the deadline. She faxed the appeal on January 7, 2011. Both Claimant and Miller stated that had Claimant been the one to file the appeal, it would have been done timely. By decision issued May 3, 2011, the UCBR dismissed Claimant's appeal for untimeliness. Claimant appealed to this Court.²

² "Our scope of review is limited to determining whether constitutional rights were violated, whether the adjudication is in accordance with the law and whether necessary findings of fact are supported by substantial evidence." *Roman-Hutchinson v. Unemployment Comp. Bd. of Review*, 972 A.2d 1286, 1289 n.2 (Pa. Cmwlth. 2009).

Claimant argues on appeal that, although the reason for his late filing does not fall under one of the limited exceptions that grants the UCBR jurisdiction to accept an untimely appeal, those limited exceptions do not preclude the UCBR's reconsideration of its decision. We disagree. First, Section 101.111 of the Department of Labor and Industry's Regulations requires that a request for reconsideration must be filed with the UCBR within 15 days of the issuance of its order. 34 Pa. Code § 101.111. There is nothing in this record reflecting that Claimant filed a request for reconsideration of the UCBR's May 3, 2011 order.

Second, the law does not authorize the UCBR to accept a late-filed appeal under the circumstances of this case. Section 502 of the Law specifically states that a referee's decision "shall be deemed the final decision of the [UCBR], unless an appeal is filed therefrom, within fifteen days" of the decision.

If an appeal is not filed within fifteen days of the determination's mailing date, the UCBR and its referees do not have jurisdiction to rule on the merits of the case. The statutory time limit for filing an appeal is mandatory in the absence of fraud or manifestly wrong or negligent conduct of the administrative authorities, and the claimant bears a heavy burden to justify an untimely appeal.

Roman-Hutchinson v. Unemployment Comp. Bd. of Review, 972 A.2d 1286, 1288 n.1 (Pa. Cmwlth. 2009) (citations omitted).

Although Claimant does not specifically designate his appeal *nunc pro tunc*, he bases his argument upon the criteria set forth in *Cook v. Unemployment Compensation Board of Review*, 543 Pa. 381, 671 A.2d 1130 (1996), in which the Pennsylvania Supreme Court held: "[A]n appeal nunc pro tunc may be allowed when a delay in filing the appeal is caused by extraordinary circumstances involving fraud or some breakdown in the court's operation through a default of its officers. . . . [or] the non-negligent conduct of the appellant's attorney or his staff." *Id.*, 543 Pa. at 383-84, 671 A.2d at 1131 (citations and quotation marks omitted). Claimant

specifically states that his appeal should be accepted because “[t]he late filing was due to non-negligent circumstances related to [his] counsel.” Claimant Br. at 7.

The facts of this case make it clear, however, that Miller’s failure to timely file Claimant’s appeal was due to nothing other than negligence on her part, rather than fraud or manifestly wrong or negligent conduct of the administrative authorities, or extraordinary circumstances involving fraud, some breakdown in the administrative process or non-negligent circumstances. This Court has specifically held that negligent filing by counsel is not a sufficient basis upon which *nunc pro tunc* relief may be granted. *SPS Techs. v. Workers’ Comp. Appeal Bd. (Marko)*, 907 A.2d 49 (Pa. Cmwlth. 2006); *Riddle v. Dep’t of Transp.*, 583 A.2d 865 (Pa. Cmwlth. 1990). Under the circumstances, the UCBR was without jurisdiction to decide the merits of Claimant’s case and, therefore, committed no error in dismissing Claimant’s appeal for untimeliness.

The order of the UCBR is affirmed.

JOHNNY J. BUTLER, Judge

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ORDER

AND NOW, this 1st day of December, 2011, the May 3, 2011 order of the Unemployment Compensation Board of Review is affirmed.

JOHNNY J. BUTLER, Judge