

IN THE UTAH COURT OF APPEALS

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Tiffany Carver,	)	MEMORANDUM DECISION	
	)	(Not For Official Publication)	
Petitioner,	)		
	)	Case No. 20100776-CA	
v.	)		
	)	F I L E D	
Department of Workforce	)	(November 12, 2010)	
Services, Workforce Appeals	)		
Board,	)	<table border="1"><tr><td>2010 UT App 320</td></tr></table>	2010 UT App 320
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	)		
Respondent.	)		

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Original Proceeding in this Court

Attorneys: Tiffany N. Carver, West Valley City, Petitioner Pro Se  
Suzan Pixton, Salt Lake City, for Respondent

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Before Judges Davis, McHugh, and Voros.

PER CURIAM:

Tiffany Carver petitions for review of the Workforce Appeals Board's (the Board) decision affirming that her appeal was untimely without good cause. This is before the court on its own motion for summary disposition based on the lack of a substantial question for review.

Carver received notice of the Department of Workforce Services' (the Department) initial decision denying benefits and assessing an overpayment and penalty amount in August 2009. The notice specified that any appeal must be received by the Department by September 14, 2009. Carver filed an appeal in July 2010, well beyond the time to appeal. An Administrative Law Judge (ALJ) held a hearing and determined that Carver had not established good cause for her late appeal. Accordingly, the Department had no jurisdiction to consider her appeal on the merits. The Board affirmed the ALJ's decision. Carver timely petitioned for review by this court.

The only issue before this court is whether the Board erred in affirming that Carver did not establish good cause for her

untimely appeal.<sup>1</sup> Under Department rules, an untimely filed appeal may be considered if good cause is shown for the delay in filing. See Utah Admin. Code R994-508-104. Good cause may be shown where

- (1) the appellant received the decision after the expiration of the time limit 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.

Id.

At the hearing, Carver acknowledged that she knowingly obtained benefits to which she was not entitled. She decided to try to pay the money back rather than appeal. Consequently, she intentionally did not appeal within the applicable time period. Her later change of mind does not constitute good cause under the rule. Because she did not establish good cause for the delay in filing, the Board did not err in affirming the ALJ's decision finding that the Department lacked jurisdiction to consider the appeal.

Affirmed.

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James Z. Davis,  
Presiding Judge

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Carolyn B. McHugh,  
Associate Presiding Judge

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J. Frederic Voros Jr., Judge

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<sup>1</sup>It is clear from Carver's response to this court's motion that she is not seeking relief from the underlying decision, but from the amount of garnishment. The amount of the garnishment, however, is not within this court's jurisdiction in this posture.