

IN THE UTAH COURT OF APPEALS

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Abbie L. Brown,)	MEMORANDUM DECISION	
)	(Not For Official Publication)	
Petitioner,)		
)	Case No. 20080450-CA	
v.)		
)		
Department of Workforce)	F I L E D	
Services,)	(October 23, 2008)	
)		
Respondent.)	<table border="1"><tr><td>2008 UT App 382</td></tr></table>	2008 UT App 382
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Original Proceeding in this Court

Attorneys: Abbie L. Brown, Layton, Petitioner Pro Se
 Michael R. Medley, Salt Lake City, for Respondent

Before Judges Greenwood, Davis, and McHugh.

PER CURIAM:

Petitioner Abbie L. Brown seeks judicial review of a decision of the Workforce Appeals Board (the Board) dismissing her appeal as untimely. This case is before the court on a sua sponte motion for summary disposition.

An administrative law judge (the ALJ) issued the decision dated April 13, 2007, which found that Brown withheld material information to obtain unemployment compensation benefits to which she was not entitled, and assessed a fraud overpayment and penalty. The decision advised Brown that it would "become final unless, within 30 days from April 13, 2007, further written appeal is received by the Workforce Appeals Board." On February 19, 2008, over ten months after the decision was issued, Brown filed an appeal of the April 13, 2007 decision with the Board.

The Board considered only whether it had jurisdiction to consider an untimely appeal of the ALJ's decision. The Board found that Brown's appeal was filed beyond the thirty-day time limit for appeal. Although Brown claimed that she filed a timely appeal in April 2007, Brown did not provide any evidence of its filing other than her own statements, which the Board found not to be credible. The Board also found that she had not demonstrated good cause for the late filing.

Brown's February 2008 appeal to the Board was untimely. Rule 994-508-104 of the Utah Administrative Code allows the Board to consider a late appeal if it determines the appeal was delayed for good cause, which is limited to circumstances where it is shown that

- (1) the appellant received the decision after the expiration of the time limit for filing the appeal, the appeal was filed within ten days of actual receipt of the decision and the delay was not the result of willful neglect;
- (2) the delay in filing the appeal was due to circumstances beyond the appellant's control;
- or
- (3) the appellant delayed filing the appeal for circumstances which were compelling and reasonable.

Utah Admin. Code R994-508-104 (2008).

Brown did not claim she was prevented from filing a timely appeal due to any of circumstances listed in the rule. She instead claimed that she filed a timely appeal, and the Board chose to disregard proof of timely filing that she provided. However, there is no proof contained in the record, other than her own statements, that Brown filed a timely appeal. A letter in which Brown requested reconsideration by the Board states that she enclosed a copy of a fax confirmation for a timely appeal, but that attachment is not contained in the record. The Board found Brown's statements not to be credible.

We reverse an administrative agency's findings of fact "only if the findings are not supported by substantial evidence." Drake v. Industrial Comm'n, 939 P.2d 177, 181 (Utah 1997). We will not disturb the Board's conclusion regarding the application of law to facts unless it "exceeds the bounds of reasonableness and rationality." Nelson v. Department of Employment Sec., 801 P.2d 158, 161 (Utah Ct. App. 1990). Because Brown argued only that she filed a timely appeal that was either lost or disregarded by the Board, she did not provide any proof or argument that she filed a late appeal under circumstances demonstrating good cause. In addition, there is no credible evidence in the record demonstrating that she filed a timely appeal with the Board, as she claims before this court.

Accordingly, we affirm the Board's decision that it lacked jurisdiction to consider the untimely appeal.

Pamela T. Greenwood,
Presiding Judge

James Z. Davis, Judge

Carolyn B. McHugh, Judge