

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Tonda B. Williams-Pendleton, :
Petitioner :
 :
v. : No. 1785 C.D. 2009
 : Submitted: July 16, 2010
Unemployment Compensation :
Board of Review, :
Respondent :

BEFORE: HONORABLE DAN PELLEGRINI, Judge
HONORABLE PATRICIA A. McCULLOUGH, Judge
HONORABLE JOHNNY J. BUTLER, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE PELLEGRINI

FILED: August 19, 2010

Tonda B. Williams-Pendleton (Claimant), appearing *pro se*, petitions for review of an order of the Unemployment Compensation Board of Review (Board) affirming the decision of the Referee denying her unemployment compensation benefits because her appeal was not timely. For the reasons that follow, we affirm the Board.

Claimant was employed by The Childrens Hospital of Philadelphia for 22 years. On October 10, 2008, she was terminated from employment due to job abandonment. On October 12, 2008, she was arrested and charged with, *inter alia*, providing controlled substance contraband to a confined person. Her preliminary hearing was continued to December 17, 2008, on which date she was released. Claimant filed for unemployment compensation benefits on January 4, 2009. On January 21, 2009, the Philadelphia UC Service Center mailed a notice of

determination to Claimant denying her benefits pursuant to Section 402(b) of the Unemployment Compensation Law (Law)¹ because 1) she took a leave of absence due to being incarcerated and 2) Claimant claimed she was falsely incarcerated; however, 3) there was insufficient information provided to show whether Claimant was incarcerated due to her own fault or there was good cause for her actions that resulted in the incarceration. The UC Service Center further stated that “Where the Claimant was incarcerated through no fault of her own or has shown good cause for her actions that caused the incarceration, the Claimant must also show that she explored all alternatives, such as work release, to maintain the employer-employee relationship prior to quitting.” The notice of determination indicated that the last day to file a timely appeal was February 5, 2009. Claimant did not file an appeal until March 9, 2009.

A hearing was held before a Referee at which time Claimant testified that she received what appeared to be two notices of determination from the UC Service Center and that she read them but she “wasn’t clear on it.” (April 7, 2009 Hearing Transcript at 5.) She attempted to call the hotline number at the UC Service Center in January numerous times but the number was always busy.

¹ Act of December 5, 1936, Second Ex. Sess., P.L. (1937), 2897, *as amended*, 43 P.S. §802(b). That section provides:

An employe shall be ineligible for compensation for any week –

(b) In which his unemployment is due to voluntarily leaving work without cause of a necessitous and compelling nature, irrespective of whether or not such work is in “employment” as defined in this act.

Regarding the timeliness of her appeal, she stated that she was released from incarceration on December 17, 2008, and after her release, she was dealing with “two medical issues” which played a big part in her getting things done in a timely manner, and that she had documentation for those issues. Claimant did not offer the documents into evidence. She also had other issues to deal with after her release including her home being in foreclosure. Because timeliness was the only issue discussed at the hearing, Employer’s two witnesses did not testify.

The Referee found that Claimant had received a notice of determination from the UC Service Center on January 21, 2009, indicating that the last day to file a timely appeal was on February 5, 2009, but Claimant did not file her appeal until March 9, 2009, and that Claimant had not been misinformed or misled regarding her appeal rights. The Referee then dismissed Claimant’s appeal because Claimant filed her appeal after the 15-day period for filing,² and she failed to show that there was either fraud or a breakdown in the administrative process which caused the late appeal.

² Section 501(e) of the Law, 43 P.S. §821(e), provides:

Unless the claimant or last employer or base-year employer of 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.

Claimant appealed to the Board requesting another hearing and attached letters from friends regarding her mental status. Also received by the Board was a physician form filled out by Mathew Frankel, M.D., dated February 24, 2009, indicating that Claimant had symptoms of chronic anxiety and panic episodes and required a mental health evaluation. The Board issued an order remanding the matter to the Referee to hold another hearing “for the purpose of providing the claimant with an opportunity to testify regarding the contention that [her] appeal was timely filed and to further elicit testimony from both parties regarding the merits of the case in the event that the Board finds that the claimant’s appeal was timely filed.” (Board order dated June 9, 2009.)

At the remand hearing, the Referee listed the following issues to be considered:

- Whether Claimant filed a timely appeal from the initial determination;
- Whether Claimant’s unemployment was due to voluntarily leaving work without cause of a necessitous and compelling nature;
- Whether Claimant’s unemployment was due to discharge to temporary suspension from work for willful misconduct connected with employment; and
- Whether Claimant was able and available for suitable work.

Claimant did not appear at the hearing she requested. The Referee stated that the notice of the hearing was mailed to Claimant at her last known

address and was not returned as undeliverable. Employer's witness, Lee Harold, Claimant's immediate supervisor, attended the hearing and testified that Claimant was terminated for abandoning her job and would have been terminated for being incarcerated.

Noting that Claimant did not appear at the remand hearing, the Board issued a decision affirming the Referee's decision denying Claimant unemployment compensation benefits because she failed to timely file her appeal. It stated that it based its determination on the testimony and evidence submitted at the first hearing only and would not address the merits of the case. This appeal by Claimant followed.³

On appeal, Claimant focuses all of her arguments on the merits of her case. As to the merits of her appeal, they will not be addressed. Claimant had the chance to address them at the remand hearing which she inexplicably chose not to attend. Had she attended the hearing, and been victorious regarding the issue of her late filing, she could have then gone on to discuss the merits.

Regarding her reasoning for filing a late claim, the only argument that Claimant makes is that "Petitioner explained her mental status upon her release, which also lead to her filing a late claim. Documentation supporting her mental health was also forward to the UCBR." Just because Claimant testified before the

³ Our scope of review is limited to determining whether constitutional rights were violated, an error of law was committed or whether necessary findings of fact are supported by competent evidence. *Glover v. Unemployment Compensation Board of Review*, 874 A.2d 692 (Pa. Cmwlth. 2005).

Referee that she was dealing with two “medical issues,” that testimony was not sufficient to explain why she filed her appeal untimely. A *nunc pro tunc* appeal will only be allowed where the late filing is caused by extraordinary circumstances involving fraud, administrative breakdown or non-negligent conduct. *Cook v. Unemployment Compensation Board of Review*, 543 Pa. 381, 671 A.2d 1130 (1996). Claimant did not explain to the Referee what her “medical issues” were. Although this Court held that a claimant’s mental deficiency (i.e., intellectual functioning in the borderline range or “educable mentally retarded”), anxiety-depressive disorder and illiteracy constituted a breakdown in the administrative system when the Referee failed to provide adequate assistance, *see Lewis v. Unemployment Compensation Board of Review*, 814 A.2d 829 (Pa. Cmwlth. 2003), those are not the facts here. While Claimant was prohibited from providing evidence of her “medical issues” at the first hearing, she was given a second chance to do so at the remand hearing but failed to appear. At the remand hearing, Claimant could have discussed her mental status upon her release and her physician’s diagnosis/medical report which had been made a part of the record and could have, in fact, been found sufficient to have prevented her from filing a timely appeal. However, without any further explanation, she failed to appear at the hearing and the Referee’s findings of fact and conclusions of law from the first hearing stand.

Accordingly, the order of the Board is affirmed.

DAN PELLEGRINI, JUDGE

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ORDER

AND NOW, this 19th day of August, 2010, the order of the Unemployment Compensation Board of Review, at No. B-487076, dated August 13, 2009, is affirmed.

DAN PELLEGRINI, JUDGE