

The issue before this Court in these consolidated appeals is whether an appeal from the denial of unemployment compensation benefits is timely filed if the envelope in which the appeal is mailed bears the mark of a private postage meter rather than a United States postmark and is received by appellee one day after the deadline for the filing of an appeal. Because we agree with the Commonwealth Court that a United States postmark is necessary for a determination of the timeliness of an appeal, we affirm.

The facts of the consolidated cases are virtually identical. Appellant Lin was terminated from his employment as an accountant with Pennsylvania Machine Works, Inc. on May 5, 1996, and thereafter applied for unemployment compensation benefits. On June 12, 1996, the Office of Employment Security (OES) issued a Notice of Determination denying benefits to Lin based on a finding that he was discharged for willful misconduct.¹ Pursuant to the terms of the Notice of Determination, the filing deadline for an appeal was June 27, 1996. The Interstate Claims office did not receive Lin's appeal until June 28, 1996, and the referee dismissed Lin's appeal as untimely. The envelope containing the appeal bore a private postage meter mark dated June 25, 1996. Lin petitioned for review with appellee, and appellee affirmed the decision of the referee.

On June 26, 1996, appellant Falkowski was terminated from his employment with Tube Methods Inc. and applied for unemployment compensation benefits on June 30, 1996. On July 22, 1996, the OES issued a Notice of Determination disapproving Falkowski's claim finding that he was discharged for repeated refusal to perform required work constituting willful misconduct. See footnote 1. The Notice of Determination stated that the last day to file an appeal was August 6, 1996. The Hatboro Job Center received Falkowski's appeal on August 7, 1996, bearing the mark of a private postage meter dated

¹ 43 P.S. § 802(e).

August 5, 1996. After a hearing, the referee dismissed the appeal as untimely. Falkowski appealed to appellee, and appellee affirmed the referee's decision.

The provision governing the timing of the filing of an appeal to the Unemployment Compensation Board of Review, 34 Pa. Code § 101.82(d), provides: "(d) The date of initiation of an appeal delivered by mail, either on the prescribed appeal form or by any form of written communication, shall be determined from the postmark appearing upon the envelope in which the appeal form or written communication was mailed." In both of the instant cases, the Commonwealth Court held that the term postmark in this provision means a United States postmark. Appellants, however, urge on this Court an interpretation of this provision that encompasses the marks of private postage meters within the term postmark.

The Commonwealth Court has consistently held that a private postage meter mark is not the equivalent of a United States postmark. In Vereb v. Unemployment Compensation Board of Review, 676 A.2d 1290 (Pa. Commw. 1996), the Commonwealth Court was faced with facts identical to the instant facts. An appeal was received one day after the deadline for filing, and the transmittal envelope contained a private postage meter mark rather than a United States postmark. The Commonwealth Court stated:

The general requirement for filing a timely appeal from an adverse determination by OES is found in Section 501(e) of the Law, 43 P.S. 821(e), which provides that an appeal must be filed "within fifteen calendar days after such notice was delivered to him personally, or was mailed to his last known post office address." Furthermore, this fifteen-day time limit is mandatory and subject to strict application. If an appeal from a determination of OES is not filed within fifteen days of its mailing, the determination becomes final, and the Board does not have the requisite jurisdiction to consider the matter. Phares v. Unemployment Compensation Board of Review, 85 Pa. Commw. 475, 482 A.2d 1187 (Pa. Cmwlth. 1984); Darroch v. Unemployment Compensation Board of Review, 156 Pa. Commw. 435, 627 A.2d 1235 (Pa. Cmwlth. 1993).

Nevertheless, there is a small exception to the strict fifteen-day filing deadline for appeals which are filed by mail and bear an official United States postmark. Pursuant to Section 101.82(d) of Title 34 of the Pennsylvania Code, 34 Pa. Code § 101.82(d), an appeal will be deemed to be timely filed even if received after this fifteen-day period if the envelope in which the appeal was mailed bears a postmark with a date which falls within the fifteen-day time period mandated by Section 501(e) of the Law.

Id. at 1292-93. Finding that the United States postmark is the most reliable means of determining the precise time of filing, the Commonwealth Court held that the appeal in Vereb was not timely filed.

In Gannett Satellite Information Network, Inc. v. Unemployment Compensation Board of Review, 661 A.2d 502, 504 (Pa. Commw. 1995), again dealing with the conflict between a private postage meter mark and a United States postmark, the Commonwealth Court stated:

We have held several times that a private postage meter mark is not the equivalent of an official U.S. Postal Service mark, and is not determinative of the timeliness of an appeal. E.B.S. v. Unemployment Compensation Board of Review, 150 Pa. Commonwealth Ct. 10, 614 A.2d 332 (1992); see also Williams v. Unemployment Compensation Board of Review, 75 Pa. Commonwealth Ct. 172, 461 A.2d 643 (1984). We have also recently held that the “regulation [34 Pa. Code § 101.82(d)] as drafted does not recognize placing an appeal in the mail as the initiation of the appeal. The regulation recognizes only the postmark date” Edwards v. Unemployment Compensation Board of Review, 162 Pa. Commonwealth Ct. 698, 702, 639 A.2d 1279, 1281 (1994). The U.S. postmark, as opposed to a private meter postmark or testimony concerning the placing of the appeal in the mail box, is virtually unassailable evidence of the time of mailing of an appeal. Accordingly, we hold that when the envelope containing the appeal does not have an official U.S. postmark, it must be deemed filed when received. See also Southeastern Pennsylvania Transportation Authority v. Unemployment Compensation Board of Review, [661 A.2d 505 (Pa. Commw. 1995)].

This Court recently endorsed these Commonwealth Court decisions in Sellers v. Workers' Compensation Appeal Board (HMT Construction Services, Inc.), 552 Pa. 22, 713 A.2d 87 (1998), a case involving the timeliness of an appeal from an adverse decision regarding workers' compensation benefits. There, as in the instant cases, the envelope containing the appeal bore a private postage meter mark rather than a United States postmark and was received after the filing deadline. The Commonwealth Court held that, because the appeal envelope did not contain an official United States postmark, the appeal was untimely. In support of its decision, the Commonwealth Court cited the unemployment compensation cases cited herein. Appellant there argued that the unemployment compensation cases were inapposite because the regulation governing workers' compensation appeals differs from the regulation governing unemployment compensation appeals. This Court affirmed the Commonwealth Court's decision holding that the cases were properly applied by the Commonwealth Court for purposes of comparison and that the regulation governing workers' compensation² appeals also dates the time of filing by a postmark which is interpreted to mean a United States postmark.

We agree with the Commonwealth Court that a United States postmark is the most reliable means of accurately dating the mailing of an appeal in an unemployment compensation case. The date on a private postage meter can be readily changed to any date by the user; therefore it lacks the inherent reliability of the official United States postmark.³ Accordingly we concur with the Commonwealth Court that an appeal in unemployment compensation matters bearing a private postage meter mark should be

² 34 Pa. Code § 111.3 (a), applicable to workers' compensation appeals, provides that service by mail is deemed complete "upon depositing in the mail, postage or charges prepaid, as evidenced by the postmark."

³ There is no suggestion in either of the instant cases that any party altered any private postage meter date.

considered filed when received. Hence, the appeals filed in the instant cases were untimely as the envelopes bore private postage meter marks and were received after the filing deadline.⁴

The decisions of the Commonwealth Court are affirmed.

Mr. Justice Zappala files a dissenting opinion.

⁴ Appellants urge us to apply this Court's holding in Miller v. Unemployment Compensation Board of Review, 505 Pa. 8, 476 A.2d 364 (1984), to find that the appeals were timely filed. We decline to do so for two reasons. First, our more recent holding in Sellers v. Workers' Compensation Appeal Board (HMT Construction Services, Inc.), 555 Pa. 22, 713 A.2d 87 (1998), is more closely analogous as the regulations governing the filing of an appeal to the Board of Review in workers' compensation and unemployment compensation cases are similarly worded, both specifically referring to a postmark. Second, Miller involves the application of the Rules of Appellate Procedure governing appeals to the Commonwealth Court rather than the agency appeal involved in the instant matters. Pa.R.A.P. 1514(a) dates the filing of an appeal transmitted by mail by the date on a U.S. Postal Service Form 3817 certificate of mailing. Such a certificate of mailing can only be obtained during hours when the post office is open for business and is distinct and separate from a U.S. postmark. A postmark, on the other hand, can be readily obtained by depositing mail in a postal service mail box or at the post office, even if the post office is not open for business. Thus, Miller and the instant cases are distinguishable because they involve interpretations of different rules governing appeals to appellate courts and agency appeals. Further, this Court in Miller went to considerable lengths to find that the appeal there was timely filed. To impose the burden of going through these machinations on the Unemployment Compensation Board of Review would thwart the purpose of the unemployment compensation scheme – the speedy payment of benefits where benefits are warranted.