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# ALABAMA COURT OF CIVIL APPEALS

OCTOBER TERM, 2020-2021

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Alabama Department of Labor

v.

Denise Barnett

Appeal from Dallas Circuit Court  
(CV-17-21)

PER CURIAM.

The Alabama Department of Labor ("the department") appeals from a judgment entered by the Dallas Circuit Court ("the circuit court")

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regarding Denise Barnett's claim for unemployment-compensation benefits. We dismiss the appeal on the basis that it arises from a nonfinal judgment.

From February 2006 until June 1, 2017, Barnett was employed by Lear Corporation ("Lear"), which is involved in the automotive-production industry. Lear terminated her employment on June 1, 2017, allegedly for violating Lear's attendance policy. That same day, Barnett filed a claim for unemployment-compensation benefits with the department, and the department mailed a "Notice of Claim and Request for Separation Information" form to Lear and its agent, TALX UCM Services, Inc. ("TALX"), which apparently manages Lear's unemployment-compensation claims.<sup>1</sup> The notice-of-claim form reflected that Barnett purportedly had been discharged from her employment on June 1, 2017, for tardiness. Also, Lear sent Barnett a letter dated June 2, 2017, that purportedly

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<sup>1</sup>A department "Form ben-7" was mailed to Barnett on June 2, 2017. That form indicates that, based on Lear's wage reports to the department, Barnett's weekly unemployment-compensation-benefit amount would be \$257, with a maximum benefit amount of \$6,682.

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"confirm[ed] [that her] termination from Lear ... [was] due to violation of the company attendance policy."

Barnett's unemployment-compensation claim was apparently reviewed by two claims examiners for the department, one of whom considered her eligibility for benefits and one of whom considered whether she might be disqualified from receiving benefits based upon the cause of her termination from employment. The claims examiner who reviewed Barnett's eligibility concluded that Barnett was not eligible for unemployment-compensation benefits based on the application of Ala. Code 1975, § 25-4-77(a)(3). According to that claims examiner, Barnett had indicated that she was not available for all shifts at her normal trade or occupation because of her need for child care in the early morning.

On June 12, 2017, the department mailed its first notice of determination to Barnett. The first notice of determination informed Barnett that she was presently ineligible for unemployment-compensation benefits based on her lack of availability under § 25-4-77(a)(3). See Ala. Code 1975, § 25-4-91(a). Barnett appealed the first notice of determination to an appeals tribunal, see Ala. Code 1975, § 25-4-92(a),

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and that appeal was assigned administrative case number 04875-AT-17 ("the eligibility-issue appeal").

On June 14, 2017, TALX submitted a "Confirmation" form ("the confirmation") to the department regarding Barnett's unemployment-compensation claim. Several questions on the confirmation are not answered, apparently because Lear had not provided the requested information to TALX. On June 19, 2017, TALX sent a telefax document to the department that stated: "[Lear] did not reply to our request." The record does not reflect to what that request pertained.

On June 23, 2017, the department mailed a second notice of determination to Barnett regarding her unemployment-compensation claim. The second notice of determination, which was apparently based on the review by the claims examiner who had examined the circumstances under which Barnett's employment had been terminated, informed Barnett that she was disqualified from receiving unemployment-compensation benefits based on her purported misconduct, citing Ala. Code 1975, § 25-4-78(3)b. Specifically, the second notice of determination stated that Barnett had been "discharged from [her] most recent bona fide

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work with [Lear] for tardiness after previous warning." Barnett appealed the second notice of determination to an appeals tribunal, and that appeal was assigned administrative case number 05290-AT-17 ("the disqualification-issue appeal").

On June 28, 2017, the appeals tribunal for the eligibility-issue appeal, which consisted of hearing officer Tara Moore (the appeals tribunal for that issue is hereinafter referred to as "Moore"), held a hearing (via telephone) regarding that issue. See § 25-4-92(a) (stating that an appeals tribunal consists of "an officer or an employee" of the department"). Barnett and a representative of the department testified before Moore. On June 30, 2017, Moore issued a decision in the eligibility-issue appeal, affirming the claims examiner's determination as to that issue.

Barnett timely filed with the department's board of appeals ("the board") an application for permission to appeal Moore's decision. See Ala. Code 1975, § 25-4-94(a) ("The board of appeals ... may ... permit any party in interest to initiate an appeal to it."); see also Ala. Code 1975, § 25-4-92(c) ("The decision of an appeals tribunal shall become final 15 days after

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notice of such decision has been mailed, postage prepaid, to the claimant and other parties to the proceedings, ... unless within that time application be made to the board of appeals for permission to appeal to the board of appeals.").

On June 30, 2017, the appeals tribunal for the disqualification-issue appeal, which consisted of hearing officer Louis Herbert Lackey III (the appeals tribunal for that issue is hereinafter referred to as "Lackey"), sent Barnett, Lear, and TALX a notice of a hearing to be held (via telephone) on July 12, 2017, regarding the issue whether Barnett had been discharged for misconduct after having received a previous warning. Lackey held the scheduled hearing (via telephone), and he received testimony from Barnett. No representative from Lear or TALX appeared for the hearing. During her testimony, Barnett admitted that her employment had been terminated based on tardiness, but she also stated that Lear had not informed her of the details that led to its decision to terminate her employment.

On July 13, 2017, Lackey mailed Barnett, Lear, and TALX his decision in the disqualification-issue appeal, reversing the decision of the

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claims examiner as to Barnett's purported disqualification. On July 28, 2017, Lear, by and through TALX, timely filed a request with the board requesting that "the case be reopened and a new hearing be held in order for [Lear] to participate." See § 25-4-94(a). According to the request, "[Lear's] witness [was] out on a leave of absence and was not aware of the hearing being scheduled."

On August 2, 2017, the board mailed Barnett its decision regarding her application for permission to appeal ("the August 2017 decision"). The August 2017 decision stated that the board had "review[ed] the record and the application for leave to appeal" and that the application was denied. The August 2017 decision specifically referenced only the administrative case number for the eligibility-issue appeal. On August 17, 2017, Barnett filed a notice of appeal to the circuit court. See Ala. Code 1975, § 25-4-95 ("Within 30 days after the decision of the board of appeals has become final, any party to the proceeding ... who claims to be aggrieved by the decision may secure a judicial review thereof by filing a notice of appeal in the circuit court of the county of the residence of the claimant ..."). The appeal was for a trial de novo pursuant to § 25-4-95. The secretary of the

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department and Lear were named as appellees in the notice of appeal, which alleged that Barnett's "application for unemployment benefits was initially denied by an Administrative Hearing Officer. On or about August 2, 2017, the [b]oard ... upheld the decision of the Administrative Hearing Officer." Barnett alleged that the denial of her unemployment-compensation claim was "in error as to the law and the facts," and she requested that the circuit court enter an order granting her unemployment-compensation claim after a trial on the merits. See Department of Indus. Rels. v. Jaco, 337 So. 2d 374, 376 (Ala. Civ. App. 1976) ("[A]ll that need be stated [in the notice of appeal] is that the decision of the Board is incorrect under the facts or the law. As appeal is to a trial de novo, there is not a review on appeal, but in fact, another trial. We perceive no reason for requiring presentation of particular errors or issues in the notice of appeal in such cases."), overruled on other grounds by Ex parte Rogers, 68 So. 3d 773 (Ala. 2010).

On August 28, 2017, the board mailed Barnett, Lear, and TALX a decision purportedly granting Lear's application for permission to appeal Lackey's decision in the disqualification-issue appeal. We note that the



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issue of disqualification based on an employee's misconduct is an affirmative defense to an unemployment-compensation claim, as to which the employer bears the burden of proof after the employee has established a prima facie case of eligibility. See Ex parte Rogers, 68 So. 3d at 780. On October 19, 2017, the board held an ore tenus hearing regarding Lear's affirmative defense, and, on November 28, 2017, the board mailed Barnett and Lear the board's decision determining that Lackey's decision was due to be reversed because Lear had terminated Barnett's employment for misconduct pursuant to § 25-4-78(3)b. ("the November 2017 decision").

As to Barnett's appeal to the circuit court following the board's August 2017 decision, in October 2017 Lear and the department filed respective answers in that action. On January 9, 2018, Lear filed a motion to dismiss Barnett's appeal to the circuit court, and the department joined Lear's motion to dismiss. In the motion to dismiss, Lear argued that the November 2017 decision had determined that Barnett was disqualified from receiving unemployment-compensation benefits based on her termination for misconduct after a previous warning. Because Barnett had failed to appeal the November 2017

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decision,<sup>2</sup> Lear contended, that decision was binding and the circuit court could not grant her unemployment-compensation claim even if it determined she was otherwise available for work. Barnett filed a response opposing Lear's motion to dismiss, arguing that the circuit court had jurisdiction to consider the denial of her unemployment-compensation claim both as to the issue of eligibility and as to the affirmative defense of disqualification for misconduct. After a hearing on the motion to dismiss, the circuit court denied the motion to dismiss.

The circuit court held an ore tenus proceeding on Barnett's unemployment-compensation claim on September 8, 2020. Barnett and Earl Snow, who was Barnett's supervisor at Lear, testified at the trial.

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<sup>2</sup>See Ala. Code 1975, § 25-4-94(d) (providing that, subject to a parties' right to appeal, the board's decision becomes final 10 days after the decision is mailed to the parties); Ala. Code 1975, § 25-4-95 (providing that an aggrieved party must file a notice of appeal to the circuit court "[w]ithin 30 days after the decision of the board of appeals has become final" ); see also Quick v. Utotem of Alabama, 365 So. 2d 1245, 1246 (Ala. Civ. App. 1979). In Quick, this court stated that, for purposes of calculating the time period for filing a notice of appeal to the circuit court, any decision of the board does not become final for an additional 10 days after it is mailed to the parties. See § 25-4-94(d).

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On October 8, 2020, the circuit court entered an order in favor of Barnett and against the department and Lear, specifically concluding that Barnett was not ineligible for unemployment-compensation benefits based on the application of § 25-4-77(a)(3) or § 25-4-78(3)b. The circuit court did not state that Barnett was entitled to unemployment-compensation benefits or determine the amount of benefits Barnett might be entitled to.

On November 12, 2020, the department filed a notice of appeal to this court. On appeal, the department argues that the circuit court erred by concluding that Barnett's appeal to the circuit court had not been mooted by the November 2017 decision and that it erred by concluding that she was eligible for unemployment-compensation benefits and not disqualified for misconduct. The labyrinthine procedural history that resulted from the division of two issues in Barnett's unemployment-compensation claim into two administrative cases, one of which concerned only an affirmative defense, and the subsequent failure of the board to expressly adjudicate those issues concurrently,<sup>3</sup> has raised numerous

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<sup>3</sup>This opinion should not be read as expressing an opinion regarding whether Lear's affirmative defense might be deemed to have been adjudicated as a matter of law or mooted upon the board's August 2017

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interesting questions, particularly based on some of the provisions in the appeal framework described in Ala. Code 1975, § 25-4-90 et seq. Nevertheless, we must defer any discussion of those questions, which likely will require additional briefing from the parties in any event, because we lack jurisdiction to review the circuit court's October 2020 order.

"[A] final judgment is necessary to give the appellate courts of this state jurisdiction on appeal," and "that ... principle of law applies to unemployment compensation cases." Department of Indus. Rels. v. Burgett, 336 So. 2d 1375, 1376 (Ala. Civ. App. 1976).

"'An appeal will ordinarily lie only from a final judgment; that is, a judgment that conclusively determines the issues before the court and ascertains and declares the rights of the parties.' Palughi v. Dow, 659 So. 2d 112, 113 (Ala. 1995). For a judgment to be final, it must put an end to the proceedings and leave nothing for further adjudication. Ex parte Wharfhouse Rest. & Oyster Bar, Inc., 796 So. 2d 316, 320 (Ala. 2001). '[W]ithout a final judgment, this Court is without jurisdiction to hear an appeal.' Cates v. Bush, 293 Ala. 535, 537, 307 So. 2d 6, 8 (1975)."

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decision to deny Barnett's application for permission to appeal from Moore's decision that Barnett was ineligible to receive unemployment-compensation benefits because of her lack of availability for work.

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Hamilton v. Connally, 959 So. 2d 640, 642 (Ala. 2006).

The proceedings before the circuit court were not an appellate review, but a trial de novo. The circuit court's conclusion that Barnett was not ineligible for unemployment-compensation benefits based on the application of § 25-4-77(a)(3) or § 25-4-78(3)b. did not grant or deny Barnett's unemployment-compensation claim or otherwise determine the unemployment-compensation benefits she could be awarded, if any. Thus, "there has been no final judgment in the underlying action; no order has 'put an end to the proceedings and [left] nothing for further adjudication.'" Hamilton, 959 So. 2d at 642." Horn v. Brown, 4 So. 3d 1106, 1110 (Ala. 2008).

Based on the foregoing, the department's appeal is dismissed.

APPEAL DISMISSED.

All the judges concur.