

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Anika Monroe, :
 :
 Petitioner :
 :
 :
 v. : No. 2540 C.D. 2009
 : Submitted: April 30, 2010
 Unemployment Compensation :
 Board of Review, :
 Respondent :

BEFORE: HONORABLE BONNIE BRIGANCE LEADBETTER, President Judge
HONORABLE P. KEVIN BROBSON, Judge
HONORABLE JIM FLAHERTY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY SENIOR JUDGE FLAHERTY

FILED: June 8, 2010

Anika Monroe (Claimant) petitions for review from an order of the Unemployment Compensation Board of Review (Board) which affirmed the decision of a referee, which dismissed Claimant's appeal as untimely pursuant to Section 501(e) of the Unemployment Compensation Law (Law), Act December 5, 1936, second Ex. Sess., P.L. (1937) 2897, as amended, 43 P.S. § 821(e). We affirm.

After her separation from employment with Greyhound Lines, Inc. (Employer), Claimant filed an application for unemployment benefits. On May 8, 2009, a determination was mailed to Claimant informing her that she was ineligible for benefits. The determination stated that Claimant had

until May 26, 2009, to file an appeal. Claimant did not file an appeal until June 10, 2009.

A referee then conducted a hearing to determine whether Claimant's appeal was timely. The referee issued a decision dismissing Claimant's appeal pursuant to Section 501(e) of the Law. Claimant appealed to the Board, which made the following findings:

1. A Notice of determination (determination) was issued to the claimant on May 8, 2009, denying benefits.
2. A copy of this determination was mailed to the claimant at her last known post office address on the same date.
3. The claimant received the determination.
4. The notice informed the claimant that May 26, 2009 was the last day on which to file an appeal from this determination.
5. The claimant filed her appeal by facsimile on June 10, 2009.
6. The claimant was not misinformed or misled by the unemployment compensation authorities concerning her right or the necessity to appeal.
7. The claimant stated she went out of town because of a death in the family and funeral on or around May 22, 2009; she returned on or around May 28, 2009.
8. The 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.

(Board's decision at 1.)

Based on the above, the Board concluded that Claimant's appeal to the referee was untimely and affirmed the referee's decision dismissing Claimant's appeal. This appeal followed.¹

Initially, we observe that Section 501(e) of the Law provides:

Unless the claimant ... 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.

Claimant argues that extenuating circumstances prevented her from filing a timely appeal. Namely, Claimant maintains that it was her understanding that she was going to be reinstated by Employer, which reinstatement was later retracted, causing her to miss the deadline outlined in the appeal process. Claimant additionally claims that during the appeal period, she learned of a family member's death and was also coping with post traumatic stress disorder.

We observe that the fifteen day appeal period set forth in Section 501(e) is mandatory and subject to strict application. Renda v. Unemployment Compensation Board of Review, 837 A.2d 685 (Pa. Cmwlth

¹ This court's review is limited to determining whether constitutional rights were violated, an error of law was committed and whether the findings of fact are supported by substantial evidence. Pollard v. Unemployment Compensation Board of Review, 798 A.2d 815 (Pa. Cmwlth. 2002).

2003), petition for allowance of appeal denied, 581 Pa. 686, 863 A.2d 1151 (2004). If an appeal is not filed within fifteen days, the determination becomes final and the Board is without jurisdiction to consider the matter. Id. A claimant filing a late appeal must show fraud or a breakdown in the administrative process. Further, negligence on the part of an administrative official may be deemed the equivalent of fraud. ATM Corporation of America v. Unemployment Compensation Board of Review, 892 A.2d 859 (Pa. Cmwlth. 2006). An appeal may also be allowed where there are non-negligent circumstances related to the appellant, her counsel or a third party, and the delay in filing is of a short duration. Cook v. Unemployment Compensation Board of Review, 543 Pa. 381, 671 A.2d 1130 (1996).

Here, there was no fraud or breakdown in the administrative process warranting a late appeal. Claimant in fact received notice of the denial of her application for benefits and knew that she had to file an appeal by May 26, 2009. The fact that Claimant did not file a timely appeal is not the result of any actions by administrative officials.

Although Claimant maintains that she did not initially file an appeal from the denial of benefits because she thought she was going to be rehired by Employer, such does not amount to non-negligent circumstances. It was Claimant's choice not to file a timely appeal, as she believed she would be rehired. No one told Claimant not to pursue her claim, Claimant simply chose not to pursue a timely appeal, believing incorrectly that she would be reinstated.

Additionally, Claimant's assertion that she attended a funeral and also suffers from post traumatic stress disorder does not excuse

Claimant's late filing.² Although Claimant left for the funeral on May 22, 2009, and did not return to town until May 28, 2009, the notice of determination was mailed to Claimant on May 8, 2009. Thus, Claimant arguably had notice prior to her trip. The Board discredited Claimant's contention that she did not have notice of the denial until she returned from the trip. Credibility issues and evidentiary weight are within the discretion of the Board. Peak v. Unemployment Compensation Board of Review, 509 Pa. 267, 501 A.2d 1383 (1985).

Moreover, even after returning from her trip, Claimant did not act promptly to file her appeal. Specifically, Claimant returned home on May 28, 2009, yet she did not file her appeal until June 10, 2009. The delay in filing was not of a short duration and there is no excuse offered for Claimant's failure to file immediately upon her return home.

In accordance with the above, the decision of the Board is affirmed.

JIM FLAHERTY, Senior Judge

² Other than stating that she suffers from post traumatic stress disorder, Claimant does not explain how the disorder prevented her from filing a timely appeal.

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Unemployment Compensation	:	
Board of Review,	:	
	:	
Respondent	:	

ORDER

Now, June 8, 2010, the order of the Unemployment Compensation Board of Review, in the above-captioned matter, is affirmed.

JIM FLAHERTY, Senior Judge