



2. A Copy of this determination was mailed to the claimant's last known post office address on the above date.

3. The Notice of Determination was not returned by the postal authorities as being undeliverable.

4. The Notice of Determination informed the claimant that there were fifteen (15) days from the date of that determination in which to file an appeal if the claimant disagreed with the determination. The last day on which a valid appeal could be filed from that determination was November 21, 2011.

5. The claimant did not file an appeal on or before November 21, 2011, but waited until November 23, 2011.

6. The claimant was not misinformed nor in any way misled regarding the right of appeal or the need to appeal.

Referee's Decision, December 28, 2011, Findings of Fact Nos. 1-6 at 1.

The referee dismissed Claimant's appeal as untimely. The Board affirmed.

Claimant contends<sup>2</sup> that he timely filed his appeal in accordance with Section 501(e) of the Law, 43 P.S. §821(e).

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

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<sup>2</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. Cmwlth. 1994).

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 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 Health Systems v. Unemployment Compensation Board of Review, 852 A.2d 467 (Pa. Cmwlth. 2004).

In the case of an appeal mailed to the Service Center, the Board's regulation, 34 Pa.Code §101.82(b)(1)(i), provides in pertinent part:

(b) A party may file a written appeal by any of the following methods:

(1) *United States mail*. The filing date will be determined as follows:

(i) The date of the official United States Postal Service postmark on the envelope containing the appeal, a United States Postal Service Form 3817 (Certificate of

Mailing) or a United States Postal Service certified mail receipt.

Here, Claimant asserts that he placed his appeal in his mailbox within the fifteen day time limit. At hearing before the referee, Claimant testified, “I received Notice . . . and decided to go ahead and put in the appeal.” Notes of Testimony, December 28, 2011, (N.T.) at 3. When the referee informed him that the date the appeal was postmarked was November 23, 2011, Claimant responded, “I’m not sure what those dates are to be honest with you.” N.T. at 4.

On November 4, 2011, the Unemployment Compensation Service Center issued the determination that denied Claimant benefits. Under Section 501(e), Claimant was required to appeal within fifteen days. The Board found that Claimant’s appeal bore a postmark of November 23, 2011. A review of the record supports that finding. Claimant failed to timely appeal the determination. Claimant does not assert any basis for a nunc pro tunc appeal.

Accordingly, this Court affirms.

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BERNARD L. McGINLEY, Judge

