

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Patricia L. Rowan,	:	
	:	
Petitioner	:	
	:	
v.	:	No. 1232 C.D. 2010
	:	Submitted: December 23, 2010
Unemployment Compensation Board of Review,	:	
	:	
Respondent	:	

**BEFORE: HONORABLE BONNIE BRIGANCE LEADBETTER, President Judge
HONORABLE ROBERT SIMPSON, Judge
HONORABLE P. KEVIN BROBSON, Judge**

OPINION NOT REPORTED

**MEMORANDUM OPINION
BY JUDGE BROBSON**

FILED: March 15, 2011

Patricia L. Rowan (Claimant) petitions, *pro se*, for review of an order of the Unemployment Compensation Board of Review (Board), dismissing her appeal as untimely pursuant to Section 501(e) of the Unemployment Compensation Law (Law).¹ We now affirm the Board's order.

¹ Act of December 5, 1936, Second Ex. Sess., P.L. (1937) 2897, *as amended*, 43 P.S. §821(e). Section 501(e) of the Law states:

(e) Unless the claimant . . . files an appeal with the board, from the determination contained in any notice required to be furnished by the department . . . within fifteen calendar days after such notice . . . was mailed to his last known post office address, and applies for a hearing, such determination of the department, with respect to the particular facts set forth in such notice, shall be final and compensation shall be paid or denied in accordance therewith.

Claimant filed a claim for unemployment compensation benefits following the termination of her employment with Mercy Life Center Corporation (Employer) as an overnight residential counselor. On February 9, 2010, the Duquesne UC Service Center issued a Notice of Determination in which it determined that Claimant was ineligible for benefits. (Certified Record (C.R.), Item No. 4.) The notice stated that the last day that Claimant could appeal the determination was February 24, 2010. (*Id.*) Claimant did not file her appeal until March 14, 2010, after the statutory appeal had expired. (C.R., Item No. 5.)

A Referee conducted a hearing on April 2, 2010, for the sole purpose of determining whether Claimant's appeal from the Notice of Determination was timely. (C.R., Item No. 9.) During the hearing, Claimant testified that she received the determination on or around February 9, 2010, and she was aware that an appeal was due by February 24, 2010. (C.R., Item No. 9, pp.4-5.) She explained that she was "pretty discouraged when [she] read the fact finding page" of the notice of determination and thought that she did not have much choice but to accept it. (*Id.* at 5) Then a friend encouraged her to "stand up for [herself]" and try to appeal the determination because she is worth it and deserves another chance. (*Id.*) Claimant testified that there was no reason for the late filing other than she was "overwhelmed." (*Id.* at 6.)

By decision dated April 2, 2010, the Referee dismissed Claimant's appeal. (C.R., Item No. 10). Claimant appealed to the Board, and the Board issued the following findings of fact:

1. A Notice of Determination (determination) was issued to the claimant on February 9, 2010, denying benefits.

2. A copy of this determination was mailed to the claimant at her last known post office address on the same date.
3. There is no evidence to indicate that the determination sent to the claimant was returned as undeliverable by the postal authorities.
4. The notice informed the claimant that February 24, 2010 was the last day on which to file an appeal from this determination.
5. The claimant filed her appeal by fax on March 14, 2010.
6. The claimant was not misinformed or misled by the unemployment compensation authorities concerning her right or the necessity to appeal.
7. The filing of the late appeal was not caused by fraud or its equivalent by the administrative authorities, a breakdown in the appellate system, or by non-negligent conduct.

(C.R., Item No. 13.) The Board explained that Claimant failed to present competent, credible evidence or testimony demonstrating good cause for filing an untimely appeal. Based on the foregoing, the Board determined that Claimant's appeal was properly dismissed as untimely under Section 501(e) of the Law, and it issued an order affirming the Referee's decision. (*Id.*) Claimant then filed the subject petition for review with this Court.

On appeal,² Claimant argues that the Board erred in dismissing her appeal as untimely because she was overwhelmed around the time that the appeal

² This Court's standard of review is limited to determining whether constitutional rights were violated, whether an error of law was committed, or whether necessary findings of fact are supported by substantial evidence. 2 Pa. C.S. § 704.

document could have been filed due to extreme weather conditions in Pittsburgh that caused her roof to leak into her dining room.³ We note, however, that Claimant did not testify to those circumstances during her hearing before the Referee, and we are limited to the record before us.

As noted above, Section 501(e) of the Law provides that unless a claimant files an appeal with respect to a notice of determination within fifteen calendar days after it was mailed to her last known post office address, such determination will be final and compensation shall be paid or denied in accordance therewith. The fifteen-day time limit is mandatory and subject to strict application. *Renda v. Unemployment Comp. Bd. of Review*, 837 A.2d 685, 695 (Pa. Cmwlth. 2003), *appeal denied*, 581 Pa. 685, 863 A.2d 1151 (2004). Failure to timely appeal an administrative agency's action is a jurisdictional defect, and the time for taking an appeal cannot be extended as a matter of grace or mere indulgence. *Sofronski v. Civil Svc. Comm'n, City of Philadelphia*, 695 A.2d 921, 924 (Pa. Cmwlth. 1997). Thus, a petitioner carries a heavy burden to justify an untimely appeal. *Blast Intermediate Unit #17 v. Unemployment Comp. Bd. of Review*, 645 A.2d 447, 449 (Pa. Cmwlth. 1994). As a result, an appeal *nunc pro tunc* may be allowed where the delay in filing the appeal was caused by extraordinary circumstances involving fraud or some breakdown in the administrative process, or non-negligent circumstances related to the petitioner, his counselor or a third party. *Cook v. Unemployment Comp Bd. of Review*, 543 Pa. 381, 671 A.2d 1130 (1996).

³ Claimant also addresses the merits of the decision denying her unemployment compensation benefits, but the only issue properly before the Court is whether her appeal of the notice of determination was timely.

In the case at hand, Claimant admitted that she received the notice of determination in a timely manner and that she knowingly filed an untimely appeal. Claimant provided no explanation for the late filing except that she was “overwhelmed.” As such, we must agree with the Board that Claimant failed to establish legal circumstances justifying a late appeal. The Board, therefore, properly dismissed Claimant’s appeal as untimely.

Accordingly, the order of the Board, dismissing Claimant’s appeal as untimely, is affirmed.⁴

P. KEVIN BROBSON, Judge

⁴ Even if the record had included reference to Claimant’s hardship at home due to a winter storm, this fact alone, while unfortunate, does not constitute good cause under the Law for waiting to file her appeal until nearly three weeks after the statutory appeal period has expired.

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Unemployment Compensation Board	:	
of Review,	:	
	:	
Respondent	:	

ORDER

AND NOW, this 15th day of March, 2011, the order of the Unemployment Compensation Board of Review is hereby AFFIRMED.

P. KEVIN BROBSON, Judge