

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Ashley Leibig, :
Petitioner :
v. :
Unemployment Compensation :
Board of Review, : No. 1283 C.D. 2010
Respondent : Submitted: November 12, 2010

BEFORE: HONORABLE BERNARD L. McGINLEY, Judge
HONORABLE PATRICIA A. McCULLOUGH, Judge
HONORABLE JAMES R. KELLEY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE McGINLEY

FILED: December 22, 2010

Ashley Leibig (Claimant), appearing *pro se*, petitions for review from the order of the Unemployment Compensation Board of Review (Board) which affirmed the decision of the referee that Claimant was ineligible for benefits because her appeal from the service center's determination was untimely filed under Section 501(e) of the Unemployment Compensation Law (Law).¹

The facts, as found by the Board, are as follows:

1. A notice of determination was issued to the claimant on December 11, 2009, denying benefits.
2. A copy of this determination was mailed to the claimant at her last known post office address on the same date.

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

3. The claimant admitted receiving the determination date [sic] December 11, 2009.
4. The notice informed the claimant that December 28, 2009 was the last day on which to file an appeal from this determination.
5. The claimant filed her appeal on March 9, 2010.
6. The claimant was not misinformed or misled by the unemployment compensation authorities concerning her right or the necessity to appeal.
7. The 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 Opinion, May 19, 2010, (Opinion), Findings of Fact Nos. 1-7 at 1;
Reproduced Record (R.R.) at 30a.

The Board determined:

Section 501(e) of the Law provides that a determination shall become final and compensation shall be paid or denied in accordance therewith unless an appeal is filed within fifteen (15) days after the date of said determination. An appeal to the unemployment compensation authorities is timely if it is filed on or before the last day to appeal. In this case, the appeal was filed on March 9, 2010, which was after the expiration of the statutory appeal period.

The claimant alleges that she mailed her appeal on or about December 18, 2009. However, the Board does not find her testimony credible. The claimant failed to offer sufficient credible testimony or evidence that she did, in fact, file a timely appeal. The provisions of this section of the Law are mandatory; the Board and its referees have no jurisdiction to allow an appeal filed after the expiration of the statutory appeal period absent limited

exceptions not relevant herein. Therefore, the referee properly dismissed the claimant's petition for appeal.

Opinion at 2; R.R. at 31a.

Claimant contends that the Board erred when it dismissed her appeal as untimely, that the Board's findings were not supported by substantial evidence, and that the Board erred when it denied her a "day in court" to establish she did not voluntarily quit her job.²

Section 501(e) of the Law, 43 P.S. §821(e), provides that appeals from determinations contained in any notice required to be furnished by the department must be taken "within fifteen calendar days after such notice was delivered . . . or was mailed to . . . [the claimant's] last known post office address."

This Court has repeatedly and consistently held that the statutory time limit for the filing of appeals is mandatory. The appeal period may be extended beyond the statutory limit only where, through acts constituting fraud or its equivalent, the compensation authorities have deprived a claimant of the right to appeal. Shimko v. Unemployment Compensation Board of Review, 422 A.2d 726 (Pa. Cmwlth. 1980).

Our courts also allow in very limited situations, an appeal *nunc pro tunc* where an appeal is not timely because of non-negligent circumstances, either

² This Court's review in an unemployment compensation case is limited to a determination of whether constitutional rights were violated, errors of law were committed, or findings of fact were not supported by substantial evidence. Lee Hospital v. Unemployment Compensation Board of Review, 637 A.2d 695 (Pa. Cmwlth. 1994).

as they relate to a claimant or his counsel, and the appeal is filed within a short time after the claimant 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 the employer is not prejudiced by the delay. UPMC v. Unemployment Compensation Board of Review, 852 A.2d 467 (Pa. Cmwlth. 2004).

Claimant asserts she timely mailed her appeal on December 11, 2009, and then, when informed by officials at the Unemployment Compensation Service Center that the appeal had not been received, she mailed another appeal on December 18, 2009. Notes of Testimony, April 2, 2010, (N.T.) at 2.

The Board specifically did not find Claimant credible and found that the appeal was mailed on March 9, 2010. In unemployment compensation proceedings, the Board is the ultimate fact-finding body empowered to resolve conflicts in evidence, to determine the credibility of witnesses, and to determine the weight to be accorded evidence. Unemployment Compensation Board of Review v. Wright, 347 A.2d 328 (Pa. Cmwlth. 1975). Findings of fact are conclusive upon review provided that the record, taken as a whole, provides substantial evidence to support the findings. Taylor v. Unemployment Compensation Board of Review, 474 Pa. 351, 378 A.2d 829 (1977). This Court determines that the Board did not err when it dismissed her appeal as untimely. Claimant did not receive her “day in court” because she did not timely appeal.

Accordingly, this Court affirms.

BERNARD L. McGINLEY, Judge

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ORDER

AND NOW, this 22nd day of December, 2010, the order of the Unemployment Compensation Board of Review in the above-captioned matter is affirmed.

BERNARD L. McGINLEY, Judge