

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2012 CA 1675

JOANNE C. GRIMMER

VERSUS

EXECUTIVE DIRECTOR, LOUISIANA WORKFORCE COMMISSION,
AND CITY OF BATON ROUGE, PARISH OF EAST BATON ROUGE
(LIBRARY)

Handwritten signature/initials

Judgment Rendered: APR 26 2013

APPEALED FROM THE NINETEENTH JUDICIAL DISTRICT COURT,
IN AND FOR THE PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA
DOCKET NUMBER 603,101, DIVISION I, SECTION 24

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Kuhn, J CONCURS

BEFORE: KUHN, PETTIGREW, AND McDONALD, JJ.

McDONALD, J.

This is an appeal of a judgment by the district court affirming a decision by the Louisiana Workforce Commission (Commission), Office of Unemployment Insurance that was affirmed by the Board of Review and the Nineteenth Judicial District Court. For the following reasons, we affirm.

Plaintiff, Joanne C. Grimmer, worked for City of Baton Rouge, Parish of East Baton Rouge Parish Library for approximately nine years, from September, 2001 to February, 2010. Grimmer's initial employment with the library was part-time, but she became a full-time employee on September 10, 2001. She said that she was asked by the library director to change to full-time because her work was so good, and she received positive evaluations of her work throughout her employment.

The parish library system underwent considerable changes throughout Grimmer's employment. Eventually she was so dissatisfied with her working conditions that she resigned. She gave one day verbal notice of her decision to quit; she gave no written notice. Her last day of employment was on or about February 26, 2010.¹ In July, 2010, Grimmer filed a claim for unemployment benefits, which was denied. The determination that her claim for benefits was denied gave the reason as "You left your employment for personal reasons. Your leaving was not for good cause attributable to a substantial change made to the employment by the employer." See R.S.23:1601-1." The determination letter also advised that the right to appeal would be lost if the appeal was not filed by fax or postmarked, if mailed, within fifteen days of September 1, 2010, which was the date the letter was mailed to her.

¹ Plaintiff indicates she worked through February 27, 2010. However, other documents in the record show her date of employment through February 26, 2010.

Louisiana Revised Statute 23:1629(A) provides a fifteen day time period during which an appeal may be timely filed. Grimmer's appeal was filed online on October 5, 2010. Although she states she filed an appeal earlier, she did not have a copy or any other proof of it. The hearing to review the correctness of the denial of eligibility for unemployment benefits was conducted by telephone conference on January 3, 2011. In addition to the administrative law judge, those taking part were Joanne C. Grimmer, and a representative of the employer. The hearing procedure allows witnesses to appear, allows each party to question testimony and to make statements. At the hearing, the administrative law judge reviewed the information he had regarding the matter and questioned the claimant, particularly regarding the date of her appeal and the reasons for resigning from her job. He received information from Grimmer in response to his questions and allowed each party to question the other and to make statements. At the conclusion of the hearing, the administrative law judge advised the parties that they would receive a copy of his decision within a week or so and thanked them for participating.

On January 7, 2011, the decision of the administrative law judge was mailed. The opinion noted that La. R.S. 23:1629 provides that within fifteen (15) days after notification was given or mailed to a claimant, an appeal may be filed either by mail, as evidenced by the postmarked date, or by delivering the appeal to the appropriate tribunal. The hearing established that the mailing of the letter denying the claim for unemployment benefits was September 1, 2010, and the appeal was filed on October 5, 2010. Therefore, the appeal, filed considerably after the fifteen days allowed by law, was considered untimely filed and dismissed. Subsequently, Grimmer appealed that decision to the Board of Review.

The Board granted Grimmer's request for appeal and affirmed the Appeal's Tribunal decision. It issued its Decision and Order, which stated the scope of the Board's review, the issues presented, the findings of fact, and the conclusions of

law. It determined that the claimant's original appeal of the determination of disqualification for benefits was untimely. It also noted that appeal delays in unemployment compensation proceedings are preemptive, and cannot be revived once they have elapsed, citing *Hughes v. Louisiana Power & Light Co.*, 98-1007 (La. App. 5 Cir.1999), 735 So.2d 44.

Grimmer filed for judicial review of the Board's decision with the Nineteenth Judicial District. Louisiana Revised Statute 23:1634(B) establishes the district court's scope of jurisdiction as follows: ". . .In any proceeding under this Section the findings of the board of review as to the facts, if supported by sufficient evidence and in the absence of fraud, shall be conclusive, and the jurisdiction of the court shall be confined to questions of law...." Therefore, the issue before the court was whether the Board's decision to affirm the dismissal of the claimant's appeal to the Appeals Tribunal because it was untimely was supported by sufficient evidence and correct as a matter of law.

The district court held a hearing in this matter on April 2, 2012. The court indicated that a number of issues were raised in brief by Grimmer, and noted that her claim for benefits was denied for two reasons: One, that it was not timely filed, and two, that she voluntarily resigned her position. Reviewing the evidence regarding the filing of the appeal, the court noted that while Grimmer testified at her hearing that she assumed she filled out the appeal form and mailed it back to the Commission within a day or two, she had no proof that she did. It also noted that the law is clear that if an appeal is not timely filed, the claim is preempted, and explained that meant it was lost forever. It also reviewed the issues raised by the plaintiff/claimant. The court found that after it had reviewed the facts, the testimony, and everything in the administrative record, there was evidence to support the finding of the administrative law judge and of the Board of Review. Regarding the questions of law, the court addressed the plaintiff's constitutional

and evidentiary contentions and found that the claimant's due process rights had been met. It also saw no basis in Grimmer's many arguments attacking the validity of the decision, and affirmed the decision of the Commission. Grimmer objected that the merits of her claim had never been addressed. The court answered that its finding that the evidence supported the ruling that the claim was filed late, so there was no need to get to the merits.

Having thoroughly reviewed the record, jurisprudence, and law concerning this appeal, we find no error in the district court's review, conclusions, or judgment in this matter. Accordingly, the appeal is affirmed.

Normally costs of an appeal are assessed against either or both of the parties. However, La. R.S. 13:5112(D) exempts the Louisiana Workforce Commission from being cast for any court costs in a judicial proceeding under the provisions of La. R.S. 23:1634. Likewise, La. R.S. 23:1692 exempts a claimant from being assessed court costs unless a court determines that the proceedings for judicial review are frivolous. We made no such finding. Thus, court costs are not assessed against either party in this appeal.

AFFIRMED.