

COMMONWEALTH COURT OF PENNSYLVANIA

Jee Y. Eom v. Unemployment Compensation Board of Review

Eom · No. 350 C.D. 2016 · Decided January 31, 2017

SUMMARY

The Pennsylvania Commonwealth Court affirmed the Unemployment Compensation Board of Review's dismissal of Jee Y. Eom's appeal as untimely under Section 501(e) of the Pennsylvania Unemployment Compensation Law. The majority held that the claimant failed to establish circumstances warranting nunc pro tunc relief, particularly because the Board did not credit counsel's testimony that the appeal had been mailed before the deadline. Judge Cosgrove dissented, reasoning that the credited or uncontradicted testimony supported equitable nunc pro tunc relief even though it was insufficient to establish timely filing under the applicable regulation.

CASE DETAILS

COURT	Commonwealth Court of Pennsylvania
WRITING FOR THE COURT	Renée Cohn Jubelirer; Joseph M. Cosgrove; James Gardner Colins
JURISDICTION	Pennsylvania
DECIDED	January 31, 2017
DOCKET	350 C.D. 2016
DISPOSITION	affirmed
PROCEDURAL POSTURE	Petition for review of the Unemployment Compensation Board of Review's order affirming a referee's dismissal of an unemployment-benefits appeal as untimely.
STANDARD OF REVIEW	Review is limited to whether necessary findings of fact are supported by substantial evidence, whether errors of law were committed, or whether constitutional rights were violated. The Board is the ultimate fact finder and determines the credibility of witnesses.
PRECEDENTIAL VALUE	unpublished and not reported; persuasive or nonprecedential value only
PARTIES	Jee Y. Eom v. Unemployment Compensation Board of Review

TOPICS

[unemployment benefits](#)[appellate procedure](#)[administrative law](#)[writ of certiorari](#)[standard of review](#)

PRACTICE AREAS

administrative law

employment law

unemployment benefits

appellate procedure

remedies

QUESTIONS PRESENTED

1. Whether the Board properly dismissed Eom's appeal as untimely under Section 501(e) of the Unemployment Compensation Law.
2. Whether Eom established grounds for equitable nunc pro tunc relief based on alleged non-negligent conduct by his attorney.
3. Whether the Commonwealth Court could overturn the Board's credibility determination concerning counsel's testimony.

HOLDINGS

1. An appeal from a notice of determination under Section 501(e) of the Unemployment Compensation Law must be filed within fifteen calendar days; an untimely appeal deprives the Board of jurisdiction and makes the determination final.
2. Eom was not entitled to nunc pro tunc relief because the Board did not credit counsel's testimony and there was no credited evidence establishing non-negligent conduct beyond Eom's control that prevented timely filing.
3. The Commonwealth Court could not overturn the Board's decision not to credit counsel's testimony because credibility determinations are within the Board's province as ultimate fact finder.
4. Even if credited, counsel's testimony that he mailed the appeal before the deadline would not establish entitlement to nunc pro tunc relief under the precedent relied upon by the majority.

KEY QUOTATIONS

“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.” (at 4)

“nunc pro tunc relief is reserved for only those “unique and compelling cases in which the appellant has clearly established that she attempted to file an appeal, but unforeseeable and unavoidable events precluded her from actually doing so.”” (at 5)

FACTUAL BACKGROUND

Eom applied for unemployment compensation, but the Service Center denied benefits on the ground that he voluntarily quit his job with Aicos System without a necessitous and compelling reason. The notice of determination was mailed on November 3, 2015, giving Eom until November 18, 2015, to appeal. The Service Center received an appeal by fax on November 20, 2015. Eom's attorney testified that he had mailed an earlier appeal before leaving town, but he had no postmark, certificate of mailing, certified-mail receipt, or other documentary proof of that mailing.

PROCEDURAL HISTORY

The local Unemployment Compensation Service Center denied Eom benefits after determining that he voluntarily quit his employment without a necessitous and compelling reason. Eom's appeal was received two days after the statutory fifteen-day deadline. After a hearing concerning timeliness, the referee dismissed the appeal, and the Board affirmed, finding counsel's testimony that the appeal had been mailed before the deadline not credible. The Commonwealth Court affirmed the Board's order.

DISPOSITION

affirmed

CASES CITED

- Johns v. Unemployment Comp. Bd. of Review, 87 A.3d 1006, 1009 n.2 (Pa. Cmwlth. 2014)
- Dumberth v. Unemployment Comp. Bd. of Review, 837 A.2d 678, 681 (Pa. Cmwlth. 2003)
- Hessou v. Unemployment Comp. Bd. of Review, 942 A.2d 194, 198 (Pa. Cmwlth. 2008)
- Bass v. Commonwealth, 401 A.2d 1133, 1135-36 (Pa. 1979)
- Walsh v. Unemployment Comp. Bd. of Review, 943 A.2d 363, 368 (Pa. Cmwlth. 2008)
- Criss v. Wise, 781 A.2d 1156, 1158-60 (Pa. 2001)
- Lee v. Unemployment Compensation Board of Review, Pa. Cmwlth., Nos. 421 C.D. 2013, 501 C.D. 2013, filed Oct. 16, 2013
- Lord v. Unemployment Comp. Bd. of Review, Pa. Cmwlth., Nos. 1566 C.D. 2011, 1567 C.D. 2011, 1568 C.D. 2011, 1569 C.D. 2011, filed June 4, 2012
- Jones v. Unemployment Comp. Bd. of Review, Pa. Cmwlth., No. 1414 C.D. 2010, filed May 26, 2011
- McKnight v. Unemployment Compensation Board of Review, 99 A.3d 946, 949 (Pa. Cmwlth. 2014)
- UGI Utilities v. Unemployment Compensation Board of Review, 776 A.2d 344, 348 (Pa. Cmwlth. 2001)
- Cook v. Unemployment Comp. Bd. of Review, 671 A.2d 1130, 1131 (Pa. Cmwlth. 1996)