

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Kathleen M. Quinn,	:	
Petitioner	:	
	:	No. 1238 C.D. 2014
v.	:	
	:	Submitted: November 14, 2014
Unemployment Compensation	:	
Board of Review,	:	
Respondent	:	

BEFORE: HONORABLE BONNIE BRIGANCE LEADBETTER, Judge
HONORABLE PATRICIA A. McCULLOUGH, Judge
HONORABLE JAMES GARDNER COLINS, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE McCULLOUGH

FILED: January 23, 2015

Kathleen M. Quinn (Claimant) petitions *pro se* for review of the July 8, 2014 order of the Unemployment Compensation Board of Review (Board) which upheld the referee's dismissal of her appeal as untimely filed. We are constrained to affirm.

The facts are not in dispute. On March 10, 2014, the local service center issued a Notice of Determination (Determination) finding that Claimant was ineligible for benefits under section 402(b) of the Unemployment Law (Law).¹ (Record Item 5.) A copy of the Determination was mailed to Claimant at her last known post office address on that same date, and Claimant received it. The

¹ Act of December 5, 1936, Second Ex. Sess., P.L. (1937) 2897, *as amended*, 43 P.S. 802(b).

Determination informed Claimant that March 25, 2014, was the last date on which she could file a timely appeal. (Findings of Fact, Nos. 1-4.)

Claimant filed an appeal by mail. (Record Item 6.) The envelope containing Claimant's appeal did not bear a postmark, and the appeal was stamped as received by the Altoona Service Center on March 26, 2014. (Findings of Fact, Nos. 5-6.) The referee scheduled a hearing to consider the timeliness of Claimant's appeal. The referee denied Employer's request for a continuance, and Employer did not attend the hearing. Claimant appeared before the referee and testified that she received the Determination and was aware that the last day to appeal was March 25th; Claimant stated that she placed her appeal in the mailbox at her post office on March 24th. (Record Item 9, Notes of Testimony at 3.)

The referee dismissed Claimant's appeal as untimely under section 501(e) of the Law, 43 P.S. §821(e). The referee explained that: section 501(e) of the Law sets forth a mandatory fifteen-day appeal period; under applicable regulations, if a mailed appeal is received without a postmark, it is considered mailed on the date that it is received; and further, in order for a referee to have jurisdiction over an untimely appeal, the party who filed the appeal must show that the late appeal was caused by fraud or a breakdown in the administrative process or by non-negligent conduct of the party or the party's counsel.² (Record Item 10, Referee's decision at 2.)

² Generally, an appeal *nunc pro tunc* may be allowed where the delay in filing the appeal was caused by extraordinary circumstances involving fraud or some breakdown in the administrative process or non-negligent circumstances related to the appealing party, his counselor, or a third party. *Cook v. Unemployment Compensation Board of Review*, 671 A.2d 1130, 1131 (Pa. 1996).

Claimant appealed to the Board. The Board held that Claimant's appeal was properly dismissed as untimely under section 501(e) of the Law, which states as follows:

Unless the claimant or last employer or base-year employer of the claimant files an appeal with the board, from the determination contained in any notice required to be furnished by the department under section five hundred and one (a), (c) and (d), within fifteen calendar days after such notice was delivered to him personally, or was mailed to his last known post office address, and applies for a hearing, such determination of the department, with respect to the particular facts set forth in such notice, shall be final and compensation shall be paid or denied in accordance therewith.

43 P.S. §821(e). The Board noted that under the regulation at 34 Pa. Code §101.82(b)(1)(iii), when an appeal is filed by mail and does not bear a United States Postal Service (USPS) postmark or private postage meter mark, the filing date will be the date the appeal is marked received by the local service center.³

³ In relevant part, 34 Pa. Code §101.82(b)(1) states as follows:

(b) A party may file a written appeal by any of the following methods:

(1) *United States mail*. The filing date will be determined as follows:

(i) The date of the official United States Postal Service postmark on the envelope containing the appeal, a United States Postal Service Form 3817 (Certificate of Mailing) or a United States Postal Service certified mail receipt.

(ii) If there is no official United States Postal Service postmark, United States Postal Service Form 3817 or United States Postal Service certified mail receipt, the date of a postage meter mark on the envelope containing the appeal.

(Footnote continued on next page...)

Citing the absence of supporting evidence in the record, the Board found Claimant's testimony that she mailed the appeal on March 24, 2014, not credible. The Board also stated that the filing of the late appeal was not caused by fraud, a breakdown in the administrative process, or by non-negligent conduct. Thus, the Board affirmed the referee's dismissal of Claimant's appeal as untimely under section 501(e) of the Law.

On appeal to this Court,⁴ Claimant argues that the receipt of her appeal on March 26th is itself evidence that the appeal was mailed no later than the deadline of March 25, 2014. Although we appreciate the logic of Claimant's argument, Pennsylvania courts have repeatedly held that the fifteen-day appeal period under section 501(e) of the Law is mandatory and subject to strict application. *Lin v. Unemployment Compensation Board of Review*, 735 A.2d 697, 699 (Pa. 1999); *Renda v. Unemployment Compensation Board of Review*, 837 A.2d 685 (Pa. Cmwlth. 2003); *Vereb v. Unemployment Compensation Board of Review*, 676 A.2d 1290, 1292 (Pa. Cmwlth. 1996).

As we stated in *McKnight v. Unemployment Compensation Board of Review*, 99 A.3d 946 (Pa. Cmwlth. 2014):

(continued...)

(iii) If the filing date cannot be determined by any of the methods in subparagraph (i) or (ii), the filing date will be the date recorded by the Department, the workforce investment office or the Board when it receives the appeal.

34 Pa. Code §101.82(b)(1).

⁴ Our scope of review is limited to determining whether constitutional rights were violated, whether the adjudication is in accordance with law, or whether the necessary findings of fact are supported by substantial evidence. Section 704 of the Administrative Agency Law, 2 Pa.C.S. §704.

[I]f an appeal is not timely filed within the specified time period, the determination becomes final, and the Board does not have the requisite jurisdiction to consider the matter. Appeal periods, even at the administrative level, are jurisdictional and may not be extended as a matter of grace or indulgence; otherwise, there would be no finality to judicial action. *Therefore, even an appeal filed merely one day after the expiration of the fifteen-day time period must be dismissed as an untimely appeal.*

Id. at 949-50 (Pa. Cmwlth. 2014) (emphasis added) (quoting *Shea v. Unemployment Compensation Board of Review*, 898 A.2d 13 at 33 (Pa. Cmwlth. 2006)).

In *Vereb*, we explained that the regulation at 34 Pa. Code §101.82 allows an appeal received beyond the fifteen-day filing deadline to be deemed timely filed if the envelope in which the appeal was mailed bears a postmark with a date that falls within the fifteen-day period mandated by section 501(e) of the Law. In that case, as here, the appeal was received one day after the appeal period expired in an envelope that did not have a postmark. We rejected the argument that a private postage meter stamp was sufficient evidence of timely mailing.⁵ More important, we declined to consider the fact the appeal was received on September 16, 1994, to be sufficient proof that the letter was mailed on or before the September 15, 1994 deadline for purposes of section 501(e).

Claimant also argues that the Board’s credibility determination indicates that the Board had discretion to rely on her testimony and consider it evidence that her appeal was timely filed. However, as our Supreme Court noted in *Lin*, the regulation at 34 Pa. Code §101.82 “does not recognize placing an appeal in the mail as the initiation of the appeal.” 735 A.2d at 699. Under the regulation, if the date on

⁵ As subsequently amended, 34 Pa. Code §101.82(b)(1)(ii) now provides that the filing date of an appeal also may be determined by the date of a private postage meter mark.

which a mailed appeal is filed cannot be determined by a USPS postmark or private postage meter stamp, the filing date is the date the appeal is received. 34 Pa. Code §101.82(b)(1)(ii). Thus, Claimant’s testimony concerning the date that she placed the appeal in a mailbox, even if found credible by the Board, would be insufficient to establish that her appeal was timely filed.

Claimant further complains that she should not be penalized for the failure of postal authorities to postmark her appeal envelope. Although we sympathize with Claimant’s position, we explained in *Vereb* that “[t]he Board is bound to follow its own regulations in determining the perfection date of an appeal.” *Id.* at 1293 (quoting *Edwards v. Unemployment Compensation Board of Review*, 639 A.2d 1279, 1281 (Pa. Cmwlth. 1994)). Further, we noted that in *Edwards*, we rejected the Board’s finding that the employer had actually mailed the appeal within the fifteen-day filing period “as being irrelevant under the Board’s own regulations.” *Vereb*, 676 A.2d at 1293. We quoted our conclusion in *Edwards* as follows:

In this case, the Board permitted the Employer to bypass the regulations by allowing testimony of the deposit of the appeal with the post office to constitute the date of filing rather than what the regulation clearly defines as the date of mailing, i.e., the postmark date. By substituting the date of mailing for that of the postmark, the Board renders its own regulation meaningless and undermines the rationale stated in *Miller v. Unemployment Compensation Board of Review*, 505 Pa. 8, 476 A.2d 364 (1984), that the timeliness of papers filed with the courts must be possible to determine from either the face of the document or from the internal records of the court. The postmark is the most reliable source from which one can determine the precise timing of mailing, as opposed to a party’s testimony.

Vereb, 676 A.2d at 1293 (quoting *Edwards*, 639 A.2d at 1281-82 (citations and footnotes omitted)).

Based on the foregoing, we must conclude that the Board properly dismissed Claimant's appeal as untimely. Accordingly, we affirm.

PATRICIA A. McCULLOUGH, Judge

Senior Judge Colins dissents.

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ORDER

AND NOW, this 23rd day of January, 2015, the order of the Unemployment Compensation Board of Review, dated July 8, 2014, is affirmed.

PATRICIA A. McCULLOUGH, Judge