

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Tamara Young,	:	
	:	
Petitioner	:	
	:	
v.	:	Nos. 1605 and 1606 C.D. 2010
	:	SUBMITTED: January 21, 2011
Unemployment Compensation	:	
Board of Review,	:	
	:	
Respondent	:	

**BEFORE: HONORABLE BONNIE BRIGANCE LEADBETTER, President Judge
HONORABLE PATRICIA A. McCULLOUGH, Judge
HONORABLE JOHNNY J. BUTLER, Judge**

OPINION NOT REPORTED

**MEMORANDUM OPINION BY
PRESIDENT JUDGE LEADBETTER**

FILED: March 17, 2011

Claimant Tamara Young petitions this Court *pro se* for review of two orders of the Unemployment Compensation Board of Review (Board), which dismissed her appeals from the denial of benefits as untimely under Section 502 of the Unemployment Compensation Law,¹ 43 P.S. § 822. The only issue on appeal is whether the Board erred in concluding that Young was not entitled to file her appeals *nunc pro tunc*. After review, we affirm.

¹ Act of December 5, 1936, Second Ex.Sess., P.L. (1937) 2897, *as amended*. Section 502 provides, in relevant part, that an appeal to the Board must be filed “within fifteen days after the date of [the referee’s] decision” *See also* 34 Pa. Code § 101.82(b).

A brief review of the relevant facts reveals that Young filed two separate applications for benefits and both were denied. She appealed the denials and a hearing before a referee followed on May 12, 2009. Based upon the evidence presented, the referee concluded, among other things, that Young was not entitled to benefits because she had voluntarily terminated her employment without cause of a necessitous and compelling nature. Each decision and order was mailed to Young on May 15, 2009, to her last known address, a post office box. June 1, 2009, was the last day in which each order could be appealed. Neither decision was returned by the postal authorities as undeliverable. Young filed her appeals by personal delivery on March 16, 2010. Young averred in her appellate paperwork to the Board that she never received the referee's decisions because she could not get to her post office box to pick up her mail due to a lack of gas money and that her post office box was subsequently closed for a lack of payment.

In light of the timeliness issue, the Board remanded the matter to the referee to allow the development of a record regarding the timeliness of Young's appeals. The following testimony was elicited before the referee:

[Referee]: Why didn't you receive [the decisions]. . . .

[Young]: Oh. Well, the post office was in Scott Run. I had no gas to get there.

. . . .

[Referee]: All right. But did you explain that to myself, the Referee, [that you could not get to your post office box] at the hearing? Because you gave [the post office box] as your address at the hearing and three days later I issued a Decision to that address. That was the only address you gave us. Did you call the Call Center to give a new address to send things to?

[Young]: They should have – they had the new address but I don't know what date.

....

[Referee]: . . . You came to the hearing and you gave me this address [a]nd three days later, I issued the Decision to the address that you gave me.

[Young]: All right. But I never got it because I couldn't get down there.

....

[Referee]: When did you give [your new address to the Call Center]? Because it's not – there's nothing in the record to say you ever changed your address.

[Young]: I don't remember.

[Referee]: You don't remember. Did you move or change the address within the 15 days after this hearing when you told us this was your address?

[Young]: You know what? We are talking about going back in 2008.

....

[Young]: . . . which was a long time ago. And I can't remember from what day exactly I called them and I gave my notice –you know, that I had . . .

Notes of Testimony (Hearing of May 18, 2010) at 2-3. In addition, when questioned, Young could not remember when her post office box was closed for lack of payment. She reiterated that at some point she called the Call Center and gave them her daughter's address but that she could not remember when that occurred.

Based upon the foregoing testimony, the Board found that Young did not receive the referee's decisions because her post office box had been closed and

she failed to give the Department any other address at which she could receive correspondence. The Board further found that the lateness of Young's appeals was not caused by fraud or its equivalent by the administrative authorities, a breakdown in the administrative system or non-negligent conduct. Accordingly, the Board concluded that the appeals were untimely and dismissed them. Young then filed the instant petitions for review, contending that her late appeals should be allowed because she could not access her post office box, the post office box was subsequently closed for lack of payment and she provided the Department with an alternative address.

It is well settled that because the failure to file a timely appeal is a jurisdictional defect, courts cannot extend the time for taking an appeal as a matter of grace or mere indulgence. *Sofronski v. Civil Serv. Comm'n, City of Philadelphia*, 695 A.2d 921 (Pa. Cmwlth. 1997). However, “[a] *nunc pro tunc* appeal may be allowed where extraordinary circumstances involving fraud or some breakdown in the administrative process caused the delay in filing, or where non-negligent circumstances related to the appellant, his or her counsel or a third party caused the delay.” *McClellan v. Unemployment Comp. Bd. of Review*, 908 A.2d 956, 959 (Pa. Cmwlth. 2006) (internal quotations omitted). Where non-negligent circumstances are at issue, an appellant must establish that “non-negligent conduct *beyond his control* caused the delay.” *Hessou v. Unemployment Comp. Bd. of Review*, 942 A.2d 194, 198 (Pa. Cmwlth. 2008) (emphasis added).

Here, the Board correctly concluded that Young was not entitled to file an appeal *nunc pro tunc*. It is a party's responsibility to keep the Department apprised of her current address for purposes of notice and the receipt of decisions and orders. *See generally* 34 Pa. Code §§ 101.53, 101.89. Although the referee's

decisions were mailed three days after the hearing, Young could not remember if her address changed during that time period, whether her post office box had been closed or whether she had informed the administrative authorities of a new address during that time. Clearly, the Board, as the finder of fact, was free to reject such testimony as too vague and uncertain to support a finding that Young had provided the administrative authorities with an alternative address. Thus, Young failed to demonstrate that fraud, a breakdown in the administrative process or non-negligent conduct beyond her control led to the lateness of her appeals. Accordingly, we conclude the Board did not err in dismissing Young's appeals as untimely filed.

The orders of the Board are affirmed.

BONNIE BRIGANCE LEADBETTER,
President Judge

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	:	
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ORDER

AND NOW, this 17th day of March, 2011, the orders of the Unemployment Compensation Board of Review in the above-captioned matters are hereby AFFIRMED.

BONNIE BRIGANCE LEADBETTER,
President Judge