

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Robert Soderquist,	:	
	:	
Petitioner	:	
	:	
v.	:	
	:	
Unemployment Compensation	:	
Board of Review,	:	No. 1810 C.D. 2010
	:	
Respondent	:	Submitted: March 18, 2011

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

OPINION NOT REPORTED

MEMORANDUM OPINION BY
JUDGE BUTLER

FILED: May 4, 2011

Robert Soderquist (Claimant) petitions for review from the August 16, 2010 order of the Unemployment Compensation Board of Review (Board) dismissing Claimant's appeal as untimely from the denial of his application for unemployment compensation (UC) benefits. The issue before this Court is whether there is substantial evidence to support the Board's finding that Claimant was not misinformed concerning his right or the necessity to appeal from an adverse decision by the UC Service Center. For the reasons that follow, we reverse the Board's order, and remand this matter for a determination as to the merits of Claimant's appeal.

On May 11, 2010, upon Claimant's application for UC benefits, the UC Service Center issued a determination denying Claimant's application. According to Claimant, the UC Service Center had previously requested additional information about Claimant's business, which Claimant then faxed to the UC Service Center on May 10, 2010. The following day, a copy of the UC Service Center's determination

was mailed to Claimant's last known post office address, denying Claimant's application and indicating that he had until May 26, 2010 to file an appeal. Claimant testified that he never received the letter, and that, on May 14, 2010, unaware that his application had been denied, Claimant contacted the UC Service Center asking for an update on his application. Claimant further testified that he was then told it could take up to nine weeks to process a claim. Claimant called the UC Service Center again on May 20, 2010. Original Record (O.R.), Item 1, Claim Record at 1. Claimant stated that on the latter occasion, he confirmed that the UC Service Center received his May 10, 2010 fax, and was again told that it could take up to nine weeks to process his claim. On June 11, 2010, Claimant once again called the UC Service Center asking for an update, and was then told that a letter had been sent to him on May 11, 2010. O.R., Item 1, Claim Record at 1. Claimant explained that when he informed the UC Service Center that he had not received the letter, the UC Service Center issued another, which he received the following day.

Three days later, Claimant filed an appeal *via* email on June 15, 2010, approximately 20 days after the appeal deadline. A hearing was held on July 6, 2010, at which only Claimant presented evidence. The Referee dismissed Claimant's appeal on the basis that it was untimely. Claimant appealed to the Board which affirmed the Referee's decision. Claimant appealed to this Court, *pro se*.¹

Claimant argues that he never received the letter mailed to him on May 11, 2010, and that when he called the UC Service Center he was given misinformation about the status of his application. He therefore contends that there

¹ "Our scope of review in unemployment compensation cases is limited to determining whether constitutional rights were violated, whether errors of law were committed or whether findings of fact are supported by substantial evidence." *Lindsay v. Unemployment Comp. Bd. of Review*, 789 A.2d 385, 389 n.4 (Pa. Cmwlth. 2001).

was a breakdown in the system, and his appeal should not have been dismissed as untimely. We agree.

Section 501(e) of the Unemployment Compensation Law² provides:

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

“The statutory time limit for filing an appeal is mandatory in the absence of fraud or manifestly wrong or negligent conduct of the administrative authorities, and the claimant bears a heavy burden to justify an untimely appeal.” *Roman-Hutchinson v. Unemployment Comp. Bd. of Review*, 972 A.2d 1286, 1288 n.1 (Pa. Cmwlth. 2009). “[S]imply stating that a notice was not received is not a sufficient reason for extending the time for filing an appeal.” *ATM Corp. of Am. v. Unemployment Comp. Bd. of Review*, 892 A.2d 859, 864 (Pa. Cmwlth. 2006). However, the law is clear that “where an administrative body acts negligently, improperly or in a misleading way, an appeal *nunc pro tunc* may be warranted.” *Union Elec. Corp. v. Bd. of Prop. Assessment, Appeals & Review of Allegheny Cnty.*, 560 Pa. 481, 487, 746 A.2d 581, 584 (2000). This Court has specifically held that even “where a person is unintentionally misled by an officer [acting on behalf of the administrative body], courts will relieve an innocent party of injury consequent on such misleading act, where it is possible to do so.” *Stana v. Unemployment Comp. Bd. of Review*, 791 A.2d 1269, 1271 (Pa. Cmwlth. 2002) (quoting *Layton v. Unemployment Comp. Bd. of Review*, 40 A.2d 125, 125 (Pa. Super. 1944)).

² Act of December 5, 1936, Second Ex.Sess., P.L. (1937) 2897, *as amended*, 43 P.S. § 821(e).

In this case, it is undisputed that Claimant filed his appeal from the UC Service Center's determination in an untimely manner, and that the UC Service Center mailed its determination on May 11, 2010 to Claimant's last known post office address. It is on this basis that the Referee presumptively determined that it was reasonable to conclude that Claimant either failed or refused to realize the importance of the determination or had misplaced it, thus leading Claimant to believe he had not received it. Similarly, the Board discredited Claimant's assertion that he did not receive the determination, stating that in light of proof of mailing, the determination was "presumably received." O.R., Item 12, Bd. Decision at 2. Beyond that, however, the Board failed to make any credibility determinations concerning Claimant's testimony, and failed to make any factual findings at all concerning specific information Claimant received from the UC Service Center staff regarding his application, the UC Service Center's decision or Claimant's opportunity to appeal. The Board's only finding in this regard is the bald assertion that Claimant was not misinformed or misled by the UC employees concerning his right or the necessity to appeal. This finding of fact is not supported by any evidence, let alone substantial evidence.

As stated, the record reflects that Claimant contacted the UC Service Center between the time the determination was mailed and the last day he could file a timely appeal. According to Claimant's uncontroverted testimony, he contacted the UC Service Center on more than one occasion. The Referee specifically stated in his decision that the claim record corroborated Claimant's version of the fact that he was in contact with the UC Service Center regarding his claim subsequent to the UC Service Center's decision and prior to the expiration of Claimant's appeal period. Upon contacting the UC Service Center, he was led to believe that it could take up to nine weeks before his claim was processed, and the UC Service Center failed to

inform Claimant at that time that a determination had already been made. *See* O.R., Item 1, Claim Record at 1. There is a notation in the claim record that Claimant was advised, on May 20, 2010, that he would get a decision in the mail, not that a decision had already been mailed. *Id.* Specifically, the notation reads: “TOLD WILL GET DESCN IN MAIL.” *Id.* While the UC Service Center employee who spoke with Claimant on June 11, 2010 informed Claimant that the decision letter was mailed on May 11, 2010, employees who spoke with Claimant on May 14 and/or 20, 2010 should, likewise, have told Claimant that the determination had already been mailed. Moreover, they should have informed him that his appeal deadline was imminent, or at the very least, provided him a copy of the decision letter upon his inquiry.

It is clear from the uncontroverted evidence of record that Claimant was proactive in his attempt to determine the status of his application prior to the expiration of his appeal period. However, he testified that his reliance on the misinformation he received from UC Service Center employees caused his appeal to be late. Claimant’s diligence is demonstrated by the fact that once Claimant received the UC Service Center’s determination on June 12, 2010, he filed his appeal within three days. The information Claimant testified he was given, as corroborated by the record in this case, certainly qualifies as being misleading. The Board’s finding that Claimant was not misinformed or misled by the UC employees is not supported by substantial evidence. Therefore, the decision of the Board must be reversed. For these reasons, the Board’s order is reversed, and the matter is remanded for a nunc pro tunc determination as to the merits of Claimant’s appeal.

JOHNNY J. BUTLER, Judge

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ORDER

AND NOW, this 4th day of May, 2011, the August 16, 2010 order of the Unemployment Compensation Board of Review is reversed. The matter is remanded for a *nunc pro tunc* determination as to the merits of Claimant's appeal.

Jurisdiction relinquished.

JOHNNY J. BUTLER, Judge