

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Jeremy Balliet, :  
 :  
 Petitioner :  
 :  
 v. : No. 1234 C.D. 2007  
 : Submitted: November 30, 2007  
 Unemployment Compensation Board :  
 of Review, :  
 Respondent :

BEFORE: HONORABLE BERNARD L. McGINLEY, Judge  
HONORABLE ROCHELLE S. FRIEDMAN, Judge  
HONORABLE JIM FLAHERTY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION  
BY JUDGE FRIEDMAN

FILED: January 18, 2008

Jeremy Balliet (Claimant) petitions for review of the May 7, 2007, order of the Unemployment Compensation Board of Review (UCBR), which affirmed a referee's decision to dismiss as untimely Claimant's appeal of a January 4, 2007, determination denying Claimant unemployment compensation (UC) benefits. We affirm.

Claimant was discharged from his employment on December 13, 2006, and, thereafter, Claimant applied for benefits with a local job center. On January 4, 2007, the local job center issued a notice of determination denying Claimant UC benefits and indicating that a copy of this determination was mailed to Claimant at his last known post office address on that same day. (O.R. Item 4.) The local postal authorities did not return the determination to the UC authorities as undeliverable. Pursuant to 501(e) of the Pennsylvania Unemployment

Compensation Law (Law),<sup>1</sup> a claimant has fifteen days from the date a determination is mailed to appeal or the determination is final. Accordingly, the determination included notice to Claimant that his last day to appeal the denial of benefits was January 19, 2007. However, Claimant did not file his appeal until January 24, 2007. Therefore, before taking evidence on the merits, a referee held a hearing to determine the timeliness of Claimant's appeal. (UCBR's Findings of Fact, Nos. 1-5.)

Claimant testified that he first became aware that the job center had issued a determination in his case on January 23, 2007, when an auditor from Benefit Accuracy Measurement Group called Claimant with questions about how his application for benefits had been handled by the Department of Labor and Industry (Department). Claimant stated that he then called the Department on January 23, 2007, and told them that he did not receive the January 4, 2007, determination, and he faxed his appeal to the UCBR on January 24, 2007. Claimant acknowledged that there were no problems with his mail service during this time. Claimant also offered into evidence a Department envelope, post-marked January 24, 2007, that contained the notice of determination Claimant received on January 25, 2007. (N.T. at 4-6.) The record included Claimant's claim record, which reflected that the Department mailed a *copy* of the determination to Claimant on January 23, 2007.

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<sup>1</sup> Act of December 5, 1936, Second Ex. Sess. P.L. (1937) 2897, *as amended*, 43 P.S. §821(e).

Noting that the notice of determination itself indicated that it was sent on January 4, 2007, and that Claimant testified that he did not have problems with his mail delivery, the referee determined that he lacked jurisdiction to rule on the merits of Claimant's appeal because the appeal was filed after the statutory appeal period had lapsed. Claimant appealed to the UCBR, asserting that due to a breakdown in the administrative system, he did not receive the January 4, 2007, determination until after the appeal period expired, and, therefore, he could not file a timely appeal.

Rejecting Claimant's evidence as not credible, the UCBR found that Claimant was not misinformed or misled by UC authorities about his right to appeal, and that Claimant's late appeal was not caused by fraud, a breakdown in the administrative process, or non-negligent conduct.<sup>2</sup> Accordingly, the UCBR concluded that it, and the referee, lacked jurisdiction over Claimant's untimely appeal.<sup>3</sup> Claimant now appeals to this court.

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<sup>2</sup> A *nunc pro tunc* appeal may be allowed where extraordinary circumstances involving fraud, some breakdown in the administrative process or non-negligent circumstances caused the delay. *Cook v. Unemployment Compensation Board of Review*, 543 Pa. 381, 671 A.2d 1130 (1996).

<sup>3</sup> If an appeal is not filed within fifteen days of the determination's *mailing date*, the UCBR and its referees do not have jurisdiction to rule on the merits of the case. *Renda v. Unemployment Compensation Board of Review*, 837 A.2d 685 (Pa. Cmwlth. 2003), *appeal denied*, 581 Pa. 686, 863 A.2d 1151 (2004). The statutory time limit for filing an appeal is mandatory in the absence of fraud or manifestly wrong or negligent conduct of the administrative authorities, and the claimant bears a heavy burden to justify an untimely appeal. *Blast Intermediate Unit #17 v. Unemployment Compensation Board of Review*, 645 A.2d 447 (Pa. Cmwlth. 1994).

Claimant repeats his argument that he provided substantial evidence proving that he did not receive the January 4, 2007, determination until it was too late to file a timely appeal. We reject this argument.<sup>4</sup>

Because knowledge of a decision mailing date is essential when it commences an appeal period, an administrative agency is obligated to indicate it clearly on the decision notice. *Julia Ribaldo Senior Services v. Department of Public Welfare*, 915 A.2d 700 (Pa. Cmwlth. 2007). Thus, when an administrative agency makes service by mail, the date of mailing is required to be listed on the notice of adjudication because that date is deemed to be the date of entry of the order and the date from which the time for appeal begins to run. *Id.* Here, the date of mailing, January 4, 2007, was clearly indicated on the notice of determination. There is a presumption that a notice of determination has been timely received if, as here, the unemployment compensation decision bearing notice of the appeal expiration date has been properly endorsed, properly addressed and has not been returned by postal authorities. *Johnson v. Unemployment Compensation Board of Review*, 401 A.2d 4 (Pa. Cmwlth. 1979).

Claimant contends that the UCBR erred in not allowing his untimely appeal because he presented clear and convincing evidence rebutting the presumption that he received timely notice of the January 4, 2007, determination.

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<sup>4</sup> Our scope of review is limited to determining whether constitutional rights were violated, whether the adjudication is in accordance with the law and whether necessary findings of fact are supported by substantial evidence. Section 704 of the Administrative Agency Law, 2 Pa. C.S. §704.

Claimant asserts that his testimony in conjunction with the envelope post-marked January 24, 2007, prove that he did not receive notice of the January 4, 2007, determination until after the appeal period had expired. Consequently, Claimant maintains that there was a breakdown in the administrative system that resulted in his not receiving a notice of his right to appeal until *after* the appeal period had expired, and he should be permitted to file an appeal *nunc pro tunc*. Claimant's argument must fail.

First, we note that the UCBR did not find Claimant's testimony credible. Because credibility determinations are not subject to appellate review, *Peak v. Unemployment Compensation Board of Review*, 509 Pa. 267, 501 A.2d 1383 (1985), Claimant cannot rely on his own testimony to support his position.

Second, Claimant cannot rely on the Department envelope for his claim of untimely notice. As stated, the January 4, 2007, determination clearly indicated that it was mailed on the same day it was issued. The UCBR chose to grant more weight to the January 4, 2007, determination and Claimant's claim record<sup>5</sup> than to Claimant's conflicting evidence. As with credibility determinations, the resolution of evidentiary conflicts is within the sound discretion of the UCBR and is not subject to appellate review. *Peak*.

Accordingly, we affirm.

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ROCHELLE S. FRIEDMAN, Judge

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<sup>5</sup> The claim record indicated that the address on the determination was correct and gave no indication that the determination had been returned as undeliverable by the local postal authorities.

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Unemployment Compensation Board	:	
of Review,	:	
	:	
Respondent	:	

ORDER

AND NOW, this 18th day of January, 2008, the order of the Unemployment Compensation Board of Review, dated May 7, 2007, is hereby affirmed.

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ROCHELLE S. FRIEDMAN, Judge