

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Charles J. Stehli, Jr., :  
Petitioner :  
 :  
v. :  
 :  
Unemployment Compensation :  
Board of Review, : No. 1466 C.D. 2009  
Respondent : Submitted: November 20, 2009

OPINION NOT REPORTED

MEMORANDUM OPINION  
PER CURIAM

FILED: December 18, 2009

Charles J. Stehli, Jr. (Claimant) 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 his appeal from the service center's determination was untimely filed under Section 501(e) of the Unemployment Compensation Law (Law).<sup>1</sup>

The facts, as initially found by the referee and confirmed by the Board, are as follows:

1. The Altoona UC Service Center mailed a Notice of Financial Determination to the claimant's last known mailing address on December 3, 2008, which found the claimant financially ineligible for EUC<sup>[2]</sup> benefits. Said Determination contained appeal instructions, which indicated the last day to file a timely appeal to the Determination was December 18, 2008.

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

<sup>2</sup> EUC is an abbreviation for Emergency Unemployment Compensation.

2. The claimant's Notice of Financial Determination was not returned by postal authorities as being undeliverable.
3. The claimant did not . . . file an appeal on or before December 18, 2008, however, [Claimant] filed an appeal on January 30, 2009.
4. The claimant was not misinformed nor in any way misled with respect to his appeal rights.

Referee's Decision, March 6, 2009, (Decision), Findings of Fact Nos. 1-4.

The referee determined:

In the present case, the competent evidence before the Referee establishes that the Altoona UC Service Center mailed a Notice of Financial Determination to the claimant's last known mailing address, which found the claimant financially ineligible for benefits under Section 403-A(i) of the Pennsylvania Unemployment Compensation Law. The determination contained appeal instructions, which advised the claimant that if the claimant disagreed with the Determination the claimant could appeal and that the last day to do so in a timely manner was December 18, 2008.

The claimant in this matter contended that he did not file an appeal on or before December 18, 2008, because he believed he was advised that he would be unable to appeal the decision because the decisions [sic] represents 'federal law', but in addition contended that he failed to file and [sic] appeal on or before December 18, 2008, as a result of his receipt of the Tier 2 letter, which was mailed sometime in mid January 2009. The Referee rejects the claimant's contention that he was informed he was not permitted to file and [sic] appeal to the Determination because it represented 'federal law', as being incredible, and finds the claimant was specifically advised by the language contained on the document that he had the ability to appeal the decision if he disagreed and the document further specifically advised the claimant of the instructions upon how to file an appeal.

In addition, the Referee finds the claimant also contended that he did not file and [sic] appeal prior to January 30, 2009 because he is a through [sic] person and wanted to make sure his appeal contained all of the proper information. The claimant choose [sic] to submit his appeal in the manner in which he did, and was not required by the UC authorities to do so. The provisions of Section 501(e) of the Law are mandatory, and as the record before the Referee fails to establish that the claimant was misinformed or misled as respect to his appeal rights, or that fraud of [sic] the equivalent of an administrative breakdown permitted the claimant from filing a timely appeal, the Referee has no jurisdiction and must consider the appeal filed by the claimant, and the claimant's appeal is dismissed.

Decision at 2.

Claimant contends that the Board erred when it determined that Claimant did not have good cause for filing an untimely appeal because he was instructed to do so by an employee in the Pennsylvania Unemployment System.<sup>3</sup>

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 ... (claimant's) last known post office address."

This Court has repeatedly and consistently held that the statutory time limit established for the filing of appeals is mandatory. The appeal period may be

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<sup>3</sup> 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. Cmwlt. 1994).

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 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).

Here, it is undisputed that Claimant did not appeal the determination that he was ineligible for Emergency Unemployment Compensation benefits under the Emergency Unemployment Act of 2008<sup>4</sup> and Section 403-A(i) of the Law, 43 P.S. §813.<sup>5</sup>

The sole question before this Court is whether the Board erred when it determined Claimant lacked good cause for filing a late appeal. Claimant testified that he understood the information contained in the notice that he had until December 18, 2008, to appeal but that he was advised by individuals in the

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<sup>4</sup> Title IV of the Supplemental Appropriation Act of 2008, Public Law 110-252, 122 Stat. 2323, Section 4001, 26 U.S.C. §3304.

<sup>5</sup> This Section was added by the Act of February 9, 1971, P.L. 1.

unemployment office “that you can send a later appeal.” Notes of Testimony, February 26, 2009, at 5. Claimant also testified:

The reason it wasn't filed originally is because when I was first told to file it, that I had an opportunity to file an appeal, they basically told me that it would be going against a . . . public law . . . in order to appeal it, and it probably didn't make a lot of sense for me to appeal it. So that's the reason I didn't do it in the beginning.

N.T. at 7.

When asked whether the document misinformed him, Claimant admitted “No.” However, he said he did not file an appeal “because what would be appealing would have been federal law.” N.T. at 11. A notation on the Service Center's records dated December 4, 2008, indicated that Claimant was advised to appeal. N.T. at 14.

The Board adopted the referee's findings and conclusions. Through the referee's decision, the Board rejected Claimant's assertion that he was advised by service center personnel not to file an appeal because he was challenging federal law. 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). This Court will not reweigh the evidence. Claimant failed to establish a justification for his untimely appeal.<sup>6</sup>

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<sup>6</sup> Claimant's delay in filing the appeal from January 14, 2009, when he was told of a possible mistake, to January 30, 2009, is irrelevant as there was no reason Claimant could not appeal by December 18, 2008.

Accordingly, this Court affirms.

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**ORDER**

**PER CURIAM**

AND NOW, this 18<sup>th</sup> day of December, 2009, the order of the Unemployment Compensation Board of Review in the above-captioned matter is affirmed.