

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Heidi J. Wilson, :
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 Petitioner :
 :
 v. : No. 1875 C.D. 2010
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 :
 State Employees' : Submitted: April 8, 2011
 Retirement System, :
 :
 Respondent :

BEFORE: HONORABLE BERNARD L. McGINLEY, Judge
HONORABLE MARY HANNAH LEAVITT, Judge
HONORABLE JAMES R. KELLEY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY SENIOR JUDGE KELLEY

FILED: June 21, 2011

Heidi J. Wilson (Wilson) petitions for review from an order of the State Employees' Retirement Board (Board) denying her untimely request for an appeal. We affirm.

The facts of this case are not in dispute. By letter dated April 19, 2010, the State Employees' Retirement System's (SERS) Benefit Determination Division advised Wilson that SERS' medical examiners have recommended that her request for continuance of her disability retirement benefits be denied because the medical documentation submitted in support thereof was insufficient. The letter advised Wilson that she could submit additional new medical documentation to support her claim within 30 days of April 19, 2010. The letter also stated that if Wilson did not submit additional new documentation to SERS within 30 days, then

SERS would issue a final determination regarding her request for continued disability retirement benefits. Wilson did not submit additional medical information or any other documentation to SERS in response to the April 19, 2010 letter.

By letter dated May 21, 2010, the Director of SERS' Benefit Determination Division advised Wilson that her disability retirement benefits were discontinued based upon the recommendation of SERS' medical examiners, because the medical documentation Wilson submitted to SERS did not support a conclusion that she was entitled to a continuation of her benefit. The letter advised Wilson that she may submit any additional current medical documentation. The letter also advised Wilson that she had the right to appeal SERS' denial of benefits to the Board by filing a written appeal with the Board *within 30 days of May 21, 2010*. The letter contained information pertaining to the requirements for an appeal filing and the procedure used by the Board to adjudicate appeals. The May 21, 2010 letter was sent, via Certified Mail, Return Receipt Requested, and was signed for by David Wilson when it was delivered to Wilson's address. Wilson did not file an appeal with the Board in accordance with the procedure set forth in the May 21, 2010 letter.

By letter dated July 19, 2010, SERS advised Wilson her retirement benefit was reduced to \$163.08 per month effective June 1, 2010 and her health coverage was terminated effective June 1, 2010 due to the discontinuance of her disability benefits.

On July 19, 2010, SERS received a fax from Claimant containing a completed SERS medical report form, which had been filled out and signed by a psychiatrist on July 19, 2010. Accompanying the medical report form was a handwritten note signed by Wilson, which read:

To Whom it may Concern,

I would like to appeal the decision that was made to revoke my retirement disability you stated that it was done so because of insufficient medical Documentation. I am enclosing further medical documentation to support my claim.

Reproduced Record (R.R.) at 13. Wilson's July 19, 2010 fax was the only communication SERS received from Wilson following the notice that her disability retirement benefit was discontinued.

By letter dated August 13, 2010, the Director of SERS' Office of Member Services informed Wilson that the Secretary of the Board denied her request for an appeal because Wilson failed to file an appeal within the proper time period and did not allege good cause for her untimely filing. From this decision, Wilson, through counsel, filed a timely petition for review with this Court.¹

Wilson contends that the Board committed an error of law by not finding good cause to extend the appeal period and denying Wilson's faxed appeal of the decision to terminate her disability retirement benefits. We disagree.

The Board's regulations govern the appeal period from decisions of Board administrative staff. 4 Pa. Code §250.2. The regulations provide:

(1) Decisions of administrative staff under authority delegated by the Board may be appealed to the Board by filing a *formal appeal within 30 days* after service of notice of the administrative decision. *Extensions of this appeal period may be requested for good cause* and will be granted at the discretion of the Board Secretary.

¹ Our scope of review of an administrative board's final adjudication is limited to a determination of whether the adjudication is supported by substantial evidence, whether it accords with the law and whether constitutional rights were violated. Miller v. State Employees' Retirement System, 626 A.2d 679 (Pa. Cmwlth. 1993).

Id. (emphasis added). “Good cause” is not defined by the Board. Generally speaking, “good cause” means a “substantial reason amounting in law to a legal excuse for failing to perform an act required by law.” Black’s Law Dictionary 692 (Sixth Ed. 1990).

The time for taking an appeal cannot be extended as a matter of grace or mere indulgence. Sofronski v. Civil Service Commission, City of Philadelphia, 695 A.2d 921 (Pa. Cmwlth. 1997). Once the appeal period has expired, appeals *nunc pro tunc* have been limited to cases where the delay in filing the appeal was caused by extraordinary circumstances involving fraud or some breakdown in the administrative process, or non-negligent circumstances related to the appellant, his or her counsel or a third party. Cook v. Unemployment Compensation Board of Review, 543 Pa. 381, 671 A.2d 1130 (1996); Sofronski.

A party seeking permission to file an appeal *nunc pro tunc* must also establish that (1) the appeal was filed within a short time after learning of and having an opportunity to address the untimeliness; (2) the elapsed time period is of very short duration; and (3) the appellee will not be prejudiced by the delay. J.C. v. Department of Public Welfare, 720 A.2d 193 (Pa. Cmwlth. 1998). The question of whether the appellant established entitlement to an appeal *nunc pro tunc* is a legal conclusion to be drawn from the evidence in the record and is fully reviewable by this Court. Falcon Oil Co. v. Department of Environmental Resources, 609 A.2d 876 (Pa. Cmwlth. 1992).

Here, Wilson claims that “good cause” existed for the late filing of her appeal. According to Wilson, the medical report she attached to her fax correspondence of July 19, 2010 indicates that her first appointment was on June 20, 2010, but the actual medical report was not completed until her appointment on July 19, 2010. Wilson further submits that she was unable to obtain additional

medical documentation requested by the April 19, 2010 letter until she was able to be seen by the doctor. Wilson avers that she exercised due diligence in obtaining this additional medical documentation. Wilson asserts that these reasons constitute “good cause” and that the Board should have treated her fax correspondence as a request to extend the time in which to file her appeal and granted the extension.

Unfortunately, the reasons asserted before this Court were not set forth in Wilson’s fax correspondence to the Board. Wilson’s fax correspondence, filed 29 days after the expiration of the appeal period, offered no justification, let alone “good cause”, for the late filing. The fax merely stated that she wished to file an appeal and attached medical documentation in support of her case. Even if the basis for her untimely appeal was asserted to the Board, Wilson’s argument fails to recognize that an appeal is distinct from an opportunity to submit medical documentation in support of a claim. Wilson has not established entitlement to an appeal *nunc pro tunc*. We, therefore, conclude that the Board did not err or abuse its discretion by denying Wilson’s appeal as untimely.

Accordingly, the order of the Board is affirmed.

JAMES R. KELLEY, Senior Judge

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State Employees'		:
Retirement System,		:
	Respondent	:

No. 1875 C.D. 2010

ORDER

AND NOW, this 21st day of June, 2011, the order of the State Employees' Retirement Board is AFFIRMED.

JAMES R. KELLEY, Senior Judge