IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Oksana Smoliniec, Petitioner	:	
v.	:	No. 861 C.D. 2025
Unemployment Compensation Board of Review, Respondent	:	Submitted: September 14, 2026

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

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE McCULLOUGH FILED: November 9, 2026

Oksana Smoliniec (Claimant), acting *pro se*, petitions this Court for review of the May 7, 2025 order of the Unemployment Compensation (UC) Board of Review (Board), which affirmed the UC Referee's (Referee) decision dismissing as untimely Claimant's appeal of the denial of her request for UC benefits pursuant to Section 501(e) of the UC Law.[1] After review, we affirm.

I. Factual and Procedural History

Claimant was employed by HAVAS Health Inc. (Employer) as a full-time Medical Editor from June 21, 2021, until August 30, 2024, when she was terminated by Employer. (Certified Record (C.R.) at 007, 012, 085.) She applied for

[1] Act of December 5, 1936, Second Ex. Sess., P.L. (1937) 2897, *as amended*, 43 P.S. § 821(e) (prescribing a 21-day appeal period).

UC benefits with the Department of Labor and Industry (Department) on October 7, 2024. *Id.* at 003. On October 23, 2024, the Department issued a determination finding Claimant ineligible for benefits because she was not able and/or available for work due to illness, injury, or disability. *Id.* at 019. The Department's Notice of Determination provided Claimant with appeal instructions, advising her that if she did not agree with the determination, she had 21 days from the date on the determination notice to file an appeal. Therefore, in order to be timely, her appeal must have been received by or postmarked by November 13, 2024. *Id.* at 019. Claimant, however, did not appeal her ineligibility determination until February 11, 2025, more than two and one-half months after the appeal deadline. *Id.* at 034.

Upon receiving Claimant's appeal, the Department scheduled a telephonic hearing before a Referee for March 31, 2025. The Department also issued a Notice of Hearing informing Claimant that the purpose of the hearing was to decide the following issues: (1) whether Claimant filed a timely and valid appeal from the Department's initial determination pursuant to Section 501(e) of the UC Law; (2) whether Claimant's unemployment was due to voluntarily leaving work without cause of a necessitous and compelling nature pursuant to Section 402(b) of the UC Law, 43 P.S. § 802(b); and (3) whether Claimant was able and available for suitable work, as required by Section 401(d)(1), (2) of the UC Law, 43 P.S. § 801(d)(1). *Id.* at 064-65. Claimant appeared and testified at the hearing but Employer did not participate.

At the hearing, the Referee asked Claimant about the reason for her untimely appeal. Claimant responded that she sought legal counsel after she was denied UC benefits and that once she was no longer employed, she applied consistently for work. The Referee asked if she had read the determination which instructed her to file her UC appeal by a date certain so that it would be timely. Claimant replied that she had read it; however, she believed that she would be denied

benefits if she appealed, and she had no other resources or support. Therefore, she said she "just continued applying for work." (Notes of Transcript (N.T.) at 4.) She further testified that when she was unable to secure a position, she decided that she "did want to file the appeal and be heard on my part of the case." *Id.* When asked if she had anything further to say on the timeliness issue, she stated:

> Just that this is my first time ever being in a situation like this. My first time having to apply for unemployment and not thoroughly being aware of the process and how it works. And also, you know, receiving the disqualifying determination and simply assuming that there was no – there was no support available to me.

Id.

The Referee then asked Claimant about her separation from employment. Claimant testified that she had taken a medical leave of absence and on the date she was scheduled to return to work, she informed her employer that she "was not able to return and perform at the work level that was required of her position." *Id.* at 7. At that point, Claimant testified, she was terminated. *Id.* at 6. The Referee asked whether Claimant was "able and available" to work after her termination. *Id*. at 7. Claimant responded that she was able and available to work, but:

> not at the position that I was at because of the fact that it was very high science work I was performing at that position. It included fact[-]checking, proofreading very high level medical documents. So, that – I was not able to work at that position, however, I was able and available to work, and I was actively seeking work.

Id.

On April 1, 2025, the Referee issued a decision dismissing Claimant's appeal for lack of jurisdiction. In the decision, the Referee made the following Findings of Fact:

1. On 10/23/2024, a determination was issued disqualifying [Claimant] for benefits.

2. The Notice of Determination informed [Claimant] that there were twenty-one [ ] (21) days from the date of that determination in which to file an appeal if [Claimant] disagreed with the determination. The last day on which a valid appeal could be filed from that determination was 11/13/2024.

3. [Claimant] did not file an appeal on or before 11/13/2024, but waited until 2/11/2025.

4. [Claimant] was not misinformed nor in any way misled regarding the right of appeal or the need to appeal.

Id. The Referee's decision then stated:

> Section 501(e) of the [UC] Law provides that a Notice of Determination shall become final and compensation shall be paid or denied in accordance therewith unless an appeal is filed within the twenty-one-day period after proper notification of said determination has been given to all affected parties. The provisions of this Section of the [UC] Law are mandatory and the Referee has no jurisdiction to allow an appeal after the expiration of the statutory appeal period. [Claimant's] appeal is, therefore, dismissed.

Id. at 091.

Claimant appealed the Referee's decision to the Board. On May 7, 2025, the Board issued an order affirming the Referee's decision and dismissing Claimant's appeal pursuant to Section 501(e) of the UC Law. *Id.* at 102-04, 114-15. The Board adopted and incorporated the Referee's findings and conclusions. The Board also added the following finding of fact: "[Claimant] received the disqualifying determination, read it, knew she was denied, and delayed in filing the appeal because

she assumed there were no resources or support available." *Id.* at 114. The Board then stated:

> Based on a review of the record, [Claimant] failed to meet her burden of proof that the appeal was, or should be accepted as if, timely filed under Section 501(e) of the [UC] Law. The Board and its Referees have no jurisdiction to decide the merits of an untimely appeal.
>
> On appeal to the Board, [Claimant] makes assertions and attaches documents that are not in the record and cannot be considered on appeal.

Id. The Board affirmed the decision of the Referee and, accordingly, dismissed [Claimant's] appeal of the Department's initial determination as untimely. *Id.* at 115.

Claimant now petitions for review of the Board's order.[2]

II. Issues

On appeal, Claimant argues that the Board erred when it refused to consider the circumstances surrounding her late appeal despite established case law which "permits late appeals where illness or other serious conditions prevent timely filing." (Claimant's Br., at 2 (unpaginated).) Claimant alleges that she had good cause for the late filing of her appeal because she was unable to file a timely appeal due to serious mental health challenges that impaired her ability to understand or comply with the 21-day appeal deadline. *Id.* at 1. She claims that during the time frame in which she could file her appeal, she was seeking medical treatment for her mental health and "could not execute her day-to-day responsibilities which included

[2] "This Court's standard of 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 Compensation Board of Review*, 310 A.3d 348, 352 n.4 (Pa. Cmwlth. 2024). In UC cases, the Board is the ultimate factfinder and it resolves issues of credibility. *Id.* In addition, its findings are conclusive on appeal so long as the record, taken as a whole, contains substantial evidence to support those findings. *Hessou v. Unemployment Compensation Board of Review*, 942 A.2d 194 (Pa. Cmwlth. 2008).

the timely appeal of this matter." *Id.* at 2. However, she maintains that she acted to file an appeal as soon as she was mentally capable of doing so. As relief, Claimant asks this Court to reverse or vacate the Board's finding on whether extraordinary circumstances existed for her late filing and remand the case for further proceedings to consider her claim that she had good cause for her late appeal.[3] *Id.*

The Board argues in response that Claimant's failure to file a timely appeal divests this Court of jurisdiction to consider the merits of her appeal unless Claimant can prove she had good cause for the late appeal or that an administrative breakdown occurred. Claimant testified at her hearing that the reason she filed a late appeal was that she had no resources or support, which the Board asserts does not provide her with good cause for her late appeal. (Respondent's Br., at 5.) The Board states that while Claimant contends that she had good cause for her late appeal, she has not met her heavy burden of demonstrating that she had good cause because when questioned by the Referee as to why her appeal was late, "Claimant explained that she sought legal counsel regarding the denial of benefits, but was given the impression that she would be denied benefits, and she felt that she had no other resources or support." *Id.* at 7. The Board avers that this explanation does not provide Claimant with good cause for her untimely appeal. *Id.*

III. Discussion

Under Section 501(e) of the UC Law, a Claimant must appeal an adverse eligibility determination within 21 days of receiving the Department's Notice of its eligibility determination. 43 P.S. § 821(e). The appeal provisions of the law are mandatory, so that a failure to file an appeal within the designated appeal period

[3] Without using the term, Appellant appears to be requesting *nunc pro tunc* relief. *Nunc pro tunc* is Latin for "now for then." *Nunc Pro Tunc*, Black's Law Dictionary (12th ed. 2024). It refers to the inherent power of a court to retroactively give legal effect to an issue that presently lacks such effect. *Id.*; *see, e.g.*, *Hall v. Unemployment Compensation Board of Review*, 42 A.2d 1204, 1207 n.2 (Pa. Cmwlth. 2012).

without an adequate excuse requires dismissal of the appeal. *United States Postal Service v. Unemployment Compensation Board of Review*, 620 A.2d 572, 573 (Pa. Cmwlth. 1993). "Failure to appeal before the mandatory deadline creates a jurisdictional defect this Court cannot overlook even 'as a matter of grace or indulgence.'" *Logan v. Unemployment Compensation Board of Review*, 334 A.3d 91, 94 (Pa. Cmwlth. 2025) (quoting *Carney v. Unemployment Compensation Board of Review*, 181 A.3d 1286, 1288 (Pa. Cmwlth. 2018)).

Nevertheless, in limited circumstances, the Board may consider an untimely appeal. *Barsky v. Unemployment Compensation Board of Review*, 261 A.3d 1112, 1119-20 (Pa. Cmwlth. 2021); *Hessou*, 942 A.2d at 198. "The burden to establish the right to have an untimely appeal considered is a heavy one because the statutory time limit established for appeals is mandatory." *Id.* Since our Supreme Court's recent decision in *Carr v. First Commonwealth Bank*, ___ A.3d ___ (Pa., Nos. 22 & 23 WAP 2025 (filed Sept. 10, 2026), 2026 WL 2663013, the only way an appellant may establish the right to have an untimely appeal in an unemployment compensation case is where he can show the administrative authority engaged in fraudulent behavior or manifestly wrongful or negligent conduct. *See Carr* (disapproving the non-negligent circumstance except to the timeliness requirement.). However, it is well settled that a claimant's unfamiliarity with appeal procedures does not excuse an untimely filing. *See Hessou*, 942 A.2d 194; *Finney v. Unemployment Compensation Board of Review*, 472 A.2d 752 (Pa. Cmwlth. 1984).

We need not consider Claimant's claim that she had good cause for her late filing because this allegation was not raised at the hearing and is not a part of the record. Her argument therefore is waived and cannot be considered by this Court. Rule 1551(a) of the Pennsylvania Rules of Appellate Procedure provides, in pertinent part:

> (a) Review of quasijudicial orders shall be conducted by the court on the record made before the government unit. Only questions raised before the government unit shall be heard or considered, except:
>
> . . . .
>
> (3) Questions that the court is satisfied the petitioner **could not by the exercise of due diligence have raised before the government unit.**

Pa.R.A.P. 1551(a)(3) (emphasis added). The waiver rule is also mandated by Section 703(a) of the Administrative Agency Law, which states that "[a] party who proceeded before a Commonwealth Agency under the terms of a particular statute . . . may not raise upon appeal any other question not raised before the agency . . . unless allowed by the court upon due cause shown . . . ." 2 Pa.C.S. § 703(a); *Ordo v. Unemployment Compensation Board of Review* (Pa. Cmwlth., No. 1574 C.D. 2025, filed August 24, 2026) 2026 WL 2469117, at *5; *Placid v. Unemployment Compensation Board of Review*, 427 A.2d 748, 750 (Pa. Cmwlth. 1981).[4]

We note that when Claimant was asked by the Referee why she filed her appeal late, she responded: "my situation was that I did seek legal counsel for the fact that I was denied the Unemployment. I had explained my situation and the fact that throughout the timing I had been applying consistently for work. . . ." (C.R. at 084.) When asked whether she had read the determination's instructions to file her appeal before the deadline date, she testified:

[4] We further note that Claimant's Brief did not comply with Pa.R.A.P. 2117(c), which requires that: (c) "[w]here under the applicable law an issue is not reviewable on appeal unless raised or preserved below, the statement of the case shall also specify" certain relevant information regarding those issues as well as "the places in the record where the matter appears . . . as will show that the question was timely and properly raised below so as to preserve the issue on appeal. . . ." Pa.R.A.P. 2117(c).

> I did read that, however, I – my perception was that I would be denied unemployment, and I had no other resources or support. And so, at the time, unfortunately, I just continued applying for work, however, throughout the period between October 2024 and March 2025, I was unable to secure a position. And therefore, I did want to file the Appeal and be heard on part of the case and what's been happening.

Id. At no point during the hearing did Claimant mention that medical issues prevented her from timely filing her appeal, even though the Referee provided her with ample opportunities to make her arguments. Indeed, rather than being unable to execute her day-to-day responsibilities, Claimant testified at the hearing that she "had been applying consistently for work." The only evidence of record is that Claimant filed an untimely appeal because she had the perception that her appeal would be denied. (C.R. at 084.)

When given the opportunity by the Referee to defend her untimeliness further, she declined to elaborate. *See* C.R. at 084. Claimant did not mention being incapacitated due to mental health challenges. Because Claimant had the opportunity to raise her arguments with respect to timeliness during the hearing and did not do so, these arguments are waived and this Court may not consider them. Pa.R.A.P. 1551(a)(3). Accordingly, we are constrained to conclude that the Board did not err in affirming and adopting the Referee's decision, and we hold that Claimant's appeal was properly dismissed as untimely under Section 501(e) of the UC Law. 43 P.S. § 821(e).[5]

---

[5] Even if Claimant's arguments before this Court had not been waived, she would not have prevailed in this appeal because she did not establish that the administrative authority engaged in fraudulent behavior or manifestly wrongful or negligent conduct. As noted previously, in *Carr v. First Commonwealth Bank*, ___ A.3d ___(Pa., Nos. 22 & 23 WAP 2025 (filed September 10, 2026), 2026 WL2663013, our Supreme Court recently held that a party may no longer excuse a late filing by proving that the occurrence of "non-negligent conduct beyond his control" was the cause of the

(Footnote continued on next page…)

IV. Conclusion

Based on the foregoing discussion, the May 7, 2025 order of the Board is affirmed.

_____
PATRICIA A. McCULLOUGH, Judge

missed deadline, unless the statute setting forth the deadline contains express statutory language that can reasonably be read to support a "non-negligent-happenstance exception to the time limitation involved." *Carr*, at *7. The UC Law does not contain such an express statutory provision.

The Pennsylvania Supreme Court has characterized administrative breakdown as occurring when "an administrative body acts negligently, improperly[,] or in a misleading way." *Logan*, 334 A.3d at 95 (quoting *Harris v. Unemployment Compensation Board of Review*, 247 A.3d 1223, 1229-30 (Pa. Cmwlth. 2021)). In the instant case, Claimant does not argue, and there is no record evidence to suggest, that her delay in filing her appeal was caused by fraudulent, negligent, or wrongful administrative conduct. Therefore, because Section 501(e) of the UC Law does not contain an express statutory provision allowing late filings due to reasons involving the non-negligence of a Claimant and because Claimant here has not asserted that fraudulent behavior or manifestly wrongful or negligent conduct on the part of the administrative agency occurred in this case, if we had not found Claimant's arguments to be waived, we would find Claimant's sole argument on appeal to be without merit.

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Oksana Smoliniec, Petitioner	: :	
v.	:	No. 861 C.D. 2025
Unemployment Compensation Board of Review, Respondent	: :	

ORDER

AND NOW, this 9th day of November, 2026, the May 7, 2025 order of the Unemployment Compensation Board of Review is AFFIRMED.

_____
PATRICIA A. McCULLOUGH, Judge