



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

DECEMBER TERM, 2021

Colin Daniels* v. Department of Labor	}	APPEALED FROM:
(Berlin City's VT Remarketed Autos Inc.)	}	
	}	Employment Security Board
	}	CASE NO. 08-20-133-01

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

Claimant appeals the Employment Security Board's dismissal as untimely of his appeal from a decision of an administrative law judge (ALJ) finding claimant ineligible for unemployment compensation benefits. We affirm.

The record indicates that claimant left his employment in January 2020. He applied for and received unemployment compensation benefits from March to July 2020. He also received federal additional compensation benefits during this period. In July 2020, a claims adjudicator determined that claimant left his job voluntarily without good cause attributable to employer and was therefore disqualified for benefits. Claimant was ordered to repay \$11,800 to the Department of Labor. The Department mailed the decision to claimant's address of record in St. Albans.

Claimant timely appealed to the ALJ by email. The Department responded that it had received his appeal and that a hearing notice would be sent by U.S. mail. The Department sent the hearing notice to claimant's address of record on October 2, 2020. The notice stated that a hearing would be held by telephone on October 14, 2020, and required the parties to provide a telephone number where they could be reached. Employer did so, but claimant did not.

At the hearing on October 14, employer testified that on January 23, 2020, claimant walked out and never returned. According to employer, claimant never gave an explanation, even after employer contacted him to see if he was coming back. Based on this information, the ALJ affirmed the determination of the claims adjudicator in an decision dated October 21, 2020, which was mailed to claimant the same day.

The envelopes containing the hearing notice and the ALJ's decision were both eventually returned to the Department as undeliverable on October 30, 2020. A stamp on each envelope stated, "moved left no address unable to forward."

On January 22, 2021, claimant emailed the Department of Labor, stating that he was still waiting to receive his hearing notice by mail. A Department representative responded the same day that a decision had been mailed to claimant on October 21, 2020. Claimant wrote back on February 12, 2021, stating that he never received notice of the hearing. He stated that his mail was being forwarded to his new residence in Florida. He indicated that he wanted to appeal to the Employment Security Board.

The Board concluded that claimant's February 2021 appeal of the October 2020 ALJ decision was untimely, depriving it of jurisdiction to hear the appeal. The Board found no basis to remand or reopen the appeal because the record indicated that claimant failed to notify the Department of his change in address as required by Board rules. This appeal followed.

The unemployment compensation statute provides that a party seeking to appeal an ALJ decision must do so "[w]ithin 30 days after date thereof." 21 V.S.A. § 1349. "Regardless of the manner of service, appeal periods shall commence to run from the date of the determination or decision rendered." *Id.* § 1357. Claimant's appeal to the Board was untimely because it was filed more than thirty days after the date of the ALJ decision. The Board therefore properly concluded that it lacked jurisdiction to consider the appeal. See Allen v. Vt. Emp. Sec. Bd., 133 Vt. 166, 168 (1975) (holding that timely appeal to Employment Security Board is jurisdictional requirement).

We have held that the Board does not have discretion to extend this statutory appeal period, except for failure to receive notice as specified in 21 V.S.A. § 1357. Allen, 133 Vt. at 169 (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. & Training, 170 Vt. 589, 590 (2000) (mem.) (declining "to carve out a fairness-based public policy exception to Allen"). Under 21 V.S.A. § 1357, "[n]otices required under the provisions of this chapter . . . shall be deemed sufficient if given in writing and . . . sent by ordinary or certified mail to the last address of the person appearing upon the records of the Commissioner." An appeal period may be extended when a party files a sworn affidavit indicating that notice of the decision was not received, or if the Commissioner is satisfied that the party did not receive the notice. In such cases, the Department mails a new notice, and the appeal period begins to run from the date of that notice. *Id.*

Here, claimant asserts that he never received the hearing notice or the ALJ decision because the Post Office failed to forward his mail to his new address. However, the Employment Security Board rules require claimants to "[k]eep the Department informed of any change in mailing address, telephone number, or other contact method." Rules of the Vt. Emp. Sec. Bd. Rule 11(C)(7), Code of Vt. Rules 24 005 001, https://labor.vermont.gov/sites/labor/files/doc_library/EmploymentSecurityBoardRules_Amended_Effective10.01.19_0.pdf [<https://perma.cc/6X94-DNGE>]. The Department's Unemployment Insurance Claimant Handbook also warns claimants that they must notify the Department of changes in address. See Vt. Dep't of Labor, Vt. Claimant Handbook at 8, https://labor.vermont.gov/sites/labor/files/doc_library/B-11Claimant%20handbook%202019.pdf, [<https://perma.cc/7GPB-7Q7J>]. Claimant did not notify the Department that he had moved to Florida until February 2021. Accordingly, the record does not support his claim that his failure to receive notice was entirely the fault of the Post Office. Under these circumstances, the Board did not err in concluding that there was no basis to reopen the appeal.

Affirmed.

BY THE COURT:

Paul L. Reiber, Chief Justice

Harold E. Eaton, Jr., Associate Justice

William D. Cohen, Associate Justice