

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Kyla Iarrusso,	:	
Petitioner	:	
	:	No. 585 C.D. 2025
v.	:	
	:	Submitted: July 24, 2026
Unemployment Compensation Board of	:	
Review,	:	
Respondent	:	

BEFORE: HONORABLE ANNE E. COVEY, Judge
HONORABLE LORI A. DUMAS, Judge
HONORABLE STACY WALLACE, Judge

OPINION NOT REPORTED

**MEMORANDUM OPINION BY
JUDGE DUMAS**

FILED: August 31, 2026

Kyla Iarrusso (Claimant), appearing *pro se*, has petitioned this Court to review an adjudication of the Unemployment Compensation Board of Review (Board), issued on April 1, 2025, which affirmed the Referee’s decision that Claimant’s appeal was untimely under Section 501(e) of the Unemployment Compensation Law (UC Law).¹ Upon review, we affirm.

¹ Act of December 5, 1936, Second Ex. Sess., P.L. (1937) 2897, *as amended*, 43 P.S. § 821(e). The Law’s section numbers are distinct from “the sections provided in Purdon’s Pennsylvania Statutes, which is an unofficial codification of Pennsylvania law.” *Herold v. Univ. of Pittsburgh*, 329 A.3d 1159, 1166 n.1 (Pa. 2025). For clarity, we may refer to provisions of the UC Law “only by their Purdon’s citation.” *Id.*

I. BACKGROUND²

In December 2023, Claimant applied for UC benefits.³ Thereafter, on February 26, 2024, the UC Service Center issued a Disqualifying Separation Determination, denying her application. The UC Service Center mailed its determination to Claimant at her last known address, and it was not returned as undeliverable. In its determination, the UC Service Center notified Claimant that she had 21 days from the date of the determination to appeal the denial of benefits, *i.e.*, by March 18, 2024. Claimant did not file her appeal until March 19, 2024.

Following a hearing, the Referee rejected Claimant's assertion that she had received the determination after the appeal period had expired. Further, discerning neither an administrative breakdown nor other non-negligent conduct, the Referee dismissed Claimant's appeal as untimely. Claimant timely appealed to the Board, which affirmed the Referee's dismissal. Claimant then timely appealed to this Court.

² Except as stated otherwise, we adopt this background from the Board's order and the Referee's decision, which was adopted by the Board, and which is supported by substantial evidence of record. *See* Bd.'s Order, 4/1/25; Referee's Decision, 8/26/24.

³ The Board made no findings regarding the nature of Claimant's employment. We note that her employer is identified as "Hand and Stone Massage and Facial Spa East Liberty." Bd.'s Order at 1. Claimant testified that she worked as a spa assistant and a licensed esthetician. Tr. of Test. (T.T.), 8/20/24, at 6. It appears that Claimant was terminated for willful misconduct. *See* Referee's Decision at 1 (citing Section 402(e) of the UC Law, 43 P.S. § 802(e)). Claimant does not challenge this on appeal. *See generally* Ancillary Pet. for Rev., 5/7/25, Claimant's Br.

II. DISCUSSION⁴

Claimant contends the Board erred in denying her benefits. *See* Claimant's Br. at 7-9. As she did before the Referee, Claimant maintains that she did not receive notice that she was denied benefits until after the appeal period had expired. *See id.* at 10. Additionally, Claimant directs our attention to a letter received from her state representative's office. *See id.* According to Claimant, this letter documents her confusion with the appeals process and, we infer, offers proof that she is entitled to *nunc pro tunc* relief. *See id.* Claimant asks this Court to reverse the Board's decision. *Id.* at 11.

Under Section 501(e) of the UC Law, a claimant must file an appeal within 21 days of a determination. *See* 43 P.S. § 821(e). An untimely appeal warrants dismissal because, even at the administrative level, the timeliness requirements are jurisdictional. *See McKnight v. Unemployment Comp. Bd. of Rev.*, 99 A.3d 946, 949 (Pa. Cmwlth. 2014).

Here, the UC Service Center mailed its determination to Claimant on February 26, 2024. *See* Disqualifying Separation Determination, 2/26/24. The determination indicated that Claimant's appeal was due no later than March 18, 2024. *See id.* Claimant did not file her appeal until March 19, 2024. Claimant's

⁴ On appeal, our review is limited to "determining whether constitutional rights were violated, whether an error of law was committed, or whether necessary findings of fact are supported by substantial evidence." *Rivera v. Unemployment Comp. Bd. of Rev.*, 310 A.3d 348, 352 n.4 (Pa. Cmwlth. 2024). It is well established that the Board is the ultimate factfinder, entitled to make its own determinations on evidentiary weight and witness credibility, and is free to accept or reject the testimony of any witness, in whole or in part. *See Cambria Cnty. Transit Auth. v. Unemployment Comp. Bd. of Rev. (CCTA)*, 201 A.3d 941, 947 (Pa. Cmwlth. 2019). Further, the Board's credibility determinations are not subject to judicial review provided they are based on substantial evidence, even if there is contrary evidence of record. *See Henderson v. Unemployment Comp. Bd. of Rev.*, 77 A.3d 699, 718 (Pa. Cmwlth. 2013). Substantial evidence is "relevant evidence upon which a reasonable mind could base a conclusion." *Fritzo v. Com., Unemployment Comp. Bd. of Rev.*, 429 A.2d 1215, 1218 (Pa. Cmwlth. 1981).

Appeal from Determination, 3/19/24. Thus, it was patently untimely. *See* 43 P.S. § 821(e).

The Board may consider an untimely appeal in extraordinary circumstances, for example, where there is a delay caused by non-negligent circumstances either by a claimant or a third party or where there is fraud or some administrative breakdown. *See Barsky v. Unemployment Comp. Bd. of Rev.*, 261 A.3d 1112, 1119-20 (Pa. Cmwlth. 2021). The party seeking to have an untimely appeal considered bears a heavy burden in establishing the right to *nunc pro tunc* relief. *See Blast Intermediate Unit No. 17 v. Unemployment Comp. Bd. of Rev.*, 645 A.2d 447, 449 (Pa. Cmwlth. 1994). The question of whether there are unique and compelling facts that would excuse an untimely appeal “is a legal conclusion to be drawn from the evidence and is reviewable on appeal.” *Barsky*, 261 A.3d at 1120.

Claimant’s assertion that she did not receive the determination until after the appeal period had expired suggests an administrative breakdown and, implicitly, invokes the mailbox rule. When a determination is mailed to a claimant’s last known address and not returned as undeliverable, there is a presumption that the claimant received proper notice. *Grimwood v. Unemployment Comp. Bd. of Rev.*, 322 A.3d 976, 980 (Pa. Cmwlth. 2024) (citation omitted); *see Douglas v. Unemployment Comp. Bd. of Rev.*, 151 A.3d 1188, 1191-93 (Pa. Cmwlth. 2016) (discussing the mailbox rule’s presumption of receipt). This presumption is rebuttable. *Volk v. Unemployment Comp. Bd. of Rev.*, 49 A.3d 38, 41 (Pa. Cmwlth. 2012). However, “[m]erely denying receipt of a determination is not sufficient to defeat the presumption.” *Logan v. Unemployment Comp. Bd. of Rev.*, 334 A.3d 91, 95 (Pa. Cmwlth. 2025) (citing *J.A. v. Dep’t of Pub. Welfare*, 873 A.2d 782, 786 (Pa. Cmwlth. 2005)).

In this case, the Board considered but did not credit Claimant's testimony. *See* Bd.'s Decision at 2 (finding that "there is no credible, sufficient evidence of record to show that the claimant received the determination after the appeal deadline"). In support of this finding, the Board observed further that Claimant had not previously acknowledged or offered an explanation for the untimeliness of her appeal. *See id.* We defer to the Board's credibility findings as they are supported by substantial evidence of record. *See Henderson v. Unemployment Comp. Bd. of Rev.*, 77 A.3d 699, 718 (Pa. Cmwlth. 2013); *see generally* T.T. Further, based on the evidence of record, we conclude that Claimant's mere denial was insufficient to overcome the presumption that she had received proper notice of the UC Service Center's determination and, therefore, was not entitled to *nunc pro tunc* relief. *See Logan*, 334 A.3d at 95; *Barsky*, 261 A.3d at 1120.

We turn briefly to the letter proffered by Claimant. *See* Ancillary Pet. for Rev. at 9 (unpaginated).⁵ The letter is signed by a constituent services advisor to State Representative Brandon Markosek; it is dated September 9, 2024, and purportedly documents Claimant's visit to that legislator's office on March 15, 2024. *See id.* Apparently, during this visit, Claimant sought assistance in responding to notice that she had been denied UC benefits. *See id.*

On appeal, we may not consider this letter. Although it does appear in the agency record certified to this Court, it was never admitted into evidence. *See*

⁵ It is not entirely clear, but it appears that Claimant first tried to supplement the record with this letter in her appeal to the Board. *See* C.R. at 120. However, it was not presented to the Referee or admitted into evidence. *See* Claimant's Br. at 10 (explaining that she didn't have the letter during her "first appeal," *i.e.*, to the Referee, but attached it to her "second appeal," *i.e.*, to the Board); *see generally* T.T. Properly, the Board did not consider the letter. Bd.'s Order at 2. *See Hollingsworth v. Unemployment Comp. Bd. of Rev.*, 189 A.3d 1109, 1113 (Pa. Cmwlth. 2018) (citing 34 Pa. Code § 101.106).

generally C.R. Our review is limited, and we may only consider “those facts that have been duly certified in the record on appeal.” *Kozicki, v. Unemployment Comp. Bd. of Rev.*, 299 A.3d 1055, 1063 (Pa. Cmwlth. 2023) (quoting *B.K. v. Dep’t of Pub. Welfare*, 36 A.3d 649, 657 (Pa. Cmwlth. 2012); *Pa. Turnpike Comm’n v. Unemployment Comp. Bd. of Rev.*, 991 A.2d 971, 974 (Pa. Cmwlth. 2009) (“This Court may not consider any evidence that is not part of the certified record on appeal.”)).

Nevertheless, even if we could consider this letter, we note that it would not corroborate Claimant’s testimony. Claimant testified that she did not receive the UC Service Center’s determination until March 19, 2024. T.T. at 5-6. However, the letter states that Claimant sought help in filing her appeal on March 15, 2024. *See* Ancillary Pet. for Rev. at 9. Therefore, the letter would not support Claimant’s contention that her appeal was untimely because she had not received the determination in a timely manner.

III. CONCLUSION

We discern no legal error in the Board’s adjudication. Claimant’s appeal was untimely because she did not appeal within 21 days of the UC Service Center’s determination. *See* 43 P.S. § 821(e). Further, based on Claimant’s testimony and the evidence introduced to the Referee, Claimant failed to establish that she is entitled to *nunc pro tunc* relief. *See Logan*, 334 A.3d at 95; *Barsky*, 261 A.3d at 1120. Accordingly, we affirm.

LORI A. DUMAS, Judge

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ORDER

AND NOW, this 31st day of August, 2026, we affirm the
Unemployment Compensation Board of Review's April 1, 2025 order.

LORI A. DUMAS, Judge