

IN THE UTAH COURT OF APPEALS

-----ooOoo-----

Monte Porter,	)	MEMORANDUM DECISION
	)	(Not For Official Publication)
Petitioner,	)	
	)	Case No. 20100225-CA
v.	)	
	)	
Department of Workforce	)	F I L E D
Services,	)	(June 17, 2010)
	)	
Respondent.	)	<span style="border: 1px solid black; padding: 2px;">2010 UT App 164</span>

-----

Original Proceeding in this Court

Attorneys: Monte Porter, Midvale, Petitioner Pro Se  
            Suzan Pixton, Salt Lake City, for Respondent

-----

Before Judges Orme, Thorne, and Voros.

PER CURIAM:

Petitioner Monte Porter seeks judicial review of a decision of the Workforce Appeals Board (the Board) dismissing his untimely appeal from two related decisions of an Administrative Law Judge (the ALJ). This case is before the court on a sua sponte motion for summary disposition.

We must evaluate the Board's decision holding that the appeal of the ALJ's decisions was filed untimely without good cause. 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. See id. If a claimant receives the 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. R994-508-104(1). Good cause may also 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. R994-508-104(2)-(3).

The ALJ issued two decisions, each dated January 13, 2009, on issues pertaining to Porter's benefits claim. One year later, on January 14, 2010, Porter filed an appeal. In two letters dated January 27, 2010, the Board advised Porter that his appeal had been received, noted that the appeal to the Board was filed

late, and requested Porter to "advise [the Board] of any circumstances which may have caused [him] to delay in filing [his] appeal." Although the Board allowed Porter an opportunity to explain the circumstances causing his late filing of an appeal from the ALJ's decisions, he did not do so. The Board found that the ALJ's decision explained the appeal rights by stating, "The following decision will become final unless, within **30 days** from **January 13, 2009**, further written appeal is received by the Workforce Appeals Board . . . ." (Emphasis in original). For an appeal to be timely, it had to be received on or before February 12, 2009. Porter filed his appeal on January 14, 2010. Applying Utah Administrative Code R994-508-104, the Board determined that Porter had not demonstrated good cause for filing an appeal eleven months late. The Board also stated that it found no mistake of fact that would justify exercising continuing jurisdiction despite the late appeal.

For the first time before this court, Porter argues that he did not file a timely appeal because he was receiving financial assistance from family and friends and did not need money at that time. He explains that he filed the appeal later when he did need money. We do not consider this argument because it was not presented to the Board for consideration. See Brown & Root Indus. v. Industrial Comm'n, 947 P.2d 671, 677 (Utah 1997) ("We have consistently held that issues not raised in proceedings before administrative agencies are not subject to judicial review except in exceptional circumstances.").

We will 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). Based upon the foregoing, we affirm as reasonable and rational the Board's decision that Porter's appeal was untimely without good cause. Accordingly, both the Board and this court lack jurisdiction to consider the merits of Porter's appeal of the ALJ's decisions.

---

Gregory K. Orme, Judge

---

William A. Thorne Jr., Judge

---

J. Frederic Voros Jr., Judge