

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

William Kaufman,	:	
Petitioner	:	
	:	
v.	:	No. 1397 C.D. 2010
	:	SUBMITTED: December 3, 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
PRESIDENT JUDGE LEADBETTER**

FILED: January 28, 2011

William Kaufman (Claimant) petitions for review of the order of the Unemployment Compensation Board of Review (Board) that affirmed the referee's decision to dismiss, as untimely, Claimant's appeal by a facsimile transmission from the Job Center's determinations. Claimant argues that his evidence established the timeliness of the appeal.

On December 18, 2009, the Indiana UC Service Center mailed notice of determinations to Claimant, informing him that he was ineligible for unemployment compensation benefits under Section 402(b) of the Unemployment Compensation Law (Law), Act of December 5, 1936, Second Ex. Sess., P.L. (1937) 2897, *as amended*, 43 P.S. § 802(b) (voluntary quit), and that there was a

fault overpayment of benefits in the amount of \$1020, which he must repay pursuant to Section 804(a) of the Law, 43 P.S. § 874(a). Claimant was advised that the last day to timely appeal the Job Center's determinations was January 4, 2010 and that an appeal can be filed, *inter alia*, by faxing a completed petition for appeal to the Department of Labor and Industry's fax number, 724-599-1068. Claimant was warned that by filing an appeal by fax, he would accept the risk that the appeal may not be properly or timely filed.

On January 25, 2010, the Department received by a fax transmission a copy of Claimant's petition for review that he testified had been faxed on December 30, 2009, along with a copy of a fax report indicating that a fax transmission from a certain number to 724-599-1068 on "12/30" at "12:16" was "OK." Department's Exhibit No. 5; Certified Record (C.R.), Item No. 7. The referee held a hearing on March 4, 2010 to determine whether Claimant's appeal was timely filed. Claimant testified that he faxed a petition for appeal to the Department on December 30, 2009 at the Philadelphia Unemployment Project Office and re-faxed it on January 25 after contacting the Department.

The referee dismissed the appeal as untimely, and the Board affirmed. The Board found that Claimant filed an appeal on January 25, 2010, that he was not misinformed or misled by the unemployment compensation authority concerning his right to appeal and that the late filing of appeal was not caused by fraud or its equivalent by the administrative authorities, a breakdown in the appellate system, or by non-negligent conduct. Claimant appealed, arguing that the evidence supports the timeliness of his appeal.

An appeal from the Job Center's determination must be filed "within fifteen calendar days after such notice was delivered to him [or her] personally, or

was mailed to his [or her] last known post office address." Section 501(e) of the Law, 43 P.S. § 821(e). A statutory appeal period is mandatory and may not be extended as a matter of grace or mere indulgence. *Union Elec. Corp. v. Bd. of Prop. Assessment, Appeals & Review of Allegheny County*, 560 Pa. 481, 746 A.2d 581 (2000).¹ Failure to timely appeal an administrative agency's decision constitutes a jurisdictional defect. *Sofronski v. Civil Serv. Comm'n*, 695 A.2d 921 (Pa. Cmwlth. 1997).

The filing date for a faxed appeal is determined as follows under 34 Pa. Code § 101.82(b)(3)(i):

(A) The date of receipt imprinted by the Department, the workforce investment office or the Board's fax machine.

(B) If the Department, the workforce investment office or the Board's fax machine does not imprint a legible date, the date of transmission imprinted on the faxed appeal by the sender's fax machine.

(C) If the faxed appeal is received without a legible date of transmission, the filing date will be the date recorded by the Department appeal office, the workforce investment office or the Board when it receives the appeal.

A faxed appeal is timely filed, "if it is received by the Department appeal office, workforce investment office or the Board before midnight on the last day of the appeal period." 34 Pa. Code § 101.82(b)(3)(iii).

It must be noted that the date and time stamp placed by the sender's fax machine is inherently unreliable. *George v. Unemployment Comp. Bd. of*

¹ An appeal *nunc pro tunc* may be allowed "only where a delay in filing the appeal is caused by extraordinary circumstances involving fraud or some breakdown in the administrative process, or non-negligent circumstances related to the appellant or his [or her] counsel or a third party." *Sofronski*, 695 A.2d at 924 (Pa. Cmwlth. 1997).

Review, 767 A.2d 1124 (Pa. Cmwlth. 2001). Thus, "[a] party filing an appeal by fax transmission is responsible for delay, disruption, or interruption of electronic signals and readability of the document and accepts the risk that the appeal may not be properly or timely filed." 34 Pa. Code § 101.82(b)(3)(ii). Where an appeal is transmitted by fax, "the date of filing is the date that it is acknowledged as received by a representative of the Department or Board not the date of the fax." *George*, 767 A.2d at 1128.

The facts in this matter are similar to those in *Mountain Home Beagle Media v. Unemployment Compensation Board of Review*, 955 A.2d 484 (Pa. Cmwlth. 2008). In that case, the last day to file an appeal was August 28, 2007. The Department first received the employer's faxed appeal on September 6, 2007. The employer presented a facsimile confirmation sheet and a two-page petition for review, which bore the imprint placed by the sender's fax machine indicating that the petition was faxed to the Job Center on "08-27-07" at "12:42." *Id.* at 487 n. 5. The Board found that the appeal was filed on September 6 when the Department first received the faxed appeal. This Court affirmed the Board's dismissal of the appeal as untimely.

In this matter, the Department first received a faxed petition for review on January 25, 2010. The imprint on top of the faxed petition indicated that it was received on "01/25/2010" at "13:45." Department's Exhibit No. 5; C.R., Item No 7. The Job Center acknowledged the petition as received on January 25. Hence, the filing date of the appeal was January 25, 2010, not December 30, 2009 when Claimant first attempted to fax an appeal. Claimant did not seek an appeal *nunc pro tunc*, and the record does not support such relief. Hence, Claimant's appeal was properly dismissed as untimely.

Accordingly, the Board's order is affirmed.

BONNIE BRIGANCE LEADBETTER,
President Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

William Kaufman,	:	
	:	
Petitioner	:	
	:	
v.	:	No. 1397 C.D. 2010
	:	
Unemployment Compensation	:	
Board of Review,	:	
	:	
Respondent	:	

ORDER

AND NOW, this 28th day of January 2011, the order of the Unemployment Compensation Board of Review in the above-captioned matter is **AFFIRMED**.

BONNIE BRIGANCE LEADBETTER,
President Judge