

[J-197-1998]
IN THE SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT

TSE TENG LIN,	:	No. 5 E.D. Appeal Docket 1998
	:	
Appellant	:	Appeal from the Order of the
	:	Commonwealth Court, dated August 5,
v.	:	1997, at No. 2682 C.D. 1996, affirming the
	:	Order of the Unemployment
	:	Compensation Board of Review
	:	
UNEMPLOYMENT COMPENSATION	:	
BOARD OF REVIEW,	:	
	:	
Appellee	:	ARGUED: October 20, 1998
	:	
PIOTR FALKOWSKI,	:	No. 7 E.D. Appeal Docket 1998
	:	
Appellant	:	Appeal from the Order of the
	:	Commonwealth Court, dated July 1, 1997,
v.	:	at No. 3219 C.D. 1996, affirming the Order
	:	of the Unemployment Compensation
	:	Board of Review
	:	
UNEMPLOYMENT COMPENSATION	:	
BOARD OF REVIEW,	:	
	:	
Appellee	:	ARGUED: October 20, 1998

DISSENTING OPINION

MR. JUSTICE ZAPPALA

DECIDED: August 17, 1999

I respectfully dissent and would reverse based on this Court's decision in Miller v. Unemployment Compensation Board of Review, 476 A.2d 364 (Pa. 1984).

Miller involved the timeliness of an appeal to the Commonwealth Court from a decision of the Unemployment Compensation Board of Review (Board). In Miller, the final date a petition for review from the Board's order could be filed with the Commonwealth Court was Friday, September 17, 1982. Miller's appeal, however, did not reach the court until Monday, September 20, 1982. Because the appeal did not include a date-stamped U.S. Postal Service Form 3817 certificate of mailing as required by Pa.R.A.P. 1514(a), the Commonwealth Court held that the petition was untimely.

This Court reversed, reasoning:

[T]he "just, speedy and inexpensive determination" of matters before all our courts, trial and appellate, requires the orderly management of dockets and the timely filing of all relevant papers. Provision must also be made for determining when the timeliness requirements have been met. It must be possible to determine the timeliness of a filing from either the face of the document or from the internal records of the court. It would be inefficient and unduly burdensome to require courts to hold evidentiary hearings to determine timeliness. Any such rule would defeat the purpose the timeliness requirements are meant to accomplish.

Those same rules, however, are to be "liberally construed." Pa.R.A.P. 105(a); Pa.R.C.P. 126. We have long refused to give overly technical, restrictive readings to procedural rules, particularly when remedial statutes such as the Unemployment Compensation Act are involved. Unemployment Compensation Board of Review v. Jolliffe, 474 Pa. 584, 379 A.2d 109 (1977); Lattanzio v. Unemployment Compensation Board of Review, 461 Pa. 392, 336 A.2d 595 (1975). Dismissals are particularly disfavored. "The extreme action of dismissal should be imposed by an appellate court sparingly, and clearly would be inappropriate when there has been substantial compliance with the rules and when the moving party has suffered no prejudice." Stout v. Universal Underwriters Insurance Co., 491 Pa. 601, 604, 421 A.2d 1047, 1049 (1980)

476 A.2d at 366-367 (footnote omitted).

We went on to take judicial notice of the hours of operation of the Harrisburg Post Office and found that since the post office was closed on Saturdays and Sundays, the appeal must have been at the post office on or before Friday, September 17, 1982, in order

to be received by the court on Monday, September 20, 1982. We reasoned that since Miller had "substantially complied" with the rules, "the dismissal of his petition, under the facts of [the] case, was improper." Id. at 367.

We further stated:

We do not condone untimeliness. In cases such as this, however, where the record shows clearly and without dispute that a petition for review was timely mailed prior to the 30-day jurisdictional deadline, where counsel for appellant appraises the court of the record in this respect and timeliness can be determined from an examination of the records of the court, a fair and just interpretation of our rules makes a dismissal improper.

We need not have drafted our rules to equate the date of mailing with the date of filing. Nevertheless, our rules do allow filing by mail, and our courts cannot consistently judge a petition as timely by the date of its mailing and at the same time reject that petition when the record is sufficient to show a timely mailing.

Id.

Whereas Miller involved the timeliness of an appeal from a decision of the Board, the instant cases involve appeals to the Board from decisions of referees. The filing deadline for the appeal of Tse Teng Lin to the Board was Thursday, June 27, 1996; the appeal was not received until Friday, June 28, 1996. Similarly, the filing deadline for the appeal of Piotr Falkowski to the Board was Tuesday, August 6, 1996; the appeal was not received until Wednesday, August 7, 1996.

Appellants argue that their cases are directly on point with and controlled by Miller. Appellants contend that in order for their appeals to have arrived by mail one day after the filing deadline, the only logical conclusion is that their appeals had to have been placed in the mail on or prior to the filing deadline. I must agree.

The failure of the majority to apply the reasoning of Miller to the cases at hand, where it is clear that the appeals had been mailed during the relevant statutory appeal

periods, is inconsistent with the principles which are intended to govern the administration of a remedial statutory system such as the Unemployment Compensation Act. Further, it would appear that this is the proverbial distinction without a difference. Unlike the majority, I discern no difference between the standards for adjudicating timeliness applicable to an appeal to the Board from a decision of a referee, and those applicable to an appeal to the Commonwealth Court from a decision of the Board. Given our statement in Miller, that “[w]e have long refused to give overly technical, restrictive readings to procedural rules, particularly when remedial statutes such as the Unemployment Compensation Act are involved,” the majority’s conclusion that our holding in Miller is inapplicable in the context of unemployment compensation is puzzling.¹

Because the record clearly shows without dispute that the appeals of Tse Ting Lin and Piotr Falkowski were timely mailed prior to the jurisdictional deadline, the subsequent dismissal of their appeals was improper under Miller. Accordingly, I dissent and would reverse the orders of the Commonwealth Court.

¹ Moreover, I find equally unpersuasive the majority’s attempt to distinguish Miller on the basis of our recent decision in Sellers v. Workers’ Compensation Appeal Board (HMT Construction Services, Inc.), 713 A.2d 87 (Pa. 1998). Unlike the instant cases where the record clearly shows that the appeals were timely mailed prior to the jurisdictional deadlines, the record in Sellers was insufficient to show that a timely mailing occurred as the appeal in Sellers was received on Wednesday, June 7, 1995, two days past the jurisdictional deadline of Monday, June 5, 1995.