

Note: In the case title, an asterisk () indicates an appellant and a double asterisk (**) indicates a cross-appellant. Decisions of a three-justice panel are not to be considered as precedent before any tribunal.*

ENTRY ORDER

SUPREME COURT DOCKET NO. 2020-286

MAY TERM, 2021

Timothy Buckley* v. Department of Labor	}	APPEALED FROM:
(The Stratton Corporation)	}	
	}	Employment Security Board
	}	
	}	DOCKET NO. 06-20-066-05

In the above-entitled cause, the Clerk will enter:

Claimant appeals the Employment Security Board’s decision adopting the ruling of an administrative law judge (ALJ) that claimant filed an untimely appeal of the claims adjudicator’s denial of his claim for unemployment compensation benefits. We reverse and remand for further proceedings.

On March 11, 2020, claimant filed a claim with the Department of Labor for unemployment compensation benefits. On April 6, 2020, a claims adjudicator denied the claim, concluding that claimant had left his employment voluntarily without good cause attributable to the employer, and was therefore disqualified for benefits. On June 17, 2020, claimant appealed the determination of the claims adjudicator. After a hearing, an ALJ dismissed the appeal as untimely because it was filed more than thirty days after the date of the claims adjudicator’s determination. Claimant appealed to the Employment Security Board, which adopted the ALJ’s ruling after a hearing. This appeal followed.

The unemployment compensation statute provides that a party seeking to appeal the determination of a claims adjudicator must do so “within 30 days after notice thereof.” 21 V.S.A. § 1348(a). “Regardless of the manner of service, appeal periods shall commence to run from the date of the determination or decision rendered.” *Id.* § 1357. We have held that the Board does not have discretion to extend this statutory appeal period. See *Allen v. Vt. Emp’t Sec. Bd.*, 133 Vt. 166, 169 (1975) (stating that “board has no inherent power to extend the statutory appeal period” except for failure to receive notice as specified in 21 V.S.A. § 1357); see also *Trask v. Dep’t of Emp’t & Training*, 170 Vt. 589, 590 (2000) (mem.) (declining “to carve out a fairness-based public policy exception to *Allen*”).

At the hearing before the ALJ, claimant testified that he received the claims adjudicator’s determination shortly after it was issued in early April. On the day he received the determination, he wrote a two-page appeal and mailed it to the Department. He stated that he never heard back from the Department, and when he subsequently managed to reach the Department by phone, he was advised that he had to file the appeal on a printed form and include the last four digits of his Social Security number. The ALJ found that claimant believed he sent his appeal shortly after receiving the determination, then stated, “however, he did not identify himself in the letter.” The

ALJ stated that after the hearing, she went through the appeals received by the Department since early April in which claimants had not identified themselves and did not find anything from claimant. The ALJ concluded that claimant had not filed an appeal until June, rendering it untimely.* On appeal, the Board adopted the ALJ’s findings and conclusion.

We conclude that the decision below must be reversed and the matter remanded for further proceedings because it is not clear from the ALJ’s findings whether the Department in fact received the letter that claimant says he sent in April and declined to accept it on the ground that claimant had not properly identified himself. The record contains a copy of a letter dated March 10, 2020, in which claimant challenged the claims adjudicator’s determination. Claimant told the Board that he wrote the wrong date on the letter but that he had mailed it to the Department on April 10 or shortly thereafter. The copy in the record is date-stamped August 7, 2020, suggesting that the Department first received it on that date. However, the ALJ’s statement that claimant “did not identify himself in the letter” suggests that the Department may have located a document from claimant that was sent earlier than June 17. The Department conceded at oral argument that at the time, it was receiving an unprecedented volume of claims due to the coronavirus pandemic. The Board did not address the apparent inconsistency in the ALJ’s decision. Accordingly, we reverse and remand for the Board to resolve the issue in the first instance. See Rutland Country Club, Inc. v. City of Rutland, 137 Vt. 590, 592 (1979) (reversing judgment that was based on inconsistent findings).

Reversed and remanded for further proceedings consistent with this opinion.

BY THE COURT:

Paul L. Reiber, Chief Justice

Beth Robinson, Associate Justice

William D. Cohen, Associate Justice

* The record indicates that claimant’s appeal was received on June 17, 2020, not June 25, 2020, as the ALJ stated in her decision. However, if this is the first appeal letter the Department received, this discrepancy would not alter the outcome, because June 17 was still more than thirty days after the date of the determination being appealed.