

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Michael Melbert,	:	
	:	
Petitioner	:	
	:	
v.	:	
	:	
Unemployment Compensation	:	
Board of Review,	:	No. 1548 C.D. 2009
	:	
Respondent	:	Submitted: January 15, 2010

BEFORE: HONORABLE DAN PELLEGRINI, Judge  
HONORABLE JOHNNY J. BUTLER, Judge  
HONORABLE JAMES R. KELLEY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION BY  
JUDGE BUTLER

FILED: February 24, 2010

Michael Melbert (Claimant) petitions this Court for review of the July 13, 2009 order of the Unemployment Compensation Board of Review (UCBR) dismissing Claimant's appeal under Section 502 of the Unemployment Compensation Law (Law).<sup>1</sup> The dispositive issue before the Court is whether Claimant's appeal should be considered timely filed.<sup>2</sup> For reasons that follow, we affirm the UCBR's order.

Claimant was employed by Harley-Davidson off and on for 12 years ending in June of 2008. Claimant received Unemployment Compensation (UC) benefits through December of 2008. Claimant subsequently applied for Emergency

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<sup>1</sup> Act of December 5, 1936, Second Ex. Sess., P.L. (1937) 2897, *as amended*, 43 P.S. § 822.

<sup>2</sup> Claimant also argues that he is entitled to Emergency Unemployment Compensation benefits; however, the Court does not reach that issue.

UC (EUC) benefits. On January 6, 2009, the Lancaster UC Service Center mailed a notice of financial determination advising Claimant that he is not financially eligible for EUC under the Emergency Unemployment Act of 2008<sup>3</sup> and Section 403-A(i) of the Law.<sup>4</sup> Claimant appealed and a hearing on the merits was held by a Referee. On February 11, 2009, the Referee mailed his decision affirming the determination of the Lancaster UC Service Center finding Claimant financially ineligible for EUC benefits. On April 13, 2009, Claimant appealed to the UCBR, and a hearing was held on June 10, 2009 on the issue of whether Claimant's appeal was timely. On July 13, 2009, the UCBR dismissed Claimant's appeal for untimeliness. Claimant appealed to this Court.<sup>5</sup>

Claimant argues that his appeal should be considered timely because the untimeliness of his appeal was not the result of his negligence. According to Claimant, he missed the appeal deadline because he did not receive the necessary wage documents to support his appeal from his short term disability carrier until April 9, 2009.

Section 502 of the Law specifically states that a referee's decision "shall be deemed the final decision of the [UCBR], unless an appeal is filed therefrom, within fifteen days" of the decision.

If an appeal is not filed within fifteen days of the determination's mailing date, the UCBR and its referees do not have jurisdiction to rule on the merits of the case. The statutory time limit for filing an appeal is mandatory in the

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<sup>3</sup> 26 U.S.C. § 3304 (2008).

<sup>4</sup> Added by the Act of February 9, 1971, P.L. 1, 43 P.S. § 813.

<sup>5</sup> This Court's review is limited to determining whether the findings of fact were supported by substantial evidence, whether constitutional rights were violated, or whether errors of law were committed. *Johnson v. Unemployment Comp. Bd. of Review*, 869 A.2d 1095 (Pa. Cmwlth. 2005).

absence of fraud or manifestly wrong or negligent conduct of the administrative authorities, and the claimant bears a heavy burden to justify an untimely appeal. A *nunc pro tunc* appeal may be allowed where extraordinary circumstances involving fraud, some breakdown in the administrative process or non-negligent circumstances caused the delay.

*Roman-Hutchinson v. Unemployment Comp. Bd. of Review*, 972 A.2d 1286, 1288 n.1 (Pa. Cmwlth. 2009) (citations omitted).

In the instant matter, Claimant was well aware that he had until February 26, 2009 to file his appeal, as the final date to appeal was clearly marked on the Referee's decision which was mailed on February 11, 2009. Original Record, Item No. 8. Notwithstanding, Claimant did not file his appeal until 46 days past the deadline because he requested and waited for documents from his insurance carrier. Clearly, Claimant's choice to wait for documents, rather than timely file, does not constitute fraud or manifestly wrong or negligent conduct of the administrative authorities; nor does it constitute extraordinary circumstances involving fraud, some breakdown in the administrative process or non-negligent circumstances. Thus, Claimant's appeal was untimely.<sup>6</sup> Accordingly, the UCBR did not err in dismissing Claimant's appeal.

For all of the above reasons, the order of the UCBR is affirmed.

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JOHNNY J. BUTLER, Judge

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<sup>6</sup> The appropriate course of action for Claimant would have been to file his appeal by February 26, 2009, and then wait for his supporting documents, requesting a continuance of the timely filed appeal on an as needed basis.

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ORDER

AND NOW, this 24<sup>th</sup> day of February, 2010, the July 13, 2009 order of the Unemployment Compensation Board of Review is affirmed.

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JOHNNY J. BUTLER, Judge