

IN THE UTAH COURT OF APPEALS

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Jeremy Williams,)	MEMORANDUM DECISION	
)	(Not For Official Publication)	
Petitioner,)		
)	Case No. 20050893-CA	
v.)		
)	F I L E D	
Department of Workforce)	(December 22, 2005)	
Services, Workforce Appeals)		
Board,)	<table border="1"><tr><td>2005 UT App 550</td></tr></table>	2005 UT App 550
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)		
Respondent.)		

Original Proceeding in this Court

Attorneys: John D. Sorge, Salt Lake City, for Petitioner
 Michael R. Medley, Salt Lake City, for Respondent

Before Judges Davis, McHugh, and Orme.

PER CURIAM:

Jeremy Williams petitions for judicial review of the decision of the Workforce Appeals Board (the Board), which concluded that his appeal of an Administrative Law Judge's (the 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 and mailed its decision to Williams on June 23, 2005. The decision specifically advised Williams that it would "become final unless, within thirty days from June 23, 2004, further written appeal is made to the Workforce Appeals Board." The Board received the appeal on July 27, 2005, one day beyond the thirty-day limit.¹ The Board allowed Williams the opportunity to explain the reasons for the delay. In response, Williams argued that his appeal was timely because he mailed the

¹Thirty days after June 23, 2005, was July 23, 2005. However, July 23 was a Saturday, and Monday, July 25 was an official State holiday. Accordingly, the thirty-day appeal period ran on Tuesday, July 26, 2005.

appeal on July 23, 2005, which met the Board's deadline.² The Board concluded that Williams had not shown good cause for filing an untimely appeal.

Williams argues that he timely filed his appeal because he mailed the appeal prior to the thirty-day deadline. Utah Administrative Code R994-508-302 provides in relevant part:

(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. This time limit applies regardless of whether the decision of the ALJ was sent through the U.S. Mail or personally delivered to the party. . . . No additional time for mailing is allowed.

(2) In computing the period of time allowed for filing a timely appeal, the date as it appears in the ALJ's decision is not included. The last day of the appeal period is included in the computation unless it is a Saturday, Sunday, or legal holiday when the offices of the Department are closed. If the last day permitted for filing an appeal falls on a Saturday, Sunday, or legal holiday, the time permitted for filing a timely appeal will be extended to the next day when the Department offices are open.

(3) The date of receipt of an appeal to the Board is the date the appeal is actually received by the Board, as shown by the Department's date stamp on the document or other credible evidence such as a written or electronic notation of the date of receipt, and not the post mark date from the post office.

Utah Admin. Code R994-508-302(1)-(3). Thus, contrary to Williams's argument, an appeal is not deemed filed until it is received by the Board. Therefore, Williams's appeal was not timely unless he could prove good cause for the delay. See id. R994-508-104.

²The appeal shows a postmark of July 26, 2005.

Utah Administrative Code R994-508-104 governs the determination of good cause for late filing of an agency appeal. See id. Good cause is limited to circumstances where:

(1) the appellant received the decision after the expiration of the time limit for filing the appeal . . . ; (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.

Williams received the ALJ's decision within the appeal period and it was not beyond his control to timely file his appeal. Moreover, insisting his appeal was actually timely, Williams advances no reason as to why his delay was compelling and reasonable.

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."); Armstrong v. Department of Employment Sec., 834 P.2d 562, 568 (Utah Ct. App. 1992) (concluding the Board did not err in declining to address merits of untimely appeal). Pursuant to Utah Administrative Code R994-508-302, it is clear that Williams'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(3). Further, Williams has failed to establish any good cause for filing a late appeal.

Therefore, the Board did not err in deciding it lacked jurisdiction to consider the merits of the appeal because it was filed late and without good cause. Accordingly, we grant the motion for summary disposition and affirm the Board's decision.

James Z. Davis, Judge

Carolyn B. McHugh, Judge

Gregory K. Orme, Judge