

concluded that under Section 404(d)(2), Claimant's pension from General Motors (Employer) was deductible from his weekly Unemployment Compensation benefits. The Service Center's Determination was mailed on December 11, 2006, and contained thereon an express statement that Claimant's final day to appeal therefrom was December 26, 2006. Claimant does not dispute that he did not appeal the Service Center's Determination within that time frame.

Some eight months later, on August 14, 2007, Claimant filed an appeal of the Service Center's Determination to a Referee. A hearing was held thereafter, at which Claimant appeared, *pro se*, and presented brief testimony. Employer did not appear before the Referee.

The transcript of proceedings² before the Referee establishes that Claimant received the Determination at issue, and was aware of the appeal time limitation set to expire on December 26, 2006. Claimant further testified that another case before the Board, involving a coworker, had been "overturned" on April 7, 2007, thereby rendering the Service Center's Determination in Claimant's case incorrect. Claimant testified that he appealed from the Determination after learning of the Board's action in the other case, at which point, Claimant asserted, he realized that the Determination in his case was incorrect. Claimant presented the argument that the Service Center's incorrect ruling constituted a breakdown in

Law for a claimant's receipt of a pension under a plan maintained or contributed to by his employer.

² See Original Record (O.R.) at Item 7.

the administrative process justifying the grant of an appeal *nunc pro tunc* in his case, excusing his untimely appeal.

By Decision and Order mailed September 11, 2007, the Referee dismissed Claimant's appeal as untimely pursuant to Section 501(e) of the Law, which states:

Determination of compensation appeals

* * *

(e) 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.

43 P.S. §821(e). Additionally, the Referee expressly found that Claimant had not been misinformed or misled regarding his right to appeal. O.R. at Item 8.

Claimant appealed the Referee's Decision and Order to the Board, which affirmed without making any independent findings of fact or conclusions of law. The Board concluded:

[T]he determination made by the Referee is proper under the Unemployment Compensation Law as interpreted by the appellate courts. The Board notes that a Board decision ruling the pension of another claimant who worked for the same employer to be non-deductible does not constitute good cause for a late appeal of the Department's determination in the claimant's earlier case.

O.R. at Item 10. Claimant now appeals from the Board's order dated October 29, 2007.

This Court's scope of review is limited to determining whether constitutional rights were violated, an error of law was committed, or necessary findings of fact are not supported by substantial evidence. Section 704 of the Administrative Agency Law, 2 Pa.C.S. §704; Kirkwood v. Unemployment Compensation Board of Review, 525 A.2d 841 (Pa. Cmwlth. 1987).

Claimant first argues that the Board erred in denying his appeal on grounds of untimeliness. The crux of Claimant's argument on this issue is that the Service Center errantly denied Claimant benefits in its inclusion of Claimant's pension benefits into its calculations. Claimant cites to a subsequent decision of the Board dated April 11, 2007, involving another of Employer's workers. In that subsequent Board decision, Claimant argues, the Board reversed a Referee and granted that claimant benefits under the Law in a case in which the claimant worked for the same Employer, and presented the same pension deduction issue as that advanced by Claimant in his case. Claimant argues that once he became aware of the subsequent Board decision, and thereby became aware of the Service Center's alleged error, he immediately filed his appeal. Claimant argues that the Service Center's error in deciding his case, in light of the Board's subsequent ruling under the allegedly similar facts, should be equated to a breakdown in the judicial system entitling Claimant to an appeal *nunc pro tunc*. We disagree.

It is well established in our precedents that the appeal provisions of the Law are mandatory, and that therefore a failure to file an appeal within fifteen

days, without an adequate excuse for the late filing, mandates dismissal of the appeal. U.S. Postal Service v. Unemployment Compensation Board of Review, 620 A.2d 572 (Pa. Cmwlth. 1993). The burden upon a claimant to establish the right to an appeal *nunc pro tunc* is very heavy, and will only result from a showing of fraud or breakdown in the administrative process. Id. There is no authority in our precedents for equating a legal error by an administrative body with a breakdown in the administrative process, and we cannot accept Claimant's invitation to find such an equation here. To so hold would, essentially, completely eviscerate the timeliness provisions of the Law, and potentially allow an untimely appeal from any order in which a party could reasonably assert an error of law, resulting in an unworkable appeal system and an overriding of the express and clear timeliness provisions of the Law as embodied in Section 501(e). Indeed, the correction of errors of law in administrative decisions is precisely what the appeal process, if undertaken in a timely fashion, is designed to address. It is axiomatic that the *timely* address of such appeals is critical to the efficient, orderly, and just administration of our appellate process.

We are sympathetic to Claimant's implied argument herein that, as a *pro se* litigant, he was simply unaware of the alleged legal error in the Service Center's Determination until he became aware of the Board's later decision addressing similar facts. We are, also, sympathetic to the plight of *pro se* litigants in general, and especially to those representing themselves in matters involving unemployment benefits. However, it has long been recognized by our Supreme Court, and by this Court, that "any layperson choosing to represent himself in a

legal proceeding must, to some reasonable extent, assume the risk that his lack of expertise and legal training will prove his undoing.” Shaffer v. Unemployment Compensation Board of Review, 928 A.2d 391, 392 (Pa. Cmwlth. 2007) (quoting Vann v. Unemployment Compensation Board of Review, 508 Pa. 139, 148, 494 A.2d 1081, 1086 (1985)). As such, Claimant's argument on this issue must fail.

Next, Claimant argues that his equal protection rights under the United States and Pennsylvania Constitutions³ were violated when an award of benefits was denied to Claimant, but made to the allegedly similarly situated claimant in the subsequent decision of the Board. Claimant argues that he was not treated equally to the claimant granted benefits under the Board’s subsequent decision, in that he was not allowed to proceed with his appeal *nunc pro tunc* to remedy the Service Center’s Determination. We disagree.

First, we note that Claimant is not similarly situated to the claimant in the case subsequently addressed by the Board, which address ultimately resulted in a grant of benefits under the Law. Although the record of that subsequent matter is not before this Court, the subsequent claimant can be reasonably presumed⁴ to have pursued his right to appeal in a timely fashion, unlike Claimant in the matter *sub*

³ The Equal Protection Clause of the 14th Amendment to the United States Constitution provides that no state shall deny to any person within its jurisdiction the equal protection of the laws. Article I, Section 26 of the Pennsylvania Constitution provides:

Neither the Commonwealth nor any political subdivision thereof shall deny to any person the enjoyment of any civil right, nor discriminate against any person in the exercise of any civil right.

⁴ Claimant does not argue to this Court that the subsequent claimant’s appeal, in any
(Continued...)

judice. Further, the statutory appeal scheme under the Law expressly afforded Claimant herein with the right to appeal the Service Center's Determination in a timely manner; the fact that Claimant chose not to so pursue a timely appeal will not be viewed as a disallowance to proceed with his case, as characterized by Claimant.⁵ That choice was made by Claimant, and it was that choice not to proceed – and not any unequal treatment – that resulted in Claimant foregoing his right to challenge the correctness of the Service Center's Determination within the time limit mandated by the Law. Claimant was not denied his right to timely address the Service Center's Determination.

Accordingly, we affirm.

JAMES R. KELLEY, Senior Judge

stage of his proceedings, was untimely.

⁵ This Court has consistently held that no allowance for untimely appeals under the Law will be made if the claimant had control over the circumstances which resulted in a late appeal. Accord Guat Gnoh Ho v. Unemployment Compensation Board of Review, 525 A.2d 874 (Pa. Cmwlth. 1987).

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Patrick J. Reddington,	:	
	:	
Petitioner	:	
	:	
v.	:	No. 2330 C.D. 2007
	:	
Unemployment Compensation	:	
Board of Review,	:	
	:	
Respondent	:	

ORDER

AND NOW, this 25th day of July, 2008, the order of the Unemployment Compensation Board of Review, dated October 29, 2007, at B-466876, is affirmed.

JAMES R. KELLEY, Senior Judge