



nor Claimant attended the hearing. Accordingly, the referee affirmed the award of benefits.

On July 27, 2010, Employer submitted a request to reopen the hearing, stating that it never received notice of the hearing but offering no explanation as to why Employer believed notice was not received. By order dated November 16, 2010, the Board denied Employer's request to reopen the hearing and affirmed the referee's decision, finding that Employer did not have good cause for failing to appear.

On appeal to this court,<sup>2</sup> Employer contends that the Board erred in denying Employer's request to reopen the hearing. We disagree.

"Where a party fails to appear at a scheduled hearing, the Board may remand the case for an additional hearing only where the Board has made an independent determination that the reasons set forth by the party for its failure to appear constitute proper cause." Sanders v. Unemployment Compensation Board of Review, 524 A.2d 1031, 1032 (Pa. Cmwlth. 1987) (emphasis added); see also 34 Pa. Code §101.24.<sup>3</sup> Under Rule 101.24, "[i]f a party fails to appear at a scheduled

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<sup>2</sup> Our scope of review is limited to determining whether constitutional rights were violated, an error of law was committed, or findings of fact were unsupported by substantial evidence. Section 704 of the Administrative Agency Law, 2 Pa. C.S. §704.

<sup>3</sup> Section 101.24 of the Board's regulations provides:

**§101.24. Reopening of hearing**

(a) If a party who did not attend a scheduled hearing subsequently gives written notice, which is received by the tribunal prior to the release of a decision, and it is determined by the tribunal that his failure to attend the hearing was for reasons which constitute "proper cause," the case shall be reopened. Requests for reopening, whether made to the referee or Board, shall be in writing; shall give the reasons believed to constitute "proper cause" for not appearing; and they shall be delivered or mailed--preferably to the tribunal at the address shown on the notice of hearing or to the

**(Footnote continued on next page...)**

hearing, that party must show good cause for that failure before the Board will delay the final disposition of the case by remanding for additional hearings.” McNeill v. Unemployment Compensation Board of Review, 510 Pa. 574, 579, 511 A.2d 167, 169 (1986). If the evidence in the record supports that a notice from the Board was mailed to a party’s last known address and not returned as undeliverable by the Post Office, it is presumed that the notice was received. See Gaskins v. Unemployment Compensation Board of Review, 429 A.2d 138 (Pa. Cmwlth. 1981) (affirming the Board’s denial of an untimely appeal where notice of the referee’s decision was mailed, was not returned by the postal authorities, and contained the information

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Unemployment Compensation Board of Review, Labor and Industry Building, Seventh and Forster Streets, Harrisburg, Pennsylvania 17121, or to the local employment office where the appeal was filed.

(b) A request for reopening which is received by the referee before his decision has been mailed to the parties shall be decided by the referee before whom the case is pending. If the request for reopening is allowed, a new hearing shall be scheduled with written notice thereof to each of the parties. At a reopened hearing, the opposing party shall be given the opportunity to object to the reopening if he so desires. If the request for reopening is denied, the referee shall append to the record the request, supporting material and the ruling on the request, so that it shall be subject to review on further appeal.

(c) A request for reopening the hearing which is not received before the decision was mailed, but is received or postmarked on or before the 15th day after the decision of the referee was mailed to the parties shall constitute a request for further appeal to the Board and a reopening of the hearing, and the Board will rule upon the request. If the request for reopening is allowed, the case will be remanded and a new hearing scheduled, with written notice thereof to each of the parties. At a reopened hearing, the opposing party shall be given the opportunity to object to the reopening if he so desires. If the request to have the hearing reopened is denied, the Board will append to the record the request, supporting material and the ruling on the request, so that it shall be subject to review in connection with any further appeal to the Commonwealth Court.

34 Pa. Code §101.24 (emphasis added).

necessary to put the claimant on notice of the referee's decision). This presumption is rebuttable. Id. However, the mere assertion that the notice was not received, without factual support of any kind, is insufficient to rebut this presumption and does not constitute "good cause" for not appearing at a hearing. Otherwise, there would be no incentive to appear at the initial hearing. See McNeill. See also Wheeler v. Red Rose Transit Authority, 890 A.2d 1228, 1231 (Pa. Cmwlth 2006) ("testimony alone" that a notice from the court was not received will not rebut the presumption under Pa. R.C.P. No. 440(b) that notice was received); Kulick v. Commonwealth, 666 A.2d 1148 (Pa. Cmwlth. 1995) (testimony that a third party interfered with receipt of mail does not satisfy the burden of proving mail was not received); Sheehan v. Workmen's Compensation Appeal Board (Supermarkets General and Alexis, Inc.), 600 A.2d 633 (Pa. Cmwlth. 1991) (testimony denying receipt is insufficient, in and of itself, to rebut the presumption that a properly-mailed item was received); Commonwealth v. Warenczuk, 636 A.2d 1225, 1226 (Pa. Cmwlth. 1991) (presumption that notice of a license suspension was received is not rebutted by "mere denial of receipt").

Employer cites Verdecchia v. Unemployment Compensation Board of Review, 657 A.2d 1341 (Pa. Cmwlth. 1995), for the proposition that Employer is entitled to a remand hearing in order to provide "additional testimony and evidence on its reasons why it did not attend the . . . hearing." (Employer's brief at 9.) The employer in Verdecchia was a personal care residence which had shut down. After the employer failed to appear at two hearings held by the referee, the referee awarded benefits to the claimant. The employer sought a rehearing on the basis that, although the employer had requested the Post Office to forward its mail, the Post Office held some of the mail for as long as six weeks before delivering it to the new address. This court affirmed the Board's decision to reopen the hearing, citing Sanders for the proposition that the "negligence of a disinterested third party may excuse dilatory actions of a party to the litigation." Verdecchia at 1344. We distinguish the present

case from Verdecchia because, here, Employer offers no information to support its assertion that it did not receive notice of the hearing, offers no theory as to why notice was not received, and points to no unusual circumstances surrounding its ability to receive mail.

Employer also points out that Claimant “failed to attend the hearing and sent a letter to the [r]eferee’s office, supporting that there were notification problems in this matter.” (Employer’s brief at 9.) We find this argument disingenuous, however, as the letter Claimant wrote to the Board clearly indicated that he had received notice of the hearing scheduled for July 19, 2010, and that he was late to the hearing because it was “a little difficult” for him to find his way there. (R.R. at 8a.) The contents of this letter demonstrate that notification of the hearing had been mailed and implies that Claimant missed the hearing because he could not find his way there, not because he did not receive notice.

Section 504 of the Law, 43 P.S. §824, gives the Board discretion to decide whether to grant a request for a remand. Fisher v. Unemployment Compensation Board of Review, 696 A.2d 895 (Pa. Cmwlth. 1997) (holding that the Board abused its discretion by denying a remand to consider additional evidence that was not available at the first hearing). This court will not overturn a decision by the Board unless there is an abuse of that discretion. Id. Here, we cannot conclude that the Board abused its discretion. Employer offered no information whatsoever to rebut the presumption that it received notice of the hearing. Employer had received mailings from the Board before. The certified record clearly shows that notice of the hearing, with Employer’s proper address clearly written on it, was mailed to both Claimant and Employer on July 7, 2010. Unlike the employer in Verdecchia, there were no irregularities or unusual circumstances surrounding Employer’s mailing address. Moreover, the fact that Claimant received his notice strengthens the likelihood that the notice was, in fact, mailed.

For all of the foregoing reasons, we affirm.

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PATRICIA A. McCULLOUGH, Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Beaumont Retirement Center,	:	
Petitioner	:	
	:	No. 2627 C.D. 2010
v.	:	
	:	
Unemployment Compensation Board	:	
of Review,	:	
Respondent	:	

**ORDER**

AND NOW, this 17th day of October, 2011, the order of the Unemployment Compensation Board of Review, dated November 16, 2010, is hereby affirmed.

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PATRICIA A. McCULLOUGH, Judge