

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Ismael Ifkirne,		:	
	Petitioner	:	
		:	
v.		:	
		:	
Unemployment Compensation		:	No. 1411 C.D. 2010
Board of Review,		:	No. 1412 C.D. 2010
	Respondent	:	Submitted: December 17, 2010

BEFORE: HONORABLE BERNARD L. McGINLEY, Judge  
 HONORABLE PATRICIA A. McCULLOUGH, Judge  
 HONORABLE JAMES R. KELLEY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION  
 BY JUDGE McGINLEY

FILED: January 11, 2011

Ismael Ifkirne (Claimant) challenges the order of the Unemployment Compensation Board of Review (Board) which affirmed the decision of the referee that Claimant was ineligible for benefits, received an overpayment of benefits and was subject to penalty weeks because his appeal from the service center’s determinations were untimely filed under Section 501(e) of the Unemployment Compensation Law (Law).<sup>1</sup> Claimant also challenges the order of the Board that determined he was ineligible for Emergency Unemployment Compensation (EUC) benefits, received an overpayment of EUC benefits and was subject to penalty weeks for EUC benefits. The two appeals are consolidated before this Court.

**I. Unemployment Compensation Appeal. No. 1412 C.D. 2010.**

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<sup>1</sup> Act of December 5, 1936, Second Ex. Sess., P.L. (1937) 2897, as amended, 43 P.S. §821(e).

The facts, as initially found by the referee and confirmed by the Board in the first appeal, are as follows:

1. On December 15, 2009, the Scranton UC Service Center issued a Notice of Penalty Weeks Determination that the claimant was penalized 28 weeks of benefits under Section 801(b) of the Law.
2. On December 16, 2009, the Scranton UC Service Center issued a Notice of Determination of Overpayment of Benefits that the claimant was overpaid Unemployment Compensation Benefits under Section 804(a) of the Law.
3. On December 17, 2009, the Scranton UC Service Center issued a Notice of Determination that the claimant was ineligible for benefits under Section 402(b) of the Law.
4. Copies of the determinations were mailed to the claimant's last known postal address on the same date.
5. The determinations mailed to the claimant were not return [sic] as undeliverable by the postal authorities.
6. The determinations indicated that the claimant had fifteen (15) days [from] the mailing date of the determinations in which to file an appeal if the claimant disagreed with the determination.
7. The last date in [sic] file a valid appeal to the Notice of Penalty Weeks Determination was December 31, 2009.
8. The last date to file a valid appeal for the Notice of Determination of Overpayment of Benefits was December 31, 2009.
9. The last date to file a valid appeal to the Notice of Determination was January 4, 2010.

10. The claimant did not file an appeal on or before December 31, 2009, or January 4, 2010.

11. The claimant filed his Petition for Appeal with the US Postal Authorities with the postmark on the envelope that the appeal was mailed was March 15, 2010.

12. The Claimant was not misinformed or misled by the Unemployment Compensation Authorities concerning his right or the necessity to appeal.

13. 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.

Referee's Decision, April 5, 2010, (Decision), Findings of Fact Nos. 1-13 at 1-2.

The referee determined:

In the present case, the record reveals that the UC Service Center provided the claimant with proper notification of the Notice of Determination at issue in this appeal, and the claimant's appeal request was received by the Scranton UC Service Center with a postmark date of March 15, 2010. The postmark date established the date of the claimant's appeal. Since the claimant's appeal was filed subsequent to the allotted fifteen (15) day appeal period indicated on the Notice of Determination, the claimant's appeal must be deemed to be an untimely appeal. The provisions of Section 501(e) of the Law are mandatory and the Referee has no jurisdiction to allow an appeal filed after the expiration of the statutory appeal period, absent limited exceptions not relevant herein. Therefore, the claimant's Petition for Appeal must be dismissed in accordance with Section 501(e) of the Law.

Decision at 2.

The Board adopted and incorporated the Board's findings and conclusions, "The claimant admitted that he received the determinations and talked to the department and simply did not file his appeal because he did not understand the process. The claimant has failed to establish proper cause for the late filing of the appeal." Board Opinion, May 21, 2010, at 1.

## **II. Emergency Unemployment Compensation Appeal. No. 1411 C.D. 2010.**

The facts, as initially found by the referee and confirmed by the Board in the EUC appeal, are as follows:

1. On December 16, 2009, the Scranton UC Service Center issued a Notice of Determination (Determination) finding that the claimant was not entitled to receive Emergency Unemployment Compensation under Section 4001(b) of the Law [EUC Act].
2. On December 16, 2009, the Scranton UC Service Center issued a Notice of Determination of Overpayment of Benefits (Overpayment Determination) finding the claimant overpaid Emergency Unemployment Compensation Benefits in the amount of \$732 under Section 4005(a), 4005(b), and 4005(c) of the EUC Act.<sup>[2]</sup>
3. On December 16, 2009, the Scranton UC Service Center issued a Notice of Penalty Weeks Determination (Penalty Determination) that the claimant was penalized 5 weeks of benefits under Section 801(b) of the Law and Section 4005(a)(1) of the EUC Act.
4. Copies of all the determinations were mailed to the claimant's last known post office address on the same date.

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<sup>2</sup> Title IV of the Supplemental Appropriation Act of 2008, Public Law 110-252, 122 Stat. 2323, Section 4005, 26 U.S.C. §3304.

5. The determinations mailed to the claimant were not returned undeliverable by the postal authorities.
6. The determinations indicated that the claimant had fifteen (15) days from the mailing date of the determination at which to file an appeal if the claimant disagreed with the determination.
7. The last date in which a valid appeal could be filed from the determinations was December 31, 2009.
8. The claimant did not file an appeal on or before December 31, 2009.
9. The claimant filed his Petition of Appeal with the UC [sic] Postal Service with the postmark on the envelope that the appeal was mailed on March 15, 2010.
10. The claimant was not misinformed or misled by the Unemployment Compensation Authorities concerning his right or necessity to appeal.
11. 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.

Referee's Decision, April 5, 2010, Findings of Fact Nos. 1-11 at 1-2. When he denied the appeal as untimely, the referee made the same conclusions that he did in the first appeal.

The Board affirmed.

### **III. Arguments as to Both Appeals.**

Claimant contends that the Board erred when it affirmed the dismissal of his appeal, and that the Board erred when it concluded that he was overpaid unemployment compensation benefits and was ineligible for benefits.<sup>3</sup>

Section 501(e) of the Law, 43 P.S. §821(e), provides that appeals from determinations contained in any notice required to be furnished by the department must be taken "within fifteen calendar days after such notice was delivered ... or was mailed to ... (claimant's) last known post office address."

This Court has repeatedly and consistently held that the statutory time limit established for the filing of appeals is mandatory. The appeal period may be extended beyond the statutory limit only where, through acts constituting fraud or its equivalent, the compensation authorities have deprived a claimant of the right to appeal. Shimko v. Unemployment Compensation Board of Review, 422 A.2d 726 (Pa. Cmwlth. 1980).

An appeal *nunc pro tunc* may be granted in very limited situations where an appeal is untimely because of non-negligent circumstances, either as they relate to a claimant or his counsel, and the appeal is filed within a short time after the claimant or his counsel learns of and has an opportunity to address the untimeliness, and the employer is not prejudiced by the delay. UPMC v.

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<sup>3</sup> This Court's review in an unemployment compensation case is limited to a determination of whether constitutional rights were violated, errors of law were committed, or findings of fact were not supported by substantial evidence. Lee Hospital v. Unemployment Compensation Board of Review, 637 A.2d 695 (Pa. Cmwlth. 1994).

Unemployment Compensation Board of Review, 852 A.2d 467 (Pa. Cmwlth. 2004).

Claimant asserts that he is a native of Morocco and English is not his native language. He asserts that he received correspondence from the Unemployment Compensation Service Center which he did not understand and was unaware that he had to respond by filing an appeal. He had difficulty reaching the Unemployment Compensation Service Center by telephone. When he finally did reach the Unemployment Compensation Service Center, a translator informed him that he had to appeal.

A review of the record reveals that Claimant called the Service Center on December 21, 2009, and was told he could appeal the determinations. On February 16, 2010, Claimant raised questions about his overpayment and was informed about the determinations. On February 19, 2010, Claimant telephoned multiple times and asked an interpreter on the language line how to file a late appeal.

Here, it is undisputed that Claimant received the determinations. It is also undisputed that he failed to timely appeal. There was no fraud or any similar conduct by the unemployment compensation authorities which led him to file untimely appeals. Furthermore, Claimant does not allege any non-negligent circumstances that prevented him from filing the appeal in a timely manner. He argues that he just did not understand what he needed to do to appeal. This Court has previously stated that “any lay person choosing to represent himself in a legal

proceeding must, to some reasonable extent, assume the risk that his lack of expertise and legal training will prove his undoing.” Groch v. Unemployment Compensation Board of Review, 472 A.2d 286, 288 (Pa. Cmwlth. 1984).

Assuming arguendo that Claimant did provide proof of sufficient non-negligent circumstances to perfect a *nunc pro tunc* appeal, he failed to file his appeal promptly after he learned of and had a chance to address the untimeliness. He spoke with the interpreter on February 19, 2010, yet he did not file his appeals until March 15, 2010.<sup>4</sup>

Accordingly, this Court affirms.

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BERNARD L. McGINLEY, Judge

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<sup>4</sup> This Court need not address Claimant’s second issue which goes to the merits of his case.



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	:	
Respondent	:	

**ORDER**

AND NOW, this 11th day of January, 2011, the orders of the Unemployment Compensation Board of Review in the above-captioned matters are affirmed.

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BERNARD L. MCGINLEY, Judge