

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

George D. Bowman,	:
Petitioner	:
	:
v.	: No. 1589 C.D. 2009
	: Submitted: January 22, 2010
Unemployment Compensation	:
Board of Review,	:
Respondent	:

BEFORE: HONORABLE DAN PELLEGRINI, Judge
HONORABLE JOHNNY J. BUTLER, Judge
HONORABLE JAMES R. KELLEY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE PELLEGRINI

FILED: February 22, 2010

George D. Bowman (Claimant) appeals from an order of the Unemployment Compensation Board of Review (Board) dismissing his appeal because it was not filed within 15 days of the notice of determination that he received from the Department of Labor and Industry (Department) as required under Section 501(e) of the Unemployment Compensation Law (Law).¹ Because his untimely filing was due to his own fault, we affirm the Board's dismissal.

¹ Act of December 5, 1936, Second Ex. Sess. P.L. (1937) 2897, *as amended*, 43 P.S. §821(e). Section 501(e) of the Law provides:

Unless the claimant or last employer or base-year employer of the claimant files an appeal with the board, from the determination contained in any notice required to be furnished by the department
(Footnote continued on next page...)

Claimant was involuntarily separated from his employment, applied for unemployment compensation benefits on February 17, 2008, and began receiving unemployment compensation benefits in the amount of \$467 per week. The Altoona UC Service Center (Service Center) found that Claimant's original weekly benefit rate of \$467 had to be revised to a rate of \$113 per week after determining that he was also receiving a monthly pension of \$1,531 from his employer, and the base year earnings affected his eligibility for or increased the amount of the pension. However, because Claimant did not contribute to the pension and the pension was deductible at 100% of the pro-rated weekly amount, the pro-rated weekly pension amount equaled \$354. As a result, Claimant's weekly benefit rate was reduced to \$113. The Service Center sent him a notice of determination with a mailing date of April 1, 2009, informing him of this reduction in benefits and that he had until April 16, 2009, to timely appeal this notice of determination.

Claimant filed an appeal from that decision reducing his weekly unemployment benefits but did not do so until April 25, 2009. A Referee held a hearing on whether the appeal was timely at which Claimant testified that he filed the appeal as soon as he received the notification of determination and any delay in

(continued...)

under section five hundred and one (a), (c) and (d), within fifteen calendar days after such notice was delivered to him personally, or was mailed to his last known post office address, and applies for a hearing, such determination of the department, with respect to the particular facts set forth in such notice, shall be final and compensation shall be paid or denied in accordance therewith.

his receiving it had to be due to a delay by the postal delivery service. The Referee issued a decision on May 21, 2009, dismissing Claimant's appeal, finding that the notice of determination was mailed to Claimant's last known post office address on April 1, 2009; the notice of determination informed Claimant that he had 15 days from the date of the notice of determination in which to file an appeal if he disagreed with the determination; the last day on which he could file an appeal was April 16, 2009; and Claimant did not file an appeal until April 25, 2009, which was not within the requisite 15 days under Section 501(e) of the Law. Claimant appealed the Referee's decision to the Board, which affirmed.² This *pro se* appeal by Claimant followed.³

Claimant's sole argument is that the late filing was not his fault because he only received the notice of determination on April 22, 2009, six days after the filing deadline. He claims he does not know why the notice of determination from the Service Center, which he does not dispute was mailed on April 1, 2009, was not received by him in a timely fashion, but he argues that when the Service Center sends out time-sensitive mailings, they should be sent by registered mail or with some delivery confirmation with a date so this situation does not arise.

² We note that the Board incorrectly states in its first finding of fact that the notice of determination was issued to Claimant on **May 21, 2009**, reducing his benefits. May 21, 2009, was actually the date of the Referee's decision and April 1, 2009, was the mailing date of the notice of determination.

³ Our scope of review of the Board's decision and order is limited to determining whether the Board committed an error of law, whether constitutional rights were violated, or whether necessary findings of fact were supported by substantial evidence. *Hessour v. Unemployment Compensation Board of Review*, 942 A.2d 194 (Pa. Cmwlth. 2008).

The notice of determination had a mailing date of April 1, 2009. An appeal had to be taken within 15 days or by April 16, 2009, to be timely filed. An appeal was not filed by Claimant until April 25, 2009. Claimant is not contending that the notice of determination was not timely mailed by the Service Center or that it was mailed to an incorrect address, but only that it was not timely received by him at his correct address. Essentially, Claimant is arguing that the burden of proof should be on the Service Center to prove that he received the notice of determination.

In *Gaskins v. Unemployment Compensation Board of Review*, 429 A.2d 138 (Pa. Cmwlth. 1981), the claimant did not file a timely appeal alleging that the notice of determination was handed to him at his home by a stranger who said it had been delivered to the wrong address even though it was correctly addressed. The Referee and Board both found the appeal untimely and the provisions of the Law concerning a timely appeal mandatory. On appeal to this Court, we affirmed holding:

If there is evidence in the record that the determination of the Bureau was mailed to the claimant's last known address, and that the notice was not returned to the Bureau by the postal officials as undeliverable, then there is a presumption of the regularity of administrative acts of public officials which the referee may invoke in reaching a determination that the claimant did have proper notice....Furthermore, the credibility of the claimant's testimony on the subject, and the weight to be given the evidence presented are matters to be decided by the Board.

429 A.2d at 140. The claimant in *Gaskins* also argued that the burden of proving delivery of the notice of determination should be on the party asserting it, i.e., the Service Center, but we stated, “We note here that the Bureau is not asserting delivery; evidence of mailing vests the Bureau with the presumption of delivery which claimant must attempt to rebut.” *Id.* at 141.

In this case, the Referee noted for the record that he presumed the notice of determination was delivered because it was mailed to Claimant’s last known address of 17 Johns Street in Johnstown, Pennsylvania, 15901, and that it was not returned and marked as undeliverable by the United States Postal Service. When the Referee asked Claimant why he did not timely file the appeal from the notice of determination, his response was as follows:

R: Okay. But the envelope that that appeal came in looks like [sic] has a Pittsburgh postal cancellation dated April 25, 2009. So do you know why you waited for a while before you filed an appeal?

C: Apparently, there is postal delay from me receiving it. ‘Cause I appealed – they may have mailed it at that time frame, but – but apparently I didn’t receive it.

R: But is your Post Office Box 142 in Belasano?

C: Correct. That’s the only – that’s the only thing that I can figure as to why there’s a delay in the time frame from they mailed – when they mailed theirs and when I mailed mine is the fact of delay in the postal delivery to my home.

R: So you think the mail from Altoona takes 24 days for you to get your mail?

C: No. I don’t –I’m not saying it takes 24 days.

* * *

R: Anything else in regards to your efforts to file an appeal on or before April 16th you're just stating that as far as you can recall for some reason you believe you got it sometime around April 25th and not close to April 1st?

C: Yes. It was – it was – it had to been a delay in postal delivery. That's the only thing I can think of.

R: And you received those UC benefits that they stopped for you? \$5664? You received those unemployment benefits?

C: Oh, yes.

(May 18, 2009 Hearing, Notes of Testimony at 5, 7.) Because the notice of determination had been timely mailed to Claimant by the Service Center and not returned as undeliverable, that Claimant did not timely file an appeal as was his burden to do so, and the evidence of record supports the Referee's determination, especially in light of the fact that Claimant admitted that he received all of his unemployment compensation checks, Claimant's argument is without merit.

Accordingly, the order of the Board is affirmed.

DAN PELLEGRINI, JUDGE

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ORDER

AND NOW, this 22nd day of February, 2010, the order of the Unemployment Compensation Board of Review, dated July 10, 2009, at B-485753, is affirmed.

DAN PELLEGRINI, JUDGE