## IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Reinaldo Alvarez-Quinones, :

Petitioner

:

v. : No. 1237 C.D. 2010

Submitted: December 17, 2010

FILED: January 20, 2011

**Unemployment Compensation** 

Board of Review,

:

Respondent

BEFORE: HONORABLE BONNIE BRIGANCE LEADBETTER, President Judge

HONORABLE DAN PELLEGRINI, Judge

HONORABLE ROCHELLE S. FRIEDMAN, Senior Judge

## OPINION NOT REPORTED

MEMORANDUM OPINION BY SENIOR JUDGE FRIEDMAN

Reinaldo Alvarez-Quinones (Claimant) petitions *pro se* for review of the June 1, 2010, order of the Unemployment Compensation Board of Review (UCBR), which dismissed as untimely Claimant's challenge to a referee's decision. We affirm.

Claimant filed an application for unemployment compensation, which was denied. Claimant filed an appeal, and a hearing was held before a referee. The referee subsequently issued a decision denying the appeal as untimely. A copy of the referee's decision was mailed to Claimant at his last known post office address, and the postal authorities did not return the decision as undeliverable.<sup>1</sup>

<sup>&</sup>lt;sup>1</sup> Claimant argued before the referee that the unemployment office sent its initial determination to him at the wrong address. However, we note that the referee's decision was sent to Claimant at his correct address.

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.<sup>2</sup> Claimant now petitions this court for review.<sup>3</sup>

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.

<sup>&</sup>lt;sup>2</sup> 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).

<sup>&</sup>lt;sup>3</sup> 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.<sup>4</sup> (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

<sup>&</sup>lt;sup>4</sup> 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).

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## 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.

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 $ROCHELLE\ S.\ FRIEDMAN,\ Senior\ Judge$