

IN THE UTAH COURT OF APPEALS

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Ryan Latimer,)	MEMORANDUM DECISION
)	(Not For Official Publication)
Petitioner,)	
)	Case No. 20050222-CA
v.)	
)	
Workforce Appeals Board,)	F I L E D
Department of Workforce)	(July 29, 2005)
Services,)	
)	2005 UT App 336
Respondent.)	

Original Proceeding in this Court

Attorneys: Ryan Latimer, Murray, Petitioner Pro Se
 Suzan Pixton, Salt Lake City, for Respondent

Before Judges Davis, Orme, and Thorne.

PER CURIAM:

Ryan Latimer seeks judicial review of a decision of the Workforce Appeals Board. This case is before the court on a sua sponte motion for summary disposition.

On September 16, 2004, the Department of Workforce Services (Department) issued its decision assessing an overpayment and statutory penalty based upon a failure to report work and earnings while collecting unemployment benefits. The departmental decision advised Latimer that he could appeal "by mail, by FAX, or on-line." The notice also stated:

Your appeal must be in writing and must be received or postmarked by Friday, **October 1, 2004**. An appeal received or postmarked after that time limit may be considered if good cause for the late filing can be established.

(Emphasis in original.)

The Administrative Law Judge (ALJ) found that Latimer knew the deadline for filing an appeal was October 1, 2004 and that

the appeal must be in writing, and also found he was not prevented from filing a timely appeal by being unable to contact the adjudicator. Accordingly, Latimer did not demonstrate good cause for his late filing. The Workforce Appeals Board (Board) affirmed, making the additional finding that "[w]hile the claimant may have had questions he would like to have answered prior to filing his appeal, those questions did not prohibit him from filing a timely appeal." The Board found no merit to the claim that Latimer did not receive a fair hearing. Finally, the Board concluded that Latimer was not prevented from filing a timely appeal, and had not shown good cause for the late filing.

An appeal from a departmental determination must be filed "within ten days after the date of mailing of the notice of determination . . . to the party's last-known address." Utah Code Ann. § 35A-4-406(3)(a) (2001). The Department modified application of the jurisdictional statute "by adopting a good cause exception to the time limitation for filing an appeal." Armstrong v. Department of Emp. Sec., 834 P.2d 562, 564 (Utah Ct. App. 1992). Accordingly, a late appeal can be considered on its merits if "the appeal was delayed for good cause." Utah Admin. Code R994-508-104. Under the only good cause exception potentially applicable to this case, Latimer must establish that he "delayed filing the appeal for circumstances which were compelling and reasonable." Id.

The "factual findings underlying a determination of good cause will be affirmed if they are supported by substantial evidence when viewed in light of the whole record before the court." Armstrong, 834 P.2d at 565. "The ultimate question as to whether good cause exists is a mixed question of law and fact and should be affirmed only if it is reasonable." Id. "If the appellant does not show good cause for filing late, the ALJ does not have jurisdiction to hear the appeal." Autoliv ASP, Inc. v. Workforce Appeals Bd., 2000 UT App 223, ¶12, 8 P.3d 1033.

Latimer admitted that he received the decision prior to expiration of the time for appeal and that he read and understood the notice of appeal rights advising him that any appeal must be in writing and be filed before October 1, 2004. He filed his untimely appeal, even though he was unable to contact an adjudicator to get answers to his questions. In fact, Latimer did not indicate what questions he had about the process. The notice of appeal rights clearly stated that an appeal must be in writing, thus excluding any possibility that an appeal could be filed telephonically. Latimer did not satisfy the burden of demonstrating circumstances that were compelling and reasonable and would support good cause for the late appeal. The Board's findings of fact are supported by substantial evidence, and the decision is reasonable and rational. Because Latimer did not

establish good cause for the late filing, the Board did not err in declining to address the merits of the untimely appeal.

We affirm the Board's decision.

James Z. Davis, Judge

Gregory K. Orme, Judge

William A. Thorne, Judge