

The referee's decision included a notice advising that interested parties had fifteen days to file a valid appeal. Claimant had to file his appeal to the UCBR on or before January 5, 2010, but Claimant did not file an appeal until January 8, 2010. The UCBR dismissed Claimant's appeal as untimely, concluding that Claimant was not misinformed or misled by authorities concerning his appeal rights, and that Claimant's filing of a late appeal was not caused by fraud or its equivalent by administrative authorities, by a breakdown in the appellate system or by non-negligent conduct.² Claimant now petitions this court for review.³

Claimant argues that the UCBR erred in dismissing his appeal because his filing of a late appeal was due to the fact that: (1) authorities mailed the referee's decision on December 21, 2009, in the middle of the Christmas season when the post office is more congested; and (2) Claimant, who is a Puerto Rican, does not understand English well and, thus, needed to find a translator. We disagree.

With respect to the first reason given by Claimant for his filing of a late appeal, Claimant asserts that, because of the holiday season, authorities should have given him fifteen **working** days, not fifteen **calendar** days, to file a timely appeal.

² The UCBR may consider an untimely appeal where: (1) authorities engaged in fraudulent behavior or manifestly wrongful or negligent conduct; or (2) non-negligent conduct beyond the control of the claimant caused the delay. *Hessou v. Unemployment Compensation Board of Review*, 942 A.2d 194, 198 (Pa. Cmwlth. 2008).

³ Our scope of review is limited to determining whether constitutional rights were violated, whether an error of law was committed or whether the necessary findings of fact are supported by substantial evidence. Section 704 of the Administrative Agency Law, 2 Pa. C.S. §704.

Claimant points out that December 24, 25, 26, 27, 31 and January 1 were not working days. However, the UCBR could not by law allow Claimant fifteen working days to file his appeal. *See* 34 Pa. Code §101.82(a) (stating that an appeal must be filed on or before the fifteenth day after the date that the decision was delivered personally or mailed to the claimant at the last known post office address).

With respect to the second reason given by Claimant for his filing of a late appeal, Claimant asserts that he did not receive the referee's decision until January 4, 2010, and he did not find a translator until January 6, 2010. (Claimant's Brief at 10.) There is no question that a *nunc pro tunc* appeal may be granted where there is evidence of a breakdown in the postal system. *Darroch v. Unemployment Compensation Board of Review*, 627 A.2d 1235, 1237-38 (Pa. Cmwlth. 1993). However, the UCBR rejected Claimant's testimony that he did not receive the referee's decision until January 4, 2010.⁴ (UCBR's Brief at 9.) As the factfinder, the UCBR is free to reject even uncontradicted testimony. *Daniels v. Unemployment Compensation Board of Review*, 755 A.2d 729, 731 (Pa. Cmwlth. 2000).

Accordingly, we affirm.

ROCHELLE S. FRIEDMAN, Senior Judge

⁴ Indeed, the UCBR necessarily rejected Claimant's testimony in finding that there was no breakdown in the appellate system, which includes the use of the postal system. *See* 34 Pa. Code §101.82(a).

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Reinaldo Alvarez-Quinones, :
 Petitioner :
 :
 :
 v. :
 :
 :
Unemployment Compensation :
Board of Review, :
 Respondent :

No. 1237 C.D. 2010

ORDER

AND NOW, this 20th day of January, 2011, the order of the Unemployment Compensation Board of Review, dated June 1, 2010, is hereby affirmed.

ROCHELLE S. FRIEDMAN, Senior Judge