

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Shante R. Dennis, :
 :
 : Petitioner :
 :
 : v. : No. 1985 C.D. 2010
 :
 : Unemployment Compensation : Submitted: February 4, 2011
 : Board of Review, :
 : Respondent :

BEFORE: HONORABLE DAN PELLEGRINI, Judge
HONORABLE MARY HANNAH LEAVITT, Judge
HONORABLE JAMES R. KELLEY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY SENIOR JUDGE KELLEY

FILED: May 9, 2011

Shante R. Dennis (Claimant), proceeding *pro se*, petitions for review from an order of the Unemployment Compensation Board of Review (Board), which affirmed the referee's decision dismissing Claimant's appeal on the basis that it was untimely. We affirm.

On February 14, 2010, Claimant applied for unemployment compensation benefits. By notice of determination issued and mailed on March 10, 2010, the Altoona UC Service Center (Service Center) denied Claimant's application upon finding Claimant ineligible for benefits pursuant to Section 402(e) of the Unemployment Compensation Law¹ (Law) for willful misconduct. The notice

¹ Act of December 5, 1936, Second Ex. Sess., P.L. (1937) 2897, as amended, 43 P.S. §802(e).

informed Claimant that the last day to file a timely appeal was March 25, 2010. On May 3, 2010, Claimant appealed the Service Center's notice to the referee.

Following an evidentiary hearing, the referee determined that Claimant's appeal was untimely. By decision mailed June 14, 2010, the referee dismissed her appeal.

From this decision, Claimant filed an appeal with the Board. The Board made the following findings of fact. The notice of determination was mailed to Claimant at her last known post office address. There is no evidence to indicate that the determination sent to Claimant was returned as undeliverable by postal authorities. Claimant received a pension and was told by an individual at the Service Center that she could not collect unemployment benefits during claim weeks for which she had received the pension. Claimant, however, was not discouraged from filing an appeal. Claimant did not file an appeal until after her pension ran out. Claimant was not misinformed or misled by the unemployment compensation authorities concerning her right or necessity to appeal. Claimant's filing of the late appeal was not caused by fraud or its equivalent by the administrative authorities, a breakdown in the appellate system, or by non-negligent conduct. The Board concluded that Claimant's appeal was untimely without justification. By decision dated August 2, 2010, the Board affirmed the referee's dismissal. This appeal now follows.²

The sole issue presented by Claimant is whether the Board erred in concluding that Claimant is ineligible for benefits under the provisions of "Section

² This Court's scope of review is limited to determining whether constitutional rights were violated, an error of law was committed, or necessary findings of fact are not supported by substantial evidence. Section 704 of the Administrative Agency Law, 2 Pa. C.S. §704; Kirkwood v. Unemployment Compensation Board of Review, 525 A.2d 841 (Pa. Cmwlth. 1987).

402(b)” of the Law.³ As the case was dismissed as untimely, neither the referee nor the Board reached the merits of the case. Unfortunately, Claimant has failed to challenge the Board’s findings and conclusions regarding the untimeliness of her appeal. As a result, the Board’s findings are conclusive on appeal. Salamak v. Unemployment Compensation Board of Review, 497 A.2d 951 (Pa. Cmwlth. 1985). Even if this Court were to conclude that the issue of timeliness was fairly comprised in the issue presented, Claimant has asserted no basis upon which to conclude that the Board erred in dismissing her appeal.

Under the Law, the failure to file an appeal within 15 days ordinarily mandates the dismissal of the appeal. Section 501(e) of the Law, 43 P.S. §821. Section 501(e) of the Law provides:

(e) Unless the claimant or last employer ... 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.

43 P.S. §821(e) (emphasis added). The requirement that an appeal be timely filed is jurisdictional and the Board and its referees have no discretion to accept an untimely appeal. See Southeastern Pennsylvania Transportation Authority v. Unemployment Compensation Board of Review, 661 A.2d 505

³ Claimant was denied benefits pursuant to Section 402(e) of the Law, not Section 402(b), which pertains to voluntary separations. We shall treat Claimant’s reference to Section 402(b) as a typographical error.

(Pa. Cmwlth. 1995). The party initiating the appeal, Claimant herein, has the burden to prove that the appeal was timely filed. Id.

The 15-day time limit 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), petition for allowance of appeal denied, 581 Pa. 686, 863 A.2d 1151 (2004). However, where fraud or a breakdown in the administrative process is shown, an appeal from a denial of unemployment compensation benefits may be accepted after the fifteenth day, as set forth by statute, on a *nunc pro tunc* basis. ATM Corp. of America v. Unemployment Compensation Board of Review, 892 A.2d 859 (Pa. Cmwlth. 2006).

In this case, the last day to file an appeal with the referee was March 25, 2010. Claimant did not deny that she received the notice of determination, which plainly advised Claimant of the appeal period and the process by which she could challenge the notice of determination. However, Claimant did not file her appeal until May 3, 2010. While Claimant testified that she was advised that she could not collect unemployment compensation benefits during the claim weeks for which she had received the pension,⁴ Claimant offered no explanation why her appeal from the notice of determination denying benefits for willful misconduct was late. The Board's finding that Claimant was not discouraged from filing an appeal is supported by the evidence. We, therefore, conclude that Claimant did not establish any breakdown in the administrative process or prove that she was misled by

⁴ Upon reviewing her testimony, it is not clear who advised Claimant. In her brief to this Court, Claimant asserts the information came from a representative of Employer. Claimant's Brief at 8-9.

unemployment compensation authorities regarding her right to appeal. Thus, the Board properly dismissed Claimant's appeal as untimely filed.

Accordingly, the order of the Board is affirmed.

JAMES R. KELLEY, Senior Judge

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ORDER

AND NOW, this 9th day of May, 2011, the order of the Unemployment Compensation Board of Review, at Decision No. B-503746, dated August 2, 2010, is AFFIRMED.

JAMES R. KELLEY, Senior Judge