

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Thaddeus R. Rude, :  
Petitioner :  
 : No. 184 C.D. 2010  
v. :  
 : Submitted: June 11, 2010  
Unemployment Compensation :  
Board of Review, :  
Respondent :

BEFORE: HONORABLE RENÉE COHN JUBELIRER, Judge  
HONORABLE PATRICIA A. McCULLOUGH, Judge  
HONORABLE JAMES R. KELLEY, Senior Judge

**OPINION NOT REPORTED**

MEMORANDUM OPINION  
BY JUDGE McCULLOUGH

FILED: September 20, 2010

Thaddeus R. Rude (Claimant) petitions pro se for review of the December 29, 2009, order of the Unemployment Compensation Board of Review (Board) dismissing Claimant's appeal as untimely under section 501(e) of the Unemployment Compensation Law (Law).<sup>1</sup> We affirm.

The Board's findings are summarized as follows. On July 8, 2009, the local service center issued a notice of financial determination finding Claimant financially ineligible for benefits. The notice was sent that same date to Claimant's last known post office address and was not returned as undeliverable. The notice

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<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) requires appeals to be filed within fifteen calendar days of the date a notice of determination is delivered to a claimant personally or mailed to the claimant's last known address.

informed Claimant that July 23, 2009, was the last day on which to file an appeal from this determination. Claimant did not file a timely appeal. Instead, on September 8, 2009, Claimant called the service center representative to say that he would be filing a late appeal by fax, and Claimant faxed an appeal that same day. (Board's Findings of Fact Nos. 1-4, 8-9.)

A hearing was held before a referee on October 5, 2009. Employer did not appear for the hearing. Claimant participated by telephone, indicating that he was in Ontario, Canada, pursuing work. Claimant denied receiving the July 8, 2009, notice of financial determination. He also denied receiving a form mailed July 29, 2009, requesting verification of his social security number. Claimant testified that he did receive notice of his pin code for entry of his biweekly claim, but that the pin code ceased working near the end of August. Claimant offered conflicting testimony regarding his telephone conversations with job center representatives before filing his appeal. Claimant stated that he spoke to service center representatives on July 29, 2009, and August 19, 2009; however, Claimant did not remember being told he needed to file an appeal on July 29, 2009.<sup>2</sup> In addition, although Claimant initially acknowledged that he was told to file an appeal on August 19, 2009, he subsequently testified that he was not advised to do so until he contacted the service center in September. According to Claimant, the prior conversations involved his employer's failure to provide documentation of Claimant's wages.

The referee issued a decision and order dismissing Claimant's appeal as untimely under section 501(e) of the Law. Claimant appealed to the Board, which affirmed the referee's decision, rejecting Claimant's testimony that he was not aware

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<sup>2</sup> Claimant's testimony was inaudible at times, and it is not clear from the transcript whether Claimant actually spoke to a service center representative on July 29, 2009.

until September 8, 2009, that he was required to file an appeal from the July 8, 2009, determination.<sup>3</sup>

On appeal to this Court,<sup>4</sup> Claimant argues that the Board erred in concluding that his appeal was untimely and that its decision is not supported by substantial evidence. Claimant further alleges that there was a “breakdown of the appellate system” and that he was misled by service center representatives. We disagree.

We note that the fifteen-day time limit set forth in section 501(e) is mandatory and subject to strict application. Lin v. Unemployment Compensation Board of Review, 558 Pa. 94, 735 A.2d 697 (1999); Renda v. Unemployment Compensation Board of Review, 837 A.2d 685 (Pa. Cmwlth. 2003), appeal denied, 581 Pa. 686, 863 A.2d 1151 (2004). If an appeal from a determination is not filed within this fifteen-day period, the determination becomes final and the Board does not have the requisite jurisdiction to consider the matter. Lin.

However, a *nunc pro tunc* appeal may be permitted when a delay in filing the appeal is caused by extraordinary circumstances involving fraud, administrative breakdown, or non-negligent conduct, either by a third party or by the

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<sup>3</sup> In his appeal to the Board, Claimant attempted to present an additional reason for filing a late appeal, i.e., he was in Serbia in July of 2009, looking for work and the notice of financial determination must have been lost when forwarded overseas. The Board properly refused to consider this argument, noting that Claimant failed to present any evidence in this regard before the referee. However, in its decision, the Board found that Claimant’s claim record reflected that he was told to file an appeal by job center representatives during a July 29, 2009, conversation. The Board now acknowledges that Claimant may not have spoken to a service center representative at that time.

<sup>4</sup> 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 substantial evidence. Shrum v. Unemployment Compensation Board of Review, 690 A.2d 796 (Pa. Cmwlth.), appeal denied, 548 Pa. 663, 698 A.2d 69 (1997).

appellant. Cook v. Unemployment Compensation Board of Review, 543 Pa. 381, 671 A.2d 1130 (1996); Mountain Home Beagle Media v. Unemployment Compensation Board of Review, 955 A.2d 484 (Pa. Cmwlth. 2008). Negligence on the part of an administrative official may be deemed the equivalent of fraud. Renda; Stana v. Unemployment Compensation Board of Review, 791 A.2d 1269 (Pa. Cmwlth.), appeal denied, 572 Pa. 717, 813 A.2d 848 (2002).

Nonetheless, simply stating that a notice was not received is not a sufficient reason for extending the time for filing an appeal. ATM Corporation of America v. Unemployment Compensation Board of Review, 892 A.2d 859 (Pa. Cmwlth. 2006). Where notice is mailed to a claimant's last known address and is not returned by postal authorities as undeliverable, the claimant is presumed to have received the notice. Id.; Mihelic v. Unemployment Compensation Board of Review, 399 A.2d 825 (Pa. Cmwlth. 1979). Additionally, a petitioner in an appeal *nunc pro tunc* must proceed with reasonable diligence once he or she knows of the necessity to take action. UPMC Health System v. Unemployment Compensation Board of Review, 852 A.2d 467 (Pa. Cmwlth. 2004); Stanton v. Department of Transportation, Bureau of Driver Licensing, 623 A.2d 925 (Pa. Cmwlth. 1993).

In the present case, the notice of financial determination was mailed to Claimant at his last known address on July 8, 2009, and was not returned as undeliverable. Hence, Claimant is presumed to have received the notice. ATM Corporation of America; Mihelic. The notice informed Claimant that July 23, 2009, was the last day on which to file an appeal from this determination. The Board rejected Claimant's testimony that he was unaware that he was required to file an appeal until September 8, 2009, as not credible. Moreover, the evidence of record does not reveal any extraordinary circumstances involving fraud or an administrative breakdown; nor does it reflect that Claimant was in any way misled by administrative

officials. Thus, the Board's conclusion that Claimant's appeal was untimely was supported by substantial evidence, and Claimant failed to present any evidence justifying a *nunc pro tunc* appeal.

Accordingly, the order of the Board is affirmed.

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PATRICIA A. McCULLOUGH, Judge

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Board of Review,	:	
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**ORDER**

AND NOW, this 20th day of September, 2010, the December 29, 2009, order of the Unemployment Compensation Board of Review is hereby AFFIRMED.

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PATRICIA A. McCULLOUGH, Judge