

IN THE UTAH COURT OF APPEALS

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Douglas Cheney,)	MEMORANDUM DECISION
)	(Not For Official Publication)
Petitioner,)	
)	Case No. 20081005-CA
v.)	
)	F I L E D
Department of Workforce)	(February 26, 2009)
Services,)	
)	2009 UT App 56
Respondent.)	

Original Proceeding in this Court

Attorneys: Douglas Cheney, Syracuse, Petitioner Pro Se
 Geoffrey T. Landward, Salt Lake City, for Respondent

Before Judges Greenwood, Thorne, and Orme.

PER CURIAM:

Petitioner Douglas Cheney seeks judicial review of the decision of the Workforce Appeals Board (the Board) denying unemployment insurance benefits. The only issue before us is whether the Board erred in determining that Cheney's appeal of the decision of the Department of Workforce Services (the Department) denying benefits was untimely without good cause.

The Department's decision denying benefits was dated and mailed on August 15, 2008. The decision advised Cheney that he could file a written appeal with the Appeals Section, but it "must be received or postmarked on or before September 2, 2008." On September 3, 2008, Cheney filed an appeal. The Administrative Law Judge (ALJ) received evidence on both the merits and the untimeliness of the appeal. Cheney admitted receipt of the Department decision denying benefits. However, he stated that he believed he only had to file an appeal if his employer disputed his benefits claim. He also claimed that he talked to a Department employee who told him that he did not need to appeal. However, he admitted that this conversation took place on September 3, 2008, the day after his appeal was due. The ALJ determined that Cheney's appeal was not delayed for good cause. The Board agreed, stating that even if the prior employer was not challenging the benefits claim, Cheney "must still meet the eligibility requirements, including being able and available for

full-time work." The Board found that Cheney "received the decision in the mail, and he had an obligation to note the deadline for appeal and arrange his life as such to file a timely appeal."

Utah Code section 35A-4-406(3)(a) allows a claimant to "file an appeal . . . within ten days after the date of mailing of the notice of determination . . . to the party's last-known address." Utah Code Ann. § 35A-4-406(3)(a) (2005). By administrative rule, a late appeal may be considered "if it is determined that the appeal was delayed for good cause." Utah Admin. Code R994-508-104. Good cause is limited to the circumstances stated in the rule. If a claimant receives the Department decision after the expiration of the appeal time, an appeal may be considered "if the appeal was filed within ten days of actual receipt of the decision and the delay was not the result of willful neglect." See id. Cheney claims for the first time before this court that he filed the appeal within ten days of his receipt of the decision. However, he states he received the decision on August 27, 2008--before the expiration of the appeal time--thus, the exception would not apply. Good cause may be demonstrated where "the delay in filing the appeal was due to circumstances beyond the appellant's control" or "the appellant delayed filing the appeal for circumstances which were compelling and reasonable." Id. The Board correctly determined that Cheney did not demonstrate good cause for the late filing of his appeal.

We reverse an agency's findings of fact "only if the findings are not supported by substantial evidence." Drake v. Industrial Comm'n, 939 P.2d 177, 181 (Utah 1997). We will not disturb the Board's conclusion regarding the application of law to facts unless it "exceeds the bounds of reasonableness and rationality." Nelson v. Department of Employment Sec., 801 P.2d 158, 161 (Utah Ct. App. 1990).

Accordingly, we affirm the Board's determination that Cheney did not demonstrate good cause for the untimely appeal of the Department's decision.

Pamela T. Greenwood,
Presiding Judge

William A. Thorne Jr.,
Associate Presiding Judge

Gregory K. Orme, Judge