

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Crist D. Clapper,	:	
	:	
Petitioner	:	
	:	
v.	:	No. 1034 C.D. 2009
	:	Submitted: September 25, 2009
Unemployment Compensation	:	
Board of Review,	:	
	:	
Respondent	:	

BEFORE: HONORABLE DAN PELLEGRINI, Judge
HONORABLE MARY HANNAH LEAVITT, Judge
HONORABLE JIM FLAHERTY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY SENIOR JUDGE FLAHERTY

FILED: December 21, 2009

Crist D. Clapper (Claimant) petitions, *pro se*, for review of the order of the Unemployment Compensation Board of Review (Board), dated April 23, 2009, which dismissed Claimant’s appeal from the referee’s decision as untimely, pursuant to Section 502 of the Unemployment Compensation Law (Law).¹ We affirm.

Initially, Claimant filed a claim for unemployment compensation benefits on December 17, 2006. Subsequently, Claimant applied for Emergency Unemployment Compensation (EUC) benefits, a special program that allows some recipients of regular unemployment

¹ Act of December 5, 1936, Second Ex. Sess., P.L. (1937), 2897, as amended, 43 P.S. §822.

compensation to qualify for additional weeks of benefits. On August 15, 2008, the Altoona Unemployment Compensation Service Center (Department) issued a Notice of Financial Determination, finding Claimant financially ineligible for EUC benefits based upon his claim for regular unemployment compensation benefits which began on December 17, 2006. On November 3, 2008, Claimant filed an appeal to this Notice of Financial Determination and, following a hearing, the referee dismissed Claimant's appeal as untimely in a decision dated December 2, 2008.

On December 3, 2008, the Department issued a Revised Notice of Financial Determination, again finding Claimant financially ineligible for EUC benefits based upon his claim for regular unemployment compensation benefits which began on December 17, 2006.

On December 8, 2008, Claimant appealed the December 3, 2008 Notice of Financial Determination. The referee conducted a hearing at which Claimant appeared and testified. On January 7, 2009, the referee dismissed Claimant's appeal pursuant to Section 509 of the Law, 43 P.S. §829, which prohibits collateral attacks of eligibility determinations.

On January 12, 2009, Claimant appealed both the January 7, 2009 and the December 2, 2008 decisions of the referee, by fax, to the Board. On April 21, 2009, the Board issued an order regarding the January 7, 2009 referee's decision, which stated in pertinent part as follows:

Section 509 of the Law specifically provides that any decision made by the Department or any Referee or the Board shall not be subject to collateral attack as to any application, claim or claims covered thereby or otherwise be disturbed unless appealed from; and

WHEREAS, once an appeal has been filed, the Department is divested of jurisdiction to alter a determination.

Board's Decision, at 1. The Board vacated the Revised Notice of Financial Determination dated December 3, 2008 and dismissed Claimant's appeal.²

On April 23, 2009, the Board issued an order and opinion regarding the December 2, 2008 referee's decision, in which it made the following findings of fact:

2. The claimant's request for EUC benefits was denied by the Department.
3. The claimant filed an untimely appeal from this determination.
4. Following a hearing, the Referee issued a decision which dismissed the claimant's appeal as untimely.
5. A copy of the Referee's decision was mailed to the claimant at his last known post office address on the same date.
6. The decision was accompanied by notice advising that the interested parties had fifteen (15) days in which to file a valid appeal.
7. The decision mailed to the claimant was not returned by the postal authorities as undeliverable.
8. The claimant's appeal from the Referee's decision, in order to be timely, had to have been filed on or before December 17, 2008.

² This decision of the Board dated April 21, 2009, is not before our court at present.

9. The claimant's appeal was filed on January 12, 2009, by fax.

10. The claimant alleges that he was under a doctor's care and was "confused."

11. The claimant was not misinformed or misled by the unemployment compensation authorities concerning his right or the necessity to appeal.

12. The claimant's filing of the late appeal was not caused by fraud or its equivalent by the administrative authorities, a breakdown in the appellate system, or by non-negligent conduct.

Board's Decision, April 23, 2009, Findings of Fact (F.F.) Nos. 2-12; at 1-2.

The Board determined as follows:

The Referee issued a decision dismissing the claimant's appeal as untimely and the claimant filed a further appeal

Section 502 of the...Law provides that unless an interested party institutes a further appeal to the Board from the Referee's decision within fifteen (15) days after the date of such decision, the decision shall be deemed a final decision of the Board. An appeal to the unemployment compensation authorities is timely if it is filed on or before the last day to appeal. The last day to file an appeal from this decision was December 17, 2008. However, the claimant did not file an appeal until January 12, 2009. The Board rejects as not credible the claimant's testimony that he was under a doctor's care and "confused." The decision clearly stated that the last date to file the appeal was December 17, 2008. Further, the doctor's note submitted by the claimant merely states that the claimant was under the doctor's care; it in no way attests that the claimant was confused or unable to make decisions.

The provisions of this Section of the Law are mandatory, and the Board has no jurisdiction to accept an appeal filed after the expiration of the statutory appeal period absent limited exceptions not relevant herein.

Board's Decision, April 23, 2009, at 2. The Board dismissed Claimant's appeal as untimely. Claimant now petitions this court for review.³

Claimant contends that the Board erred in finding that there was insufficient evidence that Claimant's medical and other problems prohibited a timely response, and in concluding that Claimant is ineligible for benefits pursuant to Section 402(b) of the Law.⁴

Specifically, Claimant states that the Board erred in not finding that he had a necessitous and compelling reason for filing an appeal late, as he was under medical care and unable to file such appeal. Claimant states that he was "confused" during the hearings, as he was being treated for depression, suicidal thoughts and attempts, which were diagnosed as Agoraphobia, the fear of unfamiliar places and surroundings, and therefore, anything requiring Claimant to leave his home, to attend a hearing, set off attacks of extreme anxiety and consequently delayed him in completing the required paperwork in a timely manner. After being under a doctor's care, Claimant's medical condition improved, along with his awareness to the

³ Our review in this matter is limited to a determination of whether constitutional rights have been violated, errors of law committed, or whether essential findings of fact are supported by substantial evidence. Brady v. Unemployment Compensation Board of Review, 544 A.2d 1085 (Pa. Cmwlth. 1988).

⁴ Claimant does not address Section 402(b) of the Law, nor is it relevant to the present controversy. Thus, we will not address Section 402(b) of the Law.

necessity of filing an appeal, but unfortunately it was outside the timeframe allowed for an appeal.

Pursuant to Section 502 of the Law, all appeals from the decisions of referees “shall be deemed the final decision of the board, unless an appeal is filed therefrom, within fifteen days after the date of such decision....” 43 P.S. §822. This time period of fifteen days in which to file an appeal, is mandatory. If an appeal is not filed within such time period, the determination becomes final and the Board does not have jurisdiction over the matter. Southeastern Pennsylvania Transportation Authority v. Unemployment Compensation Board of Review, 661 A.2d 505 (Pa. Cmwlth. 1995). The requirement that an appeal be filed within fifteen days is jurisdictional, precluding either the Board or a referee from further considering the matter. Darroch v. Unemployment Compensation Board of Review, 627 A.2d 1235 (Pa. Cmwlth. 1993).

In Cook v. Unemployment Compensation Board of Review, 543 Pa. 381, 384-385; 671 A.2d 1130, 1131 (1996), the Supreme Court determined that appeals may not be filed late except where there is fraud, a breakdown in the court’s operations, or “where an appeal is not timely because of non-negligent circumstances, either as they relate to appellant or his counsel, and the appeal is filed within a short time after the appellant or his counsel learns of and has an opportunity to address the untimeliness, and the time period which elapses is of very short duration, and appellee is not prejudiced by the delay, the court may allow an appeal nunc pro tunc.”

Claimant does not contest that he filed the appeal late. He does state that he did so due to an acute anxiety problem. However, the Board

found Claimant's assertions not credible. All credibility determinations are made by the Board. The weight given the evidence is within the discretion of the factfinder. Fitzpatrick v. Unemployment Compensation Board of Review, 616 A.2d 110 (Pa. Cmwlth. 1992). The Board is the ultimate factfinder. Treon v. Unemployment Compensation Board of Review, 499 Pa. 455, 453 A.2d 960 (1982). The Board determined that the doctor's note Claimant submitted, did not support Claimant's testimony. The Board's determination is supported by substantial evidence. We will not alter the Board's credibility determinations.⁵

As the Board did not have jurisdiction to hear Claimant's untimely appeal, we affirm the decision of the Board.

JIM FLAHERTY, Senior Judge

⁵ We further note that although Claimant maintains that anxiety prevented him from filing a timely appeal, during the relevant time period Claimant did in fact file an appeal in another matter. Specifically, Claimant had previously appealed the other matter to the referee on December 8, 2008.

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Board of Review,	:	
	:	
Respondent	:	

ORDER

AND NOW, this 21st day of December, 2009 the order of the Unemployment Compensation Board of Review in the above-captioned matter, is affirmed.

JIM FLAHERTY, Senior Judge