

failed to prove cause of a necessitous and compelling nature for leaving his employment. For the reasons that follow, we affirm the Board.

After voluntarily leaving his employment,² Claimant applied for unemployment compensation benefits with the Philadelphia UC Service Center, which granted benefits pursuant to Section 402(b) of the Law. Employer appealed, and a hearing was held before a Referee at which neither party appeared. The Referee denied benefits because Claimant failed to provide testimony or other documentary evidence which would support a finding that he had necessitous and compelling reasons for leaving his job.³ Claimant then appealed to the Board, arguing that he expected the hearing notice to be emailed to him and, therefore, neglected to open the envelope he received in the mail containing the hearing notice. The Board affirmed the Referee's denial of benefits, explaining that Claimant had the burden of proving cause of a necessitous and compelling nature for leaving his employment, but failed to meet that burden by not appearing at the Referee's hearing or submitting any evidence; and that Claimant failed to prove

² Although the Board did not set forth a specific finding of fact that Claimant voluntarily left his employment, its presence in the Discussion section of the Board's Opinion is "sufficient to permit appellate review." *Monroe v. Unemployment Compensation Board of Review*, 535 A.2d 1222, 1223 n.1 (Pa. Cmwlth. 1988).

³ The Referee also noted that in Claimant's initial claim filing, he indicated that he quit his job "rather than accept a demotion to a [much] lower grade position" as well as for personal reasons. (January 26, 2012 Referee's Decision at 1). The Referee found that statement "supports the employer's allegation that work was available, but was declined by the Claimant." *Id.*

good cause for his nonappearance at the Referee's hearing. This appeal by Claimant followed.⁴

On appeal, Claimant raises a number of arguments, but the ultimate issue for this Court to consider is whether the Board erred in determining that Claimant failed to prove good cause for his nonappearance at the Referee's hearing.

The Department of Labor and Industry's (Department) regulations address requests for reopening the record where a party does not attend a scheduled hearing:

If a party who did not attend a scheduled hearing subsequently gives written notice, which is received by the tribunal prior to the release of a decision, and it is determined by the tribunal that his failure to attend the hearing was for reasons which constitute "proper cause," the case shall be reopened. Requests for reopening, whether made to the referee or Board, shall be in writing; [and] shall give reasons believed to constitute "proper cause" for not appearing[.]

34 Pa. Code §101.24(a). "If a party fails to appear at a scheduled hearing, that party must show good cause for that failure before the Board will delay the final disposition of the case by remanding for additional hearings. Were it otherwise,

⁴ Our review is limited to determining whether the Board's decision is in violation of constitutional rights, whether an error of law has been committed, or whether the factual findings are supported by substantial evidence. *Philadelphia Housing Authority v. Unemployment Compensation Board of Review*, 29 A.3d 99, 101 n.2 (Pa. Cmwlth. 2011).

there would be no incentive to appear at the initial hearing.” *McNeill v. Unemployment Compensation Board of Review*, 510 Pa. 574, 579, 511 A.2d 167, 169 (1986). The decision to grant or deny a request to reopen a hearing is within the Board’s discretion. *Cannady v. Unemployment Compensation Board of Review*, 487 A.2d 1028, 1030 (Pa. Cmwlth. 1985).

We have repeatedly held that a party’s own negligence is not sufficient “good cause” as a matter of law for failing to appear at a Referee’s hearing. See *Eat ‘N Park Hospitality Group, Inc. v. Unemployment Compensation Board of Review*, 970 A.2d 492 (Pa. Cmwlth. 2008) (employer’s witness did not show good cause for failing to testify by telephone at Referee’s hearing where his testimony amounted to an admission that employer’s telephone directions to the Referee were inaccurate); *Kelly v. Unemployment Compensation Board of Review*, 747 A.2d 436 (Pa. Cmwlth. 2000) (employer did not show good cause for nonappearance at hearing where its personnel director failed to explain why neither she nor person reviewing mail in her absence did not discover hearing notice); *Savage v. Unemployment Compensation Board of Review*, 491 A.2d 947 (Pa. Cmwlth. 1985) (claimant’s misreading date on hearing notice did not constitute good cause for nonappearance at Referee’s hearing).

Here, it is undisputed that Claimant received proper notice of the Referee’s hearing. In his petition for appeal to the Board, Claimant provided the following reason for his nonappearance at the hearing:

The “Notice of Hearing” was delivered to [Claimant] via U.S. Postal Service regular mail whereas other notifications and basic communications from [the

Department] had been by e-mail. Because of this, *claimant regrettably neglected to open the envelope in which the notice came.*

(February 3, 2012 Petition for Appeal; Certified Record at 11) (emphasis added). As can be seen, Claimant's failure to attend the Referee's hearing was purely the result of his own negligence. Therefore, we find no error in the Board's denial of Claimant's request to reopen the hearing.⁵

Accordingly, the order of the Board is affirmed.

DAN PELLEGRINI, President Judge

⁵ In its brief to this Court, the Board also argues that Claimant failed to meet his burden of proof under Section 402(b) of the Law because he failed to submit any evidence proving he had necessitous and compelling reasons to quit his job. Because Claimant submitted no testimony or evidence before the Referee, and we found no error in the Board's denial of Claimant's request to reopen the Referee's hearing, it is self-evident that Claimant did not meet his burden. Claimant, however, contends that he did submit relevant documentary evidence which the Board failed to consider, specifically, a settlement agreement between Claimant and his employer allegedly demonstrating that Claimant was forced to resign. However, as the Board indicates in its brief, that evidence is not a part of the official record, as it was not submitted prior to or at the Referee's hearing, and we cannot consider it.

