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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL
AND MAY BE CITED ONLY AS AUTHORIZED BY RULE.

IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

ANGELINA MARAVILLA, *Appellant*,

v.

ARIZONA DEPARTMENT OF ECONOMIC SECURITY, an agency,
Appellee.

No. 1 CA-UB 17-0215
FILED 1-16-2018

Appeal from the A.D.E.S. Appeals Board
No. U-1526953-001-BR

REVERSED AND REMANDED

COUNSEL

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Co-Counsel for Appellant

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By Michael J. Dinn
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By Carol A. Salvati
Counsel for Appellee Arizona Department of Economic Security

MEMORANDUM DECISION

Chief Judge Samuel A. Thumma delivered the decision of the Court, in which Judge Randall M. Howe and Judge Diane M. Johnsen joined.

T H U M M A, Chief Judge:

¶1 Angelina Maravilla timely challenges a January 5, 2017 Appeals Board decision (1) affirming a deputy’s decision that she was disqualified from receiving unemployment benefits and (2) finding her appeals were not timely. The Arizona Department of Economic Security (ADES) has confessed error and agrees that the decision should be reversed and this matter remanded to the Appeal Tribunal for an evidentiary hearing on the merits of the disqualification. Accepting the confession of error, the stay previously issued is vacated, the January 5, 2017 Appeals Board decision is reversed and this matter is remanded to the Appeal Tribunal for an evidentiary hearing on the merits.

FACTS AND PROCEDURAL HISTORY

¶2 In the first part of 2016, Maravilla was receiving unemployment benefits. On May 2, 2016, Maravilla contacted ADES to have payment of her benefits suspended while she was out of the country to care for her sister, who was undergoing emergency cancer treatment. The ADES deputy she spoke with apparently told Maravilla that ADES would do so, adding that Maravilla would need to come to the ADES office upon her return.

¶3 On May 18, 2016, after Maravilla had left the country to care for her sick sister, ADES mailed her a determination of deputy stating she was disqualified from receiving benefits as of April 24, 2016. As a result, Maravilla had until June 2, 2016 to file an appeal challenging the determination of deputy. *See* Ariz. Rev. Stat. § 23-773(B).

¶4 Maravilla returned to the United States on June 6, 2016. Upon her return, she received the disqualification determination, disputed that disqualification and submitted her appeal that same day, four days after the 15-day appeal period passed. After an evidentiary hearing before an administrative law judge (ALJ), the Appeal Tribunal found the determination of deputy “was properly addressed,” that there had been no

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“misinformation provided by an agent of” ADES and that the appeal was filed after the deadline without good cause excusing a late filing, meaning the determination was “final and remains in effect.”

¶5 Maravilla timely appealed and the Appeals Board affirmed, initially and upon review, in a January 5, 2017 decision. Maravilla timely filed with ADES an application for review by this court, which ADES then timely forwarded to this court.

¶6 In June 2017, this court granted Maravilla’s application for appeal, placed this matter in the Arizona Court of Appeals Pro Bono Representation Program and stayed the appeal. After pro bono counsel appeared of record and was appointed, and after various procedural matters were resolved, counsel filed the opening brief in October 2017. In December 2017, ADES filed a confession of error, requesting reversal of the January 7, 2017 decision and asking that the matter be remanded to the Appeal Tribunal for a hearing on the merits.¹

DISCUSSION

¶7 This court reviews the evidence in a light most favorable to affirming the decision and will affirm if any reasonable interpretation of the record supports it. *Baca v. Ariz. Dep’t of Econ. Sec.*, 191 Ariz. 43, 46 (App. 1997). The court will overturn a decision that is arbitrary, capricious or an abuse of discretion, or not supported by the record. *Avila v. Ariz. Dep’t of Econ. Sec.*, 160 Ariz. 246, 248 (App. 1989). As set forth in Maravilla’s brief, abuse of discretion in this context means that a decision was rendered “by arbitrariness or capriciousness and failure to conduct an adequate investigation into the relevant facts.” *Avila*, 160 Ariz. at 248. Issues of law are reviewed de novo, see *Bowman v. Ariz. Dep’t of Econ. Sec.*, 182 Ariz. 543, 545 (App. 1995), and “legal conclusions of the appeals board are not binding on this court. [The court is] free to draw [its] own legal conclusions in determining if the appeals board properly interpreted the law,” *Avila*, 160 Ariz. at 248.

¹ Cases selected for participation in the Pro Bono Program usually will be set for oral argument. See Administrative Order 2014-04 at 2. Given ADES’ confession of error, however, the court is resolving this case without oral argument.

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¶8 As applicable here, an untimely appeal from a determination of deputy “shall be considered timely” if the delay was due to ADES’ “error or misinformation.” Arizona Administrative Code (A.A.C.) R6-3-1404(B). ADES does not dispute Maravilla’s argument that the ALJ was obligated to investigate whether facts she alleged support an exception to the 15-day appeal limit set forth in A.A.C. R6-3-1404(B). *See Maldonado v. Ariz. Dep’t of Econ. Sec.*, 182 Ariz. 476, 479 (stating “all explanations must be considered based on a standard that is consistent with the purpose of the unemployment compensation laws”). As applied, it appears that the focus of the evidentiary hearing was whether ADES mailed the determination of deputy to the correct mailing address, not whether the timing of Maravilla’s appeal was the result of ADES error or misinformation.

¶9 The record from the hearing shows that Maravilla called ADES on May 2, 2016 “to inform it was an emergency, uh, and to stop it until I came back,” ADES records show such a communication on that date, and Maravilla filed her appeal on June 6, 2016, the same day she returned to the United States. As ADES concedes, the record does not support a conclusion that the ALJ properly considered, but rejected, Maravilla’s claim that the timing of her appeal was based on ADES’ “error or misinformation.” A.A.C. R6-3-1404(B).

¶10 Given this error, Maravilla argues her appeal of the disqualification of benefits should be remanded for consideration on the merits. *See also Maldonado*, 182 Ariz. at 479 (“Claims *should* be heard on their merits if the failure to comply with a deadline or attend a hearing is of the type which can be said to be excusable.”). ADES asks this court to reverse and remand to the Appeal Tribunal for a hearing on the merits. Accordingly, and recognizing such a remand obviates Maravilla’s due process arguments, this court remands for administrative consideration of the merits of Maravilla’s appeal of the decision disqualifying her for benefits. *See also Goodman v. Samaritan Health Sys.*, 195 Ariz. 502, 505 ¶ 11 (App. 1999) (“[i]t is sound judicial policy to avoid deciding a case on constitutional grounds if there are nonconstitutional grounds dispositive of the case”).

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CONCLUSION

¶11 The stay previously issued is vacated, the January 5, 2017 Appeals Board decision is reversed and this matter is remanded to the Appeal Tribunal for an evidentiary hearing on the merits of the disqualification of benefits.



AMY M. WOOD • Clerk of the Court
FILED: AA