

SHAYLA DE LA ROSE

*

NO. 2018-CA-0724

VERSUS

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COURT OF APPEAL

**GAREY FORSTER,
SECRETARY OF THE
LOUISIANA DEPARTMENT
OF LABOR**

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FOURTH CIRCUIT

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STATE OF LOUISIANA

APPEAL FROM
CIVIL DISTRICT COURT, ORLEANS PARISH
NO. 2016-11814, DIVISION "M"
Honorable Paulette R. Irons, Judge

Judge Terri F. Love

(Court composed of Judge Terri F. Love, Judge Roland L. Belsome, Judge Sandra Cabrina Jenkins)

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**AFFIRMED
JUNE 19, 2019**

This appeal arises from the disqualification of unemployment compensation benefits. The trial court affirmed the decision of the Louisiana Board of Review (“Board of Review”) to dismiss claimant’s appeal of her disqualification of benefits after she failed to appear via telephone at the administrative hearing. In that the claimant failed to provide good cause for reopening pursuant to La. Admin. Code tit. 40:IV, § 113(D), we find no error in the trial court’s ruling that affirmed the decisions of the Board of Review and the Louisiana Workforce Commission (“LWC”). Accordingly, we affirm.

PROCEDURAL HISTORY AND FACTUAL BACKGROUND

Shayla De La Rose (“Ms. De La Rose”) was employed as a part-time security guard with Landmark Event Staffing Services, Inc. (“Landmark”) from November 2015 to September 2016. Ms. De La Rose subsequently filed for unemployment benefits with the LWC. She was later disqualified from receiving unemployment compensation benefits. Relying on La. R.S. 23:1472(19), the LWC disqualified her when it discovered that Ms. De La Rose was the principle officer

of Essential Rose, LLC, a company that provides wellness consulting, training, and management.

Ms. De La Rose filed a request to appeal the decision with the LWC's Appeals Tribunal. An administrative hearing was scheduled for November 1, 2016. Notice of the hearing, to take place via telephone, was addressed and mailed on October 20, 2016, to the address of record. There is no evidence that the notice was returned undelivered. On the hearing date, the Appeals Tribunal made attempts to reach Ms. De La Rose at the number on the notice at the time the scheduled hearing was to take place and 15 minutes after. The Appeals Tribunal was unable to reach Ms. De La Rose. Consequently, the tribunal held Ms. De La Rose in default and dismissed her appeal. Ms. De La Rose then requested a reopening of her appeal. Her request was denied, however, because she failed to provide good cause why she did not have a reliable telephone number or provide a new contact number if her telephone was unreliable.

Ms. De La Rose exercised her right to appeal the tribunal's dismissal and disqualification and sought review by the Louisiana Board of Review. The Board of Review found Ms. De La Rose's letter of appeal deficient. The Board of Review indicated in its findings that Ms. De La Rose failed to set forth a reason for her failure to appear at the scheduled hearing "that reasonably justifies a finding of good cause shown to excuse such failure." As a result, the Board of Review denied Ms. De La Rose's request for reopening and affirmed the tribunal's November 2016 decision. Thereafter, Ms. De La Rose filed a petition for judicial

review with Civil District Court for the Parish of Orleans, seeking reversal of the Board of Review's decision to affirm the dismissal of her appeal. In May 2018, the trial court affirmed the Board's decision. Ms. De La Rose timely seeks review of the trial court's May 2018 ruling.

STANDARD OF REVIEW

La. R.S. 23:1634(B) sets forth the standard of review used by the trial court in reviewing decisions made by the Board of Review, which states in pertinent part:

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.

Id.; *Stuart Consulting Group, Inc. v. Loyless*, 16-247, p. 4-5 (La. App. 5 Cir. 12/7/16), 209 So.3d 278, 282. "Judicial review of the findings of the Board is strictly limited to first, a determination of whether the facts are supported by competent evidence, and second, whether the facts as a matter of law, justify the action taken. *Id.*, 16-247, p. 5, 209 So.3d at 282 (citing *Lewis v. Administrator*, 540 So.2d 491, 496 (La. App. 1st Cir. 1989)). Further, "[j]udicial review of the findings of the Board does not permit the weighing of evidence, drawing of inferences, reevaluation of evidence, or substituting the views of the court for that of the Board as to the correctness of the facts presented." *Id.*

DISCUSSION

Ms. De La Rose avers the trial court erred when it affirmed the Board of Review's dismissal of her appeal for failure to appear via telephone at the

administrative hearing. Ms. De La Rose argues that she demonstrated good cause to justify her failure to appear at the scheduled hearing. In particular, Ms. De La Rose asserts that at the time the hearing was to take place her cellular telephone's data function was inadvertently turned off, preventing her from receiving telephone calls or text messages.

Pursuant to La. Admin. Code 40:IV, § 113(B),

[i]f the appellant, who is the party who files the appeal before the Appeals Tribunal, fails to appear or fails to be available to participate in a telephone hearing within 15 minutes after the scheduled hearing time, the administrative law judge shall order the appellant in default and issue a dismissal of appeal. In such event, the agency determination shall become the final decision.

Further, under the statute, the appellant may file a written request for reopening to the administrative law judge with a showing of good cause. *Id.* If the administrative law judge denies the request for reopening, the “request shall be forwarded to the board of review as an appeal.” *Id.* Additionally, “[i]f it is determined...by the board of review on appeal that the appellant has shown good cause for his nonappearance, the dismissal shall be vacated and a new hearing on the merits shall be scheduled.” *Id.*

The appellant must provide in writing “a statement of the reason(s) for his failure to act in a timely manner and reasonably justifies a finding of good cause to excuse such failure.” La. Admin. Code 40:IV, § 113(D)(1). In determining whether the appellant has shown good cause in an appeal, the board of review “shall consider any relevant factors, including, but not limited to: (a) reasonably prudent behavior; (b) untimely receipt of notice; (c) administrative error; (d) reasons beyond control or avoidance; (e) reasons unforeseen; (f) timely effort to

request continuance; (g) physical inabilities; (h) degree of untimeliness; or (i) prejudice to parties.” La. Admin. Code 40:IV, § 113(D)(2).

In this case, Ms. De La Rose timely filed her appeal with the Appeals Tribunal on October 5, 2016. Proper notice of the scheduled telephone hearing was mailed to Ms. De La Rose at her address of record on October 20, 2016. The notice indicated the date and time of the hearing as Tuesday, November 1, 2016, at 10:30 a.m. The notice also included information regarding the telephone number at which the Appeals Tribunal would contact Ms. De La Rose. Likewise, the notice set forth instructions in the instance there was a change to her contact number. The notice indicated that any change in Ms. De La Rose’s contact number must be provided within two days of the hearing date.

The notice of the October 2016 administrative hearing was addressed and mailed to the address of record. The notice was not returned undelivered by the U.S. Postal Service, nor does Ms. De La Rose assert that she was not in receipt of the notice.

Louisiana jurisprudence has established that proof of mailing notice creates a presumption of receipt, but that the presumption may be rebutted with sufficient evidentiary proof. *See Beasley v. Puglise*, 454 So.2d 1125, 1127 (La. App. 4th Cir. 1984); *Houston v. Administrator of Division of Employment Sec.*, 191 So.2d 167, 169-70 (La. App. 3rd Cir. 1966) (remanding to the Board of Review for taking additional evidence after finding “the presumption of receipt of a letter properly addressed and mailed is rebuttable”). On appeal, Ms. De La Rose does not contend that she did not receive proper notice of the hearing in a timely manner. Rather, she challenges the dismissal of her appeal because she did not receive the tribunal’s call and later discovered that her cellular phone’s data function was

turned off. Once her cellular provider turned on the telephone's data function, she was able to use her cellular phone for calls and text messages.

Notwithstanding the functionality issues of her cellular phone, Ms. De La Rose did not provide any new contact information pursuant to the notice prior to the hearing. Similarly, Ms. De La Rose did not request a continuance. Ms. De La Rose was not available at the number on the notice at the time of the scheduled hearing or 15 minutes after. Given Ms. De La Rose failed to answer her telephone at the time of the hearing, the hearing was not conducted and no testimony was taken. As a result, the Appeals Tribunal found her in default and dismissed her appeal.

The Board of Review affirmed the Appeal Tribunal's decision as the facts were supported by sufficient and competent evidence to justify the conclusion that Ms. De La Rose failed to timely appear for her scheduled hearing and that her circumstances did not warrant remand. The only issue for the trial court to determine on appeal was whether the Board of Review had sufficient cause to deny reopening.¹ We find Ms. De La Rose failed to appear via telephone at the administrative hearing at the scheduled time provided in the notice or 15 minutes after. Moreover, Ms. De La Rose has failed to show good cause why she did not have a reliable telephone to participate in her hearing and failed to provide a new contact number if her telephone was unreliable.

Based on the evidence in the record before us we find no error in the trial

¹ According to the transcript from the hearing on the petition for judicial review, the trial court took note of a discrepancy in the relief Ms. De La Rose sought as compared to the request for unemployment compensation benefits she made with the LWC. Ms. De La Rose testified that she was not seeking unemployment compensation benefits from her most recent employer, Landmark. Rather, she was seeking unemployment compensation benefits from a previous employment from which she had not collected. Ms. De La Rose raises the same issue again in her brief to this Court. Similar to the trial court, we will not address the merits of this particular claim as it is not before us on appeal.

court's judgment that affirmed the Board of Review's decision to dismiss Ms. De La Rose's appeal.

DECREE

We find the facts found by the Board of Review are supported by the sufficient and competent evidence that justifies its conclusion that Ms. De La Rose failed to timely appear for her scheduled administrative hearing. Moreover, we find the circumstances surrounding her failure to appear, namely issues with her cellular phone's functionality, do not warrant a remand. We find no error in the trial court's May 2018 ruling that affirmed the decisions of the Board of Review and the Appeals Tribunal, which found Ms. De La Rose in default and dismissed her appeal. Accordingly, we affirm.

AFFIRMED