

this appeal, Claimant argues that the Board's decision was not supported by substantial evidence and that she was misled into not filing an appeal in time. Finding no merit to these arguments, we affirm the decision of the Board.

The facts are as follows. In a notice of determination dated June 5, 2009, the Department denied Claimant's application for unemployment compensation benefits. The determination stated that the last day to file an appeal with the Board was June 22, 2009, and it was mailed to Claimant's last known address. Further, the determination was not returned by the postal service as being undeliverable. Claimant took no action until July 1, 2009, when she attempted to appeal the Department's decision by email. This email was received nine days after the 15-day deadline imposed by Section 501(e) of the Law, 43 P.S. §821(e).

On July 23, 2009, a hearing was held by a Referee solely on the issue of the timeliness of Claimant's appeal. There, Claimant testified that she had actually filed an appeal by regular mail on June 8, 2009, when she placed the appeal in her mailbox with two stamps on it. Notes of Testimony, 7/23/09, at 3. Claimant testified that the appeal was not returned to her and that she had "stopped at [her] post office [and] they [didn't] have it." *Id.* at 4. Claimant further testified that she "called Unemployment a couple of times" regarding the status of her appeal and that the Department had informed her that her appeal had not yet been received. *Id.* Claimant said she "didn't think of" sending another appeal until July 1st, when she emailed the appeal now at issue. *Id.* Notably, Claimant did not

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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).

testify that the Department had misled her or gave her bad advice; rather, she testified that they informed her that the appeal had not been received.

The Referee did not believe Claimant's testimony that she mailed an appeal on June 8, 2009, because she could provide no documentation to substantiate this claim. Additionally, the Referee found that Claimant was not misinformed or misled regarding her right to appeal. Therefore, the Referee found that Claimant did not file an appeal until July 1, 2009, and dismissed Claimant's appeal as untimely. On September 14, 2009, the Board affirmed the Referee's decision. Claimant now petitions for this Court's review.

On appeal,² Claimant argues that the Referee and Board erred because she did, in fact, file a timely appeal by mail on June 8, 2009. Claimant argues in her brief that she personally handed the appeal to her mail carrier, who asked her to affix additional postage before taking the letter. Claimant's Brief at 10. In support of this claim, Claimant now offers an extra-record verification from her mail carrier, Elaine Willacy, stating that Ms. Willacy remembers the letter and having to put extra postage on it. Additionally, Claimant argues that she was lulled into not filing a second appeal until July 1st by Department representatives who she spoke with on the phone regarding the status of her appeal. Claimant now states that she was told "[n]ot to worry, the appeal was probably there but it was not put in the system yet." Claimant's Brief at 11.

Section 501(e) of the Law provides that a determination of the Department is considered final unless an appeal is filed within 15 days. 43 P.S.

² This Court's scope of review in an unemployment compensation case is limited to determining whether constitutional rights were violated, whether an error of law has been committed, or whether necessary findings of fact are supported by substantial evidence. *Roberts v. Unemployment Compensation Board of Review*, 977 A.2d 12, 16 n.2 (Pa. Cmwlth. 2009).

§821(e). Because this requirement is jurisdictional, the Board may not consider a claimant's eligibility for benefits if her appeal is untimely. *DiJohn v. Unemployment Compensation Board of Review*, 687 A.2d 1213, 1215 (Pa. Cmwlth. 1997). The appeals period cannot be "extended as a matter of grace or indulgence; otherwise, there would be no finality to judicial action." *Shea v. Unemployment Compensation Board of Review*, 898 A.2d 31, 33 (Pa. Cmwlth. 2006). In other words, the 15-day appeals period is strictly enforced.³ However, a showing of fraud by the Department or a breakdown in the administrative process, such as sending a decision to the wrong address, may justify an appeal *nunc pro tunc*. *U.S. Postal Service v. Unemployment Compensation Board of Review*, 620 A.2d 572 (Pa. Cmwlth. 1993).

The Board is the fact finder in unemployment compensation cases and has complete authority over credibility determinations. *Kelly v. Unemployment Compensation Board of Review*, 776 A.2d 331, 336 (Pa. Cmwlth. 2001). Its findings are conclusive so long as they are supported by substantial evidence. *Id.* In this case, the Board found that Claimant's testimony was not credible because she could not substantiate her claim that she mailed a timely appeal. The evidence that Claimant now presents in her brief to substantiate her testimony, *i.e.*, the verification of her postal carrier, should have been presented to the Referee. Because Claimant failed to do so, she has waived her right to use that evidence at this stage in the proceeding. *Cruz v. Unemployment Compensation Board of Review*, 531 A.2d 1178, 1179 (Pa. Cmwlth. 1987). Notably, the version of events

³ This Court has held that "an appeal filed one day after the expiration of the statutory appeal period must be dismissed as untimely." *Dumberth v. Unemployment Compensation Board of Review*, 837 A.2d 678, 681 (Pa. Cmwlth. 2003).

recited by Claimant in her brief to this Court differs markedly from her testimony before the Referee, where she recalled placing the appeal in her mailbox without any interaction with her postal carrier.

Further, Claimant did not assert in her appeal to the Board that she had been misled by statements made by Department employees. That issue is, therefore, waived. *See Schneider v. Unemployment Compensation Board of Review*, 523 A.2d 1202, 1204 (Pa. Cmwlth. 1987) (holding that issue not raised before the Board is waived and not properly before this Court on appeal). In any case, Claimant’s hearing testimony does not support her claim that she was misled. To the contrary, she testified, simply, that the Department employees told her that her appeal had not yet been received. The record nowhere supports the argument she now makes in her brief that she was told “not to worry.”

The crucial findings in this case are that Claimant did not file an appeal until nine days after the statutory deadline and that Claimant was not misled or misinformed about the appeals process by anyone at the Department. These findings are fully supported by substantial evidence.

Accordingly, the Board correctly found it lacked jurisdiction to consider Claimant’s appeal under Section 501(e) of the Law, and we affirm its order.

MARY HANNAH LEAVITT, Judge

