## IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Denise R. MacNeal, :

Petitioner

:

v. : No. 175 C.D. 2011

Submitted: June 3, 2011

FILED: August 26, 2011

**Unemployment Compensation** 

Board of Review,

•

Respondent

BEFORE: HONORABLE BERNARD L. McGINLEY, Judge

HONORABLE MARY HANNAH LEAVITT, Judge HONORABLE JAMES R. KELLEY, Senior Judge

## OPINION NOT REPORTED

MEMORANDUM OPINION BY JUDGE LEAVITT

Denise MacNeal (Claimant) petitions for review of an adjudication of the Unemployment Compensation Board of Review (Board) that affirmed the Referee's dismissal of Claimant's appeal as untimely. Because Claimant offered no evidence to support her claim that she filed her appeal on time, we will affirm.

Claimant was employed by Pacifico Airport Valet (Employer) from April 1, 2009, until March 31, 2010, when Claimant terminated her employment. Claimant applied for unemployment compensation benefits. The Philadelphia UC Service Center concluded that Claimant was ineligible because she had voluntarily quit her job without a necessitous and compelling reason. The UC Service Center's determination advised Claimant that the deadline for filing an appeal was September 24, 2010. The UC Service Center received an e-mail appeal from

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). 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

<sup>&</sup>lt;sup>1</sup> 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:

<sup>(</sup>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.

<sup>43</sup> P.S. §821(e).

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

On appeal,<sup>2</sup> 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 Blast Intermediate Unit No. 17 v. Unemployment appeals is mandatory. 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).

\_

<sup>&</sup>lt;sup>2</sup> 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

## IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Denise R. MacNeal,

Petitioner

No. 175 C.D. 2011 v.

**Unemployment Compensation** 

Board of Review,

Respondent

## ORDER

AND NOW, this 26<sup>th</sup> day of August, 2011, the order of the Unemployment Compensation Board of Review in the above-captioned matter, dated December 20, 2010, is hereby AFFIRMED.

MARY HANNAH LEAVITT, Judge