

Claimant on October 19, 2010. The Referee held a hearing solely on the issue of the timeliness of Claimant's appeal.

Claimant testified that she sent her appeal on September 16, 2010, from a facsimile machine at a corner store in Philadelphia. According to Claimant, she called the UC Service Center a few weeks later to inquire about her appeal and learned that it had not been received. Claimant testified that she then resubmitted her appeal by e-mail on October 19, 2010. Claimant did not submit any documentation at the hearing to support her claim that she faxed her appeal on September 16, 2010. Employer was present but did not offer testimony.

On April 17, 2009, the Referee issued his determination that Claimant's appeal was untimely under Section 501(e) of the Unemployment Compensation Law (Law), 43 P.S. §821(e).¹ Accordingly, the Referee dismissed Claimant's appeal. Claimant appealed to the Board and submitted, for the first time, a fax transmission verification report dated September 16, 2010. The Board affirmed the Referee's decision, noting that the deadline in Section 501(e) of the Law is mandatory and that neither the Board nor the Referee is empowered to

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

- (e) Unless the claimant ... files an appeal with the board, from the determination contained in any notice required to be furnished by the department under section five hundred and one (a), (c) and (d), within fifteen calendar days after such notice was delivered to him personally, or was mailed to his last known post office address, and applies for a hearing, such determination of the department, with respect to the particular facts set forth in such notice, shall be final and compensation shall be paid or denied in accordance therewith.

43 P.S. §821(e).

enlarge the statutory appeal period. Claimant now petitions for this Court's review of the Board's adjudication.

On appeal,² Claimant contends that the Board erred in finding that her appeal was untimely. Claimant argues that evidence in the record, *i.e.*, the fax transmission verification report, shows that Claimant filed her appeal within the statutorily required 15-day period.

Section 501(e) of the Law requires appeals from Bureau determinations to be filed within 15 days of the mailing date of the determination or the determination becomes final. 43 P.S. §821(e). After the 15-day appeal period has expired, the Referee lacks jurisdiction to consider the appeal. *Darroch v. Unemployment Compensation Board of Review*, 627 A.2d 1235, 1237 (Pa. Cmwlth. 1993). The Board, in limited circumstances, may consider an untimely appeal on a *nunc pro tunc* basis. *Unemployment Compensation Board of Review v. Hart*, 348 A.2d 497, 498 (Pa. Cmwlth. 1975). The burden to establish the right to appeal *nunc pro tunc* is a heavy one because the statutory time limit established for appeals is mandatory. *Blast Intermediate Unit No. 17 v. Unemployment Compensation Board of Review*, 645 A.2d 447, 449 (Pa. Cmwlth. 1994). An appellant may satisfy this heavy burden two ways: (1) showing a breakdown in the system by the administrative authorities or (2) showing that non-negligent conduct beyond the appellant's control has caused the delay. *Bass v. Commonwealth*, 485 Pa. 256, 259-260, 401 A.2d 1133, 1135 (1979).

² This Court's review in an unemployment compensation case is limited to determining 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, 697 (Pa. Cmwlth. 1994).

Essentially, Claimant argues that this Court should consider evidence that is not part of the record. Claimant had the opportunity at the Referee’s hearing to place the fax transmission verification report into evidence. She did not do so. It is axiomatic that a party may not expand the record developed before the Referee by attaching documents to subsequent filings. *Croft v. Unemployment Compensation Board of Review*, 662 A.2d 24, 28 (Pa. Cmwlth. 1995). The Board is “restricted to the facts and the law pertinent to the issues involved on the basis of evidence *previously* submitted.” *Id.* (emphasis in original). Based on the record Claimant made before the Referee, the Board did not err in finding that her claim was untimely. Likewise, Claimant failed to demonstrate that she should have been permitted to appeal *nunc pro tunc*. Claimant offered no evidence of fraudulent or negligent conduct on the part of the administrative authorities, nor did she establish any non-negligent conduct beyond her control that excused her late appeal. Claimant simply neglected to bring her key evidence to the Referee’s hearing, and that is insufficient.

For all of the foregoing reasons, we affirm the Board’s adjudication.

MARY HANNAH LEAVITT, Judge

