

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Zarinah Y. Hayes, :
Petitioner :
 :
v. : No. 830 C.D. 2010
 : Submitted: November 24, 2010
Unemployment Compensation Board :
of Review, :
Respondent :

BEFORE: HONORABLE RENÉE COHN JUBELIRER, Judge
HONORABLE MARY HANNAH LEAVITT, Judge
HONORABLE JOHNNY J. BUTLER, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE LEAVITT

FILED: March 17, 2011

Zarinah Y. Hayes (Claimant), *pro se*, petitions for review of an adjudication of the Unemployment Compensation Board of Review (Board) denying her claim for unemployment benefits. In doing so, the Board affirmed the Referee's determination that Claimant's appeal was untimely and, therefore, had to be dismissed under Section 501(e) of the Unemployment Compensation Law (Law).¹ Because Claimant has failed to preserve any issues on appeal, we affirm.

¹ Act of December 5, 1936, Second Ex. Sess., P.L. (1937) 2897, *as amended*, 43 P.S. §821(e). Section 501(e) provides in relevant part:

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

Claimant was employed by Resources for Human Development (Employer) until she resigned on December 17, 2009. Claimant sought unemployment compensation benefits, but the Erie UC Service Center ruled her ineligible under Section 402(b) of the Law² because she voluntarily quit her job without a necessitous and compelling reason. On January 14, 2010, the UC Service Center issued a Notice of Determination, informing Claimant that she was denied unemployment benefits, and mailed it to Claimant's last known address.

The Notice of Determination includes "Appeal Instructions," and they state that an appeal of the determination must be filed within "fifteen calendar days after the mailing date shown on the determination." The Notice of Determination also states in bold letters how long a claimant has to file an appeal. Claimant had until January 29, 2010, to file an appeal, but it was filed on a later date.

At the hearing before the Referee,³ Claimant testified that she mailed two appeals, neither by certified mail, before the January 29, 2010, deadline. Claimant then testified that one week later she contacted the UC Service Center, which informed her that neither of her two appeals had been received. In response, Claimant mailed a third appeal by regular mail, which was received by the UC Service Center after the appeal deadline.

(continued . . .)

in such notice, shall be final and compensation shall be paid or denied in accordance therewith.

43 P.S. §821(e).

² 43 P.S. §802(b). Section 402(b) provides, in relevant part, that "[a]n employe shall be ineligible for compensation for any week ... [i]n which his unemployment is due to voluntarily leaving work without cause of a necessitous and compelling nature." 43 P.S. §802(b).

³ Employer did not appear at the hearing.

The Referee found, as fact, that the Notice of Determination was mailed to Claimant at her last known address and was not returned to the UC Service Center as being undeliverable. The Referee found that the envelope in which the petition for appeal was enclosed did not bear a legible U.S. postmark date stamp or a private postage meter date stamp. Accordingly, the Referee found that the appeal was filed on February 10, 2010, the date on which the UC Service Center recorded the appeal as being received. The Referee further found that there was no evidence that Claimant was misinformed or misled about her right to appeal or that her late appeal was caused by fraud, a breakdown in the administrative system or by non-negligent conduct. The Referee held that Claimant's testimony that she mailed two earlier appeals was irrelevant. Because Claimant's appeal was filed after January 29, 2010, the Referee ruled that the appeal was untimely and must be dismissed.

Claimant appealed to the Board. The Board adopted the Referee's findings and conclusions and affirmed the Referee's decision that Claimant's appeal was untimely and had to be dismissed. Claimant has petitioned this Court for review.

On appeal,⁴ Claimant argues that she is entitled to unemployment compensation benefits because she had a necessitous and compelling reason for quitting her job. The Board responds that Claimant did not preserve those issues.

⁴ Our scope of review is limited to determining whether the Board's adjudication is in violation of constitutional rights, errors of law were committed, or whether findings of fact are supported by substantial evidence. *Sheets v. Unemployment Compensation Board of Review*, 708 A.2d 884, 885 n.3 (Pa. Cmwlth. 1998).

This Court may only consider those issues which were raised before the Board, and our review is constrained to the record made before the Board. Pa. R.A.P. 1551. In this case, the only issue the Board decided, and therefore the only issue that can be appealed to this Court, is whether Claimant's appeal was timely. *See Darroch v. Unemployment Compensation Board of Review*, 627 A.2d 1235, 1238 n. 6 (Pa. Cmwlth. 1993) (noting that if an appeal is untimely the Board does not have jurisdiction to consider the merits and, as such, neither does this Court). Claimant, in her petition for review and in her brief to this Court, argues only that she had a necessitous and compelling reason to quit her job. Claimant does not challenge any of the Board's findings of fact or conclusions of law relating to the untimeliness of her appeal. Further, there is no exception from this rule for the *pro se* litigant. *Jimoh v. Unemployment Compensation Board of Review*, 902 A.2d 608, 611 (Pa. Cmwlth. 2006).

Even if Claimant had properly preserved the issue of whether her appeal was timely, we would affirm the Board's decision. Section 501(e) of the Law requires an appeal to the Board must be filed "within fifteen calendar days after such notice was ... mailed...." 43 P.S. §821(e). If an appeal is not filed within the fifteen-day period, the determination by the UC Service Center becomes final, and the Referee and the Board no longer have jurisdiction to consider the appeal. *Edwards v. Unemployment Compensation Board. of Review*, 639 A.2d 1279, 1281 (Pa. Cmwlth. 1994).

Claimant has never disputed that her appeal was filed on February 10, 2010, and was, in fact, late. Rather, Claimant's proffered excuse was that she twice placed her appeal in the mail before the deadline to file the appeal, but both

were lost in the mail. However, the timeliness of an appeal is determined solely by the Board's regulation at 34 Pa. Code §101.82(b)(1), which establishes the filing date of an appeal as the date of the postmark. If there is no postmark, then the filing date is the date the petition for appeal was received.⁵ This Court has held that testimonial evidence of the date an appeal was mailed cannot be used to establish timeliness; the criteria found in the regulation must be used. *Edwards*, 639 A.2d at 1281-1282. Therefore, the Board did not err in disregarding Claimant's testimony in determining the date of the appeal.

Accordingly, we affirm the decision of the Board.

MARY HANNAH LEAVITT, Judge

⁵ The regulation states:

- (b) A party may file a written appeal by any of the following methods:
 - (1) *United States mail*. The filing date will be determined as follows:
 - (i) The date of the official United States Postal Service postmark on the envelope containing the appeal, a United States Postal Service Form 3817 (Certificate of Mailing) or a United States Postal Service certified mail receipt.
 - (ii) If there is no official United States Postal Service postmark, United States Postal Service Form 3817 or United States Postal Service certified mail receipt, the date of a postage meter mark on the envelope containing the appeal.
 - (iii) If the filing date cannot be determined by any of the methods in subparagraph (i) or (ii), the filing date will be the date recorded by the Department, the workforce investment office or the Board when it receives the appeal.

34 Pa. Code §101.82(b)(1).

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ORDER

AND NOW, this 17th day of March, 2011, the order of the Unemployment Compensation Board of Review in the above-captioned matter, dated April 9, 2010, is hereby AFFIRMED.

MARY HANNAH LEAVITT, Judge