IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Kandi Dauberman,	:	
Petitioner	:	
	:	
v.	:	No. 1153 C.D. 2025
	:	Submitted: September 14, 2026
Unemployment Compensation	:	
Board of Review,	:	
Respondent	:	

BEFORE: HONORABLE PATRICIA A. McCULLOUGH, Judge
HONORABLE STACY WALLACE, Judge
HONORABLE STELLA M. TSAI, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE WALLACE FILED: November 16, 2026

Kandi Dauberman (Claimant), representing herself, petitions for review of the order of the Unemployment Compensation Board of Review (Board), dated August 6, 2025, which affirmed the prior decision of the referee and dismissed her appeal as untimely. After careful review, we affirm.

BACKGROUND

This case relates to a Notice of Determination (Determination) dated February 25, 2025, informing Claimant she received unemployment compensation benefits to which she was not entitled and levying a non-fault overpayment. The Determination listed a "Final Date to Appeal" of March 18, 2025, and explained Claimant must file

any appeal on or before that date. Certified Record (C.R.) at 40. Claimant appealed the Determination on April 14, 2025.[1]

A referee conducted a telephone hearing on July 11, 2025. During the hearing, Claimant testified as follows, in relevant part:

> [Referee:] Okay. All right. And, on or about February 25 of 2025 did you receive a notification that you had a non-fault overpayment of $1,640?
>
> [Claimant:] No.
>
> [Referee:] Okay. And did you at that time did you have your information going to your [unemployment compensation] portal and email or did you have it going to the postal address?
>
> [Claimant:] I'm a little confused about this, because it went to my portal, but I wanted it to come to my address.
>
> [Referee:] All right. Okay. So it went to your portal?
>
> [Claimant:] Yes.
>
> [Referee:] And as of February 25 of '25 did you have access to your portal?
>
> [Claimant:] Yes.
>
> [Referee:] All right. And did you see the notice they issued you -- or the Notice of Determination that ruled you had a non-fault overpayment of $1,640 based on the Referee reversing the initial Determination?
>
> [Claimant:] I never looked.

[1] The certified record contains a February 24, 2025 decision by a referee, concluding Claimant was not entitled to unemployment compensation benefits because she left her job voluntarily without a necessitous and compelling reason. Claimant appealed to the Board, which dismissed the appeal as untimely on June 17, 2025. Claimant did not petition this Court for review. The Board explains in its brief that Claimant filed a single appeal on April 14, 2025, which "was processed as an appeal to both decisions," i.e., as an appeal of the February 24, 2025 decision by the referee and an appeal of the February 25, 2025 Determination. Board's Br. at 2.

[Referee:] Okay.

[Claimant:] So, no.

C.R. at 129.

By decision dated July 11, 2025, the referee dismissed the appeal as untimely. The referee explained the Determination was sent to Claimant's online portal.[2] C.R. at 134. The referee reasoned Claimant had 21 days to appeal the Determination, or until March 18, 2025, but did not file her appeal until April 14, 2025. *Id.* Moreover, the referee reasoned the Determination informed Claimant of the deadline to appeal, and Claimant was not misled or misinformed as to her appellate rights. *Id.*

Claimant appealed to the Board, which affirmed the referee and dismissed the appeal as untimely by order dated August 6, 2025. The Board adopted the referee's findings and conclusions. C.R. at 161. The Board explained the Determination was sent to Claimant on February 25, 2025, "via her preferred method of communication, internal message with email notification," and Claimant received the Determination. *Id.* The Board highlighted Claimant's testimony that she "never looked," explaining there was no evidence establishing fraud or an administrative breakdown. *Id.*

Claimant timely filed a petition for review of the Board's order. Relevant to her failure to appeal the Determination by the deadline,[3] Claimant maintains she did not discover the overpayment until April 2025, when she was no longer working at

[2] The referee also explained the Determination was mailed to Claimant's last known address and was not returned as undeliverable. C.R. at 134. We see no evidence in the certified record that the Determination was mailed to Claimant.

[3] In her brief, Claimant primarily challenges the decision that she was not entitled to unemployment compensation benefits because she left her job voluntarily without a necessitous and compelling reason. We reiterate that Claimant filed a petition for review of only the Board's order resulting from the February 25, 2025 overpayment Determination, and the prior decisions of the referee and Board regarding her eligibility for benefits are not before this Court.

her "seasonal job" and "tried to file another claim." Claimant's Br. at 3.[4] According to Claimant, she requested that "unemployment correspondence . . . be sent by mail and never logged into [her] portal for this reason." *Id.* at 2. Additionally, Claimant contends that her mother died of cancer shortly "before the situation happened" with her employer, and that she had lived at her mother's house temporarily, which may have caused mail to be sent to the wrong address. *Id.* at 3.

DISCUSSION

We review the Board's order for violations of Claimant's constitutional rights, violations of agency practice and procedure, and other errors of law. Section 704 of the Administrative Agency Law, 2 Pa.C.S. § 704. Additionally, we review whether substantial evidence supports the findings of fact necessary to sustain the decision. *Id.* The Board is the ultimate finder of fact in these cases and is entitled to determine the credibility of witnesses and weight of the evidence. *Hubbard v. Unemployment Comp. Bd. of Rev.*, 252 A.3d 1181, 1185 n.2 (Pa. Cmwlth. 2021). When substantial evidence supports the Board's findings of fact, they are binding on this Court. *Allen v. Unemployment Comp. Bd. of Rev.*, 189 A.3d 1128, 1133 (Pa. Cmwlth. 2018).

Section 501(e) of the Unemployment Compensation Law,[5] provides a 21-day deadline for filing an appeal from a notice of determination, with the 21 days running from the "Determination Date" listed on the notice. 43 P.S. § 821(e). Failure to file an appeal by the deadline is a jurisdictional defect, which this Court may not simply overlook or disregard. *Carney v. Unemployment Comp. Bd. of Rev.*, 181 A.3d 1286, 1288 (Pa. Cmwlth. 2018). However, a claimant may overcome the failure to timely

[4] Because Claimant's brief lacks page numbers, we use electronic pagination in this decision.

[5] Act of December 5, 1936, Second Ex. Sess., P.L. (1937) 2897, *as amended*.

file an appeal and obtain *nunc pro tunc* relief by establishing fraud or a breakdown in the administrative process.[6] *Id.*

Here, the Determination listed a "Determination Date" of February 25, 2025, and specified the "Final Date to Appeal" was 21 days later, on March 18, 2025. C.R. at 40. The certified record indicates, and Claimant conceded during her testimony, that she filed her appeal on April 14, 2025, nearly one month after the deadline. *Id.* at 55, 129. Therefore, Claimant's appeal was untimely.

Claimant argues she did not receive the Determination in a timely manner and proposes it may have been mailed to the wrong address. Claimant's Br. at 2-3. This Court has recognized that an administrative breakdown occurs, warranting *nunc pro tunc* relief, if an agency is at fault for mailing a decision to the wrong address. *Harris v. Unemployment Comp. Bd. of Rev.*, 247 A.3d 1223, 1231 (Pa. Cmwlth. 2021).

However, Section 501(f) of the Unemployment Compensation Law provides a notice of determination "shall be mailed to the claimant's or employer's last known post office address **or transmitted electronically, as designated by the recipient**." 43 P.S. § 821(f) (emphasis added). The certified record indicates Claimant selected "Internal Message with Email Notification" as her "Preferred Notification Method." C.R. at 8. Claimant conceded she received the Determination via her online portal, consistent with this selection, and failed to review the Determination simply because

[6] For many years, case law also permitted *nunc pro tunc* relief in the event of certain "non-negligent circumstances." *See Carney*, 181 A.3d at 1288. Pennsylvania's Supreme Court recently expressed disapproval of granting relief on that basis, "absent express statutory language that can reasonably support a non-negligent-[circumstances] exception to the time limitation involved." *Carr v. First Commonwealth Bank*, 363 A.3d 1283, 1292 (Pa. 2026). We do not consider in this appeal whether the Unemployment Compensation Law might allow *nunc pro tunc* relief based on non-negligent circumstances because Claimant's actions in this case were negligent in character and would not warrant relief even if such an exception were available.

she "never looked" at her portal. *Id.* at 129. Thus, Claimant's testimony confirms no administrative breakdown occurred.[7]

CONCLUSION

Claimant did not file her appeal of the Determination until the 21-day deadline expired. Further, Claimant received the Determination through her online portal and conceded she did not review the Determination simply because she "never looked" at her portal. C.R. at 129. For these reasons, Claimant's appeal of the Determination was untimely, she is not entitled to *nunc pro tunc* relief, and this Court must affirm the Board's August 6, 2025 order.[8]

_____
STACY WALLACE, Judge

[7] *See Detwiler v. Unemployment Comp. Bd. of Rev.* (Pa. Cmwlth., No. 349 C.D. 2025, filed July 16, 2026), slip op. at 2 (concluding the claimant was not entitled to a *nunc pro tunc* appeal, where she "testified that despite checking her email a couple times per week, she 'wasn't paying attention to the portal emails' and was not made aware of the determination until months later when subsequent emails prompted her to appeal"). The Court may cite to its unreported memorandum opinions filed after January 15, 2008, for their persuasive value. *See City of Phila. v. 1531 Napa, LLC*, 333 A.3d 39, 47 n.6 (Pa. Cmwlth. 2025).

[8] We emphasize Section 804 of the Unemployment Compensation Law distinguishes between fault and non-fault overpayments. *See* 43 P.S. § 874. In a fault overpayment, a claimant must pay back the overpayment along with interest. 43 P.S. § 874(a). Here, the Determination established a **non-fault overpayment**, which means the overpayment may only be deducted from any future benefits that Claimant receives. 43 P.S. § 874(b)(1). Even this has its limits because Section 804 caps the amount of the deduction when an overpayment is equal to or greater than $100 and may also apply a credit toward an overpayment or exempt the claimant from deductions in certain circumstances. 43 P.S. § 874(b)(1)(i)-(iii).

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O R D E R

AND NOW, this 16th day of November 2026, the order of the Unemployment Compensation Board of Review, dated August 6, 2025, is **AFFIRMED**.

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STACY WALLACE, Judge