

IN THE UTAH COURT OF APPEALS

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Priscila E. Ayuso,	)	MEMORANDUM DECISION
	)	(Not For Official Publication)
Petitioner,	)	
	)	Case No. 20090229-CA
v.	)	
	)	F I L E D
Department of Workforce	)	(September 24, 2009)
Services,	)	
	)	2009 UT App 274
Respondent.	)	

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Original Proceeding in this Court

Attorneys: Priscila E. Ayuso, Salt Lake City, Petitioner Pro Se  
Geoffrey T. Landward, Salt Lake City, for Respondent

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Before Judges Bench, Orme, and McHugh.

PER CURIAM:

Priscila E. Ayuso appeals the determination of the Workforce Appeal Board (the Board) that it lacked jurisdiction to consider her untimely appeal. We affirm.

A claimant who has been denied unemployment benefits may file an appeal with the Division of Adjudication within ten days of the original determination. See Utah Code Ann. § 35A-4-406(3)(a) (2005). If the claimant does not file an appeal within the prescribed time, the claimant must demonstrate good cause for filing the late appeal. See Autoliv ASP, Inc. v. Workforce Appeals Bd., 2000 UT App 223, ¶ 12, 8 P.3d 1033.

Good cause is limited to circumstances where: (1) the appellant received the decision after the expiration of time for filing the appeal, the appeal was filed within ten days of actual receipt of the decision and the delay was not the result of willful neglect; (2) the delay in filing the appeal was due to circumstances beyond the appellant's control; or (3) the appellant delayed filing the appeal for circumstances which were compelling and reasonable. See id. If the appellant does not demonstrate good cause for his or her late filing, the administrative law judge does not have jurisdiction to hear the appeal. See id.

On August 5, 2008, the Department of Workforce Services (Department) denied Ayuso's claim for unemployment insurance benefits finding that she had committed fraud by failing to disclose her work and earnings to the Department. The decision advised Ayuso that any appeal must be received or postmarked by August 20, 2008. Ayuso did not appeal the Department's decision until November 24, 2008. Thus, the only issue properly before this court is whether Ayuso demonstrated good cause for filing an untimely appeal.

Ayuso concedes that the Department's decision was timely mailed to her but that she did not pay attention to it because she was caring for her father who was recovering from surgery. Ayuso's appeal was filed three months late. The Board "[did] not find credible that in four months [Ayuso] could not have taken the few moments necessary to file an appeal." The Board also concluded that Ayuso made a conscious choice to ignore her mail and in doing so, missed the appeal deadline. Furthermore, Ayuso "could have taken the time necessary to address her personal affairs and still cared for her father." The Board ultimately concluded that there was nothing in the record demonstrating good cause for filing an untimely appeal.

On appeal to this court, Ayuso again asserts that she did not timely file her appeal because she was caring for her father. The record supports the Board's determination that Ayuso did not demonstrate good cause excusing her untimely appeal, and that there were no circumstances beyond her control which prevented her from doing so. The record also supports the determination that Ayuso did not delay filing her appeal for circumstances that were compelling and reasonable.

Affirmed.

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Russell W. Bench, Judge

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Gregory K. Orme, Judge

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Carolyn B. McHugh, Judge