

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Andrea M. Ingram, :
Petitioner :
 :
v. : No. 1819 C.D. 2007
 : Submitted: March 14, 2008
Unemployment Compensation Board of :
Review, :
Respondent :

BEFORE: HONORABLE DORIS A. SMITH-RIBNER, Judge
HONORABLE ROBERT SIMPSON, Judge
HONORABLE JIM FLAHERTY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE SMITH-RIBNER

FILED: June 4, 2008

Andrea M. Ingram (Claimant) petitions *pro se* for review of the order of the Unemployment Compensation Board of Review that affirmed the referee's decision dismissing Claimant's appeal as untimely filed under Section 501(e) of the Unemployment Compensation Law (Law), Act of December 5, 1936, Second Ex. Sess., P.L. (1937) 2897, *as amended*, 43 P.S. §821(e).¹ Claimant states the

¹Section 501(e) provides that:

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 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.

question before the Court as "[w]hether the Board failed to give proper effect to the absence of evidence on June 27, 2007 [date of referee's hearing]."

The Philadelphia UC Service Center determined that Claimant was ineligible for benefits under Section 402(b) of the Law, 43 P.S. §802(b) (voluntary quit) because she failed to meet her burden to show a necessitous and compelling reason for quitting her job at American Pants Company of Frankford (Employer) as of April 13, 2007. Claimant appealed, and on June 27, 2007 the referee held a hearing at which Employer appeared but Claimant failed to appear. The referee dismissed Claimant's appeal after determining that her appeal of the Service Center notice of determination was untimely under Section 501(e) of the Law.

The Board affirmed the referee based on the following findings:

1. A Notice of Determination (determination) was issued to the claimant on May 21, 2007, denying benefits.
2. A copy of this determination was mailed to the claimant at her last known post office address on the same date.
3. The determination mailed to the claimant was not returned to the authorities as undeliverable by the postal authorities.
4. The notice informed the claimant that June 5, 2007, was the last day on which to file an appeal from this determination.
5. The claimant filed her appeal by U.S. mail on June 7, 2007.
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.

In affirming dismissal of Claimant's appeal, the Board reasoned as follows:

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 by U.S. mail on June 7, 2007, which was after the expiration of the statutory appeal period. 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.

The Board later denied Claimant's request for reconsideration.²

In her brief, Claimant contends that at the time she appealed the notice of determination she was under mental stress due to an armed robbery that had occurred at her place of employment. Claimant states in her reply brief that she was unaware of the June 5, 2007 deadline to appeal the notice of determination and that she "vaguely" recalled the 15-day time limit mentioned in the notice. The Board counters that it dismissed Claimant's appeal because she filed it two days late and provided no justification for an appeal nunc pro tunc. Also, Claimant merely argued the merits of her case under Section 402(b) of the Law and failed to raise the issue of her non-appearance at the hearing until her appeal to this Court. Therefore, under *Oaster v. Unemployment Compensation Board of Review*, 705 A.2d 507 (Pa. Cmwlth. 1998), the issue is waived.

²The Court's review is limited to determining whether constitutional rights were violated, whether an error of law was committed, whether a practice or procedure of the Board was not followed or whether the findings of fact are supported by substantial evidence in the record. *Glenn v. Unemployment Compensation Board of Review*, 928 A.2d 1169 (Pa. Cmwlth. 2007). The Board is the ultimate fact finder. *Id.*

Under Section 501(e) of the Law, the Service Center's determination is final unless the claimant files an appeal "within fifteen calendar days after such notice was delivered to him [or her] personally, or was mailed to his [or her] last known post office address...." In *Lin v. Unemployment Compensation Board of Review*, 558 Pa. 94, 735 A.2d 697 (1999), the Supreme Court held that the 15-day time limit is mandatory and is subject to strict application. This time requirement is "jurisdictional, precluding either the Board or a referee from further considering the matter." *Gannett Satellite Info. Network, Inc. v. Unemployment Compensation Board of Review*, 661 A.2d 502, 504 (Pa. Cmwlth. 1995).

To justify an appeal nunc pro tunc, a claimant must establish fraud or some breakdown in the administrative process. See *Stana v. Unemployment Compensation Board of Review*, 791 A.2d 1269 (Pa. Cmwlth. 2002). Additionally, the Court stated in *Stana* that negligence on the part of an administrative official may be deemed the equivalent of fraud when determining whether an appeal nunc pro tunc is warranted.

In the instant matter the Board found that the notice of determination was issued to Claimant on May 21, 2007 informing her of a June 5, 2007 deadline to appeal. The notice was mailed to Claimant's last known post office address and was not returned as undeliverable to the unemployment compensation authorities. The Board further found that Claimant was not misinformed or misled by the authorities regarding her appeal rights. Moreover, Claimant has not shown fraud, a breakdown in the administrative process or negligence by any administrative official, and accordingly she has failed to provide the requisite justification for the Court to allow her to appeal nunc pro tunc. She therefore is not entitled to a nunc pro tunc appeal.

Because Claimant filed an untimely appeal from the Service Center notice of determination and failed to offer justification for allowing her to proceed in her appeal nunc pro tunc, the Court will not overturn the Board's decision to dismiss Claimant's appeal.³ *Lin; Stana; Gannett Satellite Info. Network*. Because the Board committed no error of law, the Court affirms its order.

DORIS A. SMITH-RIBNER, Judge

³Claimant also attempted to explain in her reply brief that she did not attend the referee's hearing because she did not find the building where the hearing was held until after it was over. Claimant recounts her experience as a victim of an armed robbery at Employer's store on July 14, 2006 and her encounter with a man who threatened to rob Employer's store upon approaching the cashier on April 12, 2007, which led Claimant to quit her job on April 13, 2007. She claims that she is entitled to benefits as a result of both incidents.

The Board asserts that any other issues raised in Claimant's brief have not been preserved because they were not included in the statement of the questions involved pursuant to Pa. R.A.P. 2116. Aside from the procedural defects, the Board correctly notes that Claimant's arguments are not properly before this Court because the merits were not addressed by the referee or the Board. In her appeals to the referee and the Board, Claimant did not respond to the timeliness issue but merely described the robbery incident and the second incident where she was threatened at Employer's store.

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Unemployment Compensation Board of	:	
Review,	:	
	:	
Respondent	:	

ORDER

AND NOW, this 4th day of June, 2008, the Court affirms the order of the Unemployment Compensation Board of Review.

DORIS A. SMITH-RIBNER, Judge