

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Imose Joseph,	:	
	:	
Petitioner	:	
	:	
v.	:	No. 1704 C.D. 2010
	:	Submitted: December 30, 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 JUDGE BROBSON**

FILED: March 21, 2011

Petitioner Imose Joseph (Claimant) petitions for review of an order of the Unemployment Compensation Board of Review (Board), which affirmed a Referee’s decision dismissing Claimant’s appeal as untimely pursuant to Section 501(e) of the Unemployment Compensation Law (Law).¹ We now affirm the Board’s order.

¹ Act of December 5, 1936, Second Ex. Sess., P.L. (1937) 2897, *as amended*, 43 P.S. §821(e). Section 501(e) of the Law states:

(e) Unless the claimant . . . files an appeal with the board, from the determination contained in any notice required to be furnished by the department . . . within fifteen calendar days after such notice . . . was mailed to his last known post office address, and applies for a hearing, such determination of the department, with respect to

(Footnote continued on next page...)

Claimant filed for unemployment compensation benefits following termination of her employment with Genesis Health Care (Employer). On March 8, 2010, the Philadelphia UC Service Center (Service Center) issued a Notice of Determination in which it determined that Claimant was ineligible for unemployment compensation benefits under Section 402(e) of the Law,² relating to willful misconduct. (Reproduced Record (R.R.) at 22a.) The notice stated that the last day that Claimant could appeal the determination was March 23, 2010. (*Id.*) Claimant did not file her appeal until May 1, 2010, after the statutory appeal had expired. (*Id.* at 25a.)

A Referee conducted a hearing on May 26, 2010, for the purpose of determining whether Claimant's appeal from the Notice of Determination was timely. (*Id.* at 43a-55a.) During the hearing, Claimant testified that she received the determination on or around March 10th or 11th, 2010, but she did not mail her appeal until May 1, 2010. (*Id.* at 52a-53a.) She explained that she did not file her appeal earlier because she planned to quickly get another job after her employment was terminated. (*Id.* at 53a.) When she could not find another job right away, she decided to file her appeal. (*Id.*)

By decision dated May 26, 2010, the Referee dismissed Claimant's appeal. (*Id.* at 57a-60a.) In doing so, the Referee issued the following findings of fact:

(continued...)

the particular facts set forth in such notice, shall be final and compensation shall be paid or denied in accordance therewith.

² Act of December 5, 1936, Second Ex. Sess., P.L. (1937) 2897, *as amended*, 43 P.S. § 802(e).

1. On March 8, 2010, a determination was issued disqualifying the claimant for unemployment compensation benefits.
2. A Copy of this determination was mailed to the claimant's last known post office address on the above date.
3. The Notice of Determination was not returned by the postal authorities as being undeliverable.
4. The Notice of Determination informed the claimant that there were fifteen (15) days from the date of that determination in which to file an appeal if the claimant disagreed with the determination. The last day on which a valid appeal could be filed from that determination was March 23, 2010.
5. The claimant did not file an appeal on March 23, 2010, but waited until May 1, 2010.
6. The claimant was not misinformed nor in any way misled regarding the right of appeal or the need to appeal.

(*Id.* at 57a.) The Referee reasoned that because Section 501(e) of the Law provides that a Notice of Determination shall become final unless an appeal is filed within fifteen (15) days of its issuance, the Referee has no jurisdiction to consider an appeal that was filed after the expiration of the statutory appeal period. (*Id.*) As a result, the Referee dismissed Claimant's appeal.

Claimant appealed to the Board, and the Board affirmed the Referee's decision. (*Id.* at 66a-70a.) The Board adopted and incorporated the Referee's findings of fact and conclusions of law.

On appeal,³ Claimant argues that the Board erred in dismissing her appeal as untimely. As noted above, Section 501(e) of the Law provides that unless a claimant files an appeal with respect to a notice of determination within fifteen calendar days after it was mailed to her last known post office address, such determination “shall be final and compensation shall be paid or denied in accordance therewith.” The fifteen-day time limit is mandatory and subject to strict application. *Renda v. Unemployment Comp. Bd. of Review*, 837 A.2d 685, 695 (Pa. Cmwlth. 2003), *appeal denied*, 581 Pa. 685, 863 A.2d 1151 (2004). Failure to timely appeal an administrative agency’s action is a jurisdictional defect, and the time for taking an appeal cannot be extended as a matter of grace or mere indulgence. *Sofronski v. Civil Svc. Comm’n, City of Philadelphia*, 695 A.2d 921, 924 (Pa. Cmwlth. 1997). Thus, a petitioner carries a heavy burden to justify an untimely appeal. *Blast Intermediate Unit #17 v. Unemployment Comp. Bd. of Review*, 645 A.2d 447, 449 (Pa. Cmwlth. 1994). As a result, an appeal *nunc pro tunc* may be allowed where the delay in filing the appeal was caused by extraordinary circumstances involving fraud or some breakdown in the administrative process or non-negligent circumstances related to the petitioner, his counselor, or a third party. *Cook v. Unemployment Comp Bd. of Review*, 543 Pa. 381, 671 A.2d 1130 (1996).

In the case at hand, Claimant admitted that she received the notice of determination in a timely manner and that she knowingly filed an untimely appeal. Claimant provided no explanation for the late filing except that at the time that she

³ This Court’s standard of review is limited to determining whether constitutional rights were violated, whether an error of law was committed, or whether necessary findings of fact are supported by substantial evidence. 2 Pa. C.S. § 704.

received the Notice of Determination she expected to obtain gainful employment. When that did not occur, she then filed the untimely appeal. Although Claimant's initial decision to quickly obtain gainful employment instead of appealing the Notice of Determination may be laudable, we must agree with the Board that Claimant failed to establish legal circumstances justifying a late appeal. The Board, therefore, properly dismissed Claimant's appeal as untimely.

Accordingly, the order of the Board, dismissing Claimant's appeal as untimely, is affirmed.⁴

P. KEVIN BROBSON, Judge

⁴ Claimant also argues that the Board erred in concluding that her appeal was untimely because she was not represented by counsel during the relevant stages of the unemployment compensation proceedings. Claimant's reliance on *Lewis v. Unemployment Compensation Board of Review*, 814 A.2d 829 (Pa. Cmwlth. 2008), in support of a *nunc pro tunc* appeal in these circumstances is misplaced. In *Lewis*, the Court granted a *nunc pro tunc* appeal based on the claimant's cognitive impairment, not because she was unrepresented by counsel. In *Vann v. Unemployment Compensation Board of Appeal*, 508 Pa. 139, 148, 494 A.2d 1081, 1086 (1985), our Supreme Court recognized that "any layperson 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." As such, we must conclude that Claimant's unrepresented status by itself is insufficient to justify an appeal *nunc pro tunc*.

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	:	
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ORDER

AND NOW, this 21st day of March, 2011, the order of the Unemployment Compensation Board of Review is hereby **AFFIRMED**.

P. KEVIN BROBSON, Judge