

IN THE UTAH COURT OF APPEALS

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Chris A. Scharbow,)	MEMORANDUM DECISION
)	(Not For Official Publication)
Petitioner,)	
)	Case No. 20061139-CA
v.)	
)	
Department of Workforce)	F I L E D
Services, Workforce Appeals)	(June 1, 2007)
Board,)	
)	2007 UT App 189
Respondent.)	

Original Proceeding in this Court

Attorneys: Chris A. Scharbow, Moab, Petitioner Pro Se
 Geoffrey T. Landward, Salt Lake City, for Respondent

Before Judges Greenwood, Billings, and Davis.

PER CURIAM:

Chris A. Scharbow petitions for judicial review of the decision of the Workforce Appeals Board (the Board), which concluded that Scharbow's appeal of an Administrative Law Judge's (ALJ) decision was untimely filed without good cause. This matter is before the court on the Board's motion for summary disposition.

The ALJ issued its decision on February 6, 2003. The decision advised Scharbow that it would "become final unless, within 30 days from February 6, 2003, further written appeal is made to the [Board]." (Emphasis in original.) On October 5, 2006, well over three years later, Scharbow filed a letter that was construed as an appeal. The Board allowed Scharbow an opportunity to explain the reasons for the delay. In response, Scharbow argued his appeal was untimely due to "lack of education, lack of knowledge in the field, and ignorance of the fact he was entitled to representation." The Board concluded that Scharbow had not shown good cause for filing an untimely appeal.

Utah Administrative Code rule 994-508-104 governs the determination of good cause for late filing of an agency appeal. See Utah Admin. Code R994-508-104. Under this provision, good

cause is limited to specific circumstances not present in this case. For instance, good cause may exist where "the appellant received the decision after the expiration of the time limit for filing the appeal," id. at R994-508-104(1), "the delay in filing the appeal was due to circumstances beyond the appellant's control," id. at R994-508-104(2), or "the appellant delayed filing the appeal for circumstances which were compelling and reasonable," id. at R994-508-104(3).

Here, it is undisputed that Scharbow received the ALJ's decision within the appeal period. Further, Scharbow does not argue the delay in filing his appeal "was due to circumstances beyond [his] control." Id. at R994-508-104(2). Last, Scharbow provides no compelling and reasonable reason for the three year delay. Despite Scharbow's allegations regarding lack of education or knowledge, the notice provided to him by the ALJ specifically advised Scharbow that the decision would become final unless an appeal was filed within thirty days of a date certain. Scharbow has provided no excuse for filing his appeal over three years thereafter.

This court has consistently held that an untimely appeal deprives the agency of jurisdiction. See Autoliv ASP, Inc. v. Workforce Appeals Bd., 2000 UT App 223, ¶18, 8 P.3d 1033 ("Because [Petitioner's] appeal was not timely filed, the agency did not have jurisdiction to consider the issue of fault."). Pursuant to Utah Administrative Code rule 994-508-302, it is clear that Scharbow's appeal was untimely because it was not received by the Board within thirty days of the ALJ's decision. See Utah Admin. Code R994-508-302(1) ("The appeal from a decision of an ALJ must be filed within 30 calendar days from the date the decision was issued by the ALJ."). Scharbow has failed to establish any good cause for filing a late appeal.

Thus, the Board did not err in deciding it lacked jurisdiction to consider the merits of the appeal. Accordingly, we affirm.

Pamela T. Greenwood,
Associate Presiding Judge

Judith M. Billings, Judge

James Z. Davis, Judge