

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

LaShawndrea Price, :
Petitioner :
v. :
Unemployment Compensation :
Board of Review, : No. 311 C.D. 2011
Respondent : Submitted: July 15, 2011

BEFORE: HONORABLE BERNARD L. McGINLEY, Judge
HONORABLE RENÉE COHN JUBELIRER, Judge
HONORABLE ROCHELLE S. FRIEDMAN, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE McGINLEY

FILED: August 12, 2011

LaShawndrea M. Price (Claimant) challenges the order of the Unemployment Compensation Board of Review (Board) that dismissed Claimant's appeal to the Board as untimely under Section 502 of the Unemployment Compensation Law (Law).¹

Claimant applied for unemployment benefits on May 25, 2010, and was found ineligible for benefits. Claimant appealed the determination. Following a hearing before the referee, benefits were denied pursuant to Section 402(b) of the Law, 43 P.S. §802(b). A copy of the referee's decision was mailed to Claimant at her last known postal address on August 26, 2010. The decision included a notice that interested parties had fifteen days to appeal to the Board. In order to be timely, the appeal had to be filed on or before September 10, 2010. Claimant filed

¹ Act of December 5, 1936, Second Ex. Sess., P.L. (1937) 2897, *as amended*, 43 P.S. §822.

her appeal on September 13, 2010, by fax. The Board remanded the matter to the referee to receive evidence regarding the untimely appeal.

The referee held a hearing by telephone on November 23, 2010. Claimant testified that she realized her appeal was late. Notes of Testimony, November 23, 2010, (N.T.) at 4. Claimant explained her failure to perfect a timely appeal:

R: Okay. Why was it late, ma'am?

C: I thought it was 15 days from the date that I received that whole package. But I failed to realize that it was from the date of – from which you guys dated the mail and actually put it in. So, I didn't know that my dates had already started.

R: Well, what made you think that was the case?

C: I guess when I just read the mail . . . when I initially read the actual letter it just said it needs to be filed within 15 days. So, I figured that 15 days from that date I received it, not from the actual date that it was mailed.

R: Okay. But when – if you read – if you knew 15 days, Ms. Price – the same sentence that says 15 days says of the date of mailing.

C: Well, I failed to realize that. But took it from – I took it from 15 days of . . . me receiving it in the mail.

R: Okay. So, even though it doesn't say that that's what the 15 days is counted from?

C: Right. It was just a mishap on my part.

N.T. at 4.

The Board determined that Claimant's appeal was untimely and made the following relevant findings of fact:

8. The claimant's appeal from the Referee's decision, in order to be timely, had to have been filed on or before September 10, 2010.
9. The claimant's appeal was filed by fax on September 13, 2010.
10. The claimant believed that she had fifteen days to file her appeal from the date she received the Referee's decision.
11. The Referee's decision stated in two different areas that September 10, 2010 was the final date to appeal.
12. The claimant recognized that her error was a mishap on her part.
13. The claimant was not misinformed or misled by the unemployment compensation authorities concerning her right or the necessity to appeal.
14. The 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.

Board Opinion, December 10, 2010, (Opinion), Findings of Fact Nos. 8-14 at 1-2. The Board determined that Claimant's appeal was due September 10, 2010, but Claimant did not file an appeal until September 13, 2010. The Board concluded, "The provisions of this section of the Law are mandatory, and the Board has no jurisdiction to accept an appeal filed after the expiration of the statutory appeal period absent limited exceptions not relevant herein." Opinion at 2.

Claimant contends that the Board erred because it failed to consider that she misunderstood the appeal instructions and that the Board failed to consider “in transit time . . . when the due date was agreed upon.”² Claimant’s Brief at 5.

Section 502 of the Law, 43 P.S. §822, provides that a party has fifteen days to appeal the decision of the referee to the Board. The Board’s regulation, 34 Pa.Code §101.82, provides that a party seeking to appeal an unemployment compensation determination shall file an appeal on or before the fifteenth day after the date on which notification of the decision was delivered personally or mailed to the party at his last known postal address.

This Court has held that the statutory time limit established for appeals is mandatory. The appeal period may be extended beyond the statutory limit only where the appellant establishes that there was fraud or manifestly wrongful or negligent conduct on the part of the administrative authorities. An appellant carries a heavy burden to justify an untimely appeal. Blast Intermediate Unit #17 v. Unemployment Compensation Board of Review, 645 A.2d 447 (Pa. Cmwlth. 1994). Absent fraud, there is a presumption of regularity of the administrative authorities. Cameron v. Unemployment Compensation Board of Review, 430 A.2d 396 (Pa. Cmwlth. 1981). This Court has also permitted the filing of untimely appeals if the delay was beyond the control of the appellant or

² This Court’s review in an unemployment compensation case is limited to a determination of whether constitutional rights were violated, errors of law were committed, or essential findings of fact were not supported by substantial evidence. Lee Hospital v. Unemployment Compensation Board of Review, 637 A.2d 695 (Pa. Cmwlth. 1994).

his counsel. See Perry v. Unemployment Compensation Board of Review, 459 A.2d 1342 (Pa. Cmwlth. 1983).

Claimant testified that she mistakenly believed she had fifteen days from receipt of the referee's decision to file an appeal rather than fifteen days from the date of mailing. N.T. at 4. Claimant further asserts that the "in transit time" of mailing should be added to the time to appeal. That is not to be taken into consideration under the Law and the regulation. The Board determined that Claimant failed to establish that her late appeal was the result of fraud or its equivalent by the administrative authorities, a breakdown in the appellate system, or non-negligent conduct. Claimant failed to shoulder her heavy burden to prove either that she timely appealed or was entitled to an appeal *nunc pro tunc*.

Accordingly, this Court affirms.

BERNARD L. McGINLEY, Judge

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ORDER

AND NOW, this 12th day of August, 2011, the order of the Unemployment Compensation Board of Review in the above-captioned matter is affirmed.

BERNARD L. MCGINLEY, Judge