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APPELLANT *PRO SE*:

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IN THE
COURT OF APPEALS OF INDIANA

P.M.,	)	
	)	
Appellant,	)	
	)	
vs.	)	No. 93A02-0905-EX-424
	)	
REVIEW BOARD OF THE INDIANA DEPARTMENT OF WORKFORCE DEVELOPMENT and EMPLOYER,	)	
	)	
Appellees.	)	

APPEAL FROM THE REVIEW BOARD OF THE DEPARTMENT
OF WORKFORCE DEVELOPMENT
The Honorable Steven F. Bier, Chairperson
The Honorable George H. Baker, Member
The Honorable Lawrence A. Dailey, Member
Cause No. 09-R-1127

December 22, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

BRADFORD, Judge

Appellant P.M. appeals a ruling of the Review Board of the Indiana Department of Workforce Development ("Review Board") dismissing, as untimely, P.M.'s appeal from the denial of his application for unemployment benefits. We affirm.

FACTS AND PROCEDURAL HISTORY

P.M. ended his employment with Employer on July 5, 2008. P.M. subsequently filed a request for unemployment benefits, but a claims deputy for the Indiana Department of Workforce Development ("Agency") issued a Determination of Eligibility which stated that P.M. was not entitled to receive unemployment benefits because "[t]he claimant voluntarily left employment without good cause in connection with the work. Although the claimant may have valid personal reasons for leaving employment, they are not related to the work nor can they be directly attributed to the employer."[1] Appellant's App. p. 30. The Determination of Eligibility also included the following language regarding P.M.'s right to appeal the decision:

> RIGHT OF APPEAL: THIS DETERMINATION WILL BECOME FINAL ON 08/22/2008 IF NOT APPEALED. EITHER PARTY MAY APPEAL THIS DETERMINATION AND REQUEST A HEARING BEFORE AN ADMINISTRATIVE LAW JUDGE WITHIN TEN DAYS OF THE DATE THIS DETERMINATION WAS MAILED OR OTHERWISE DELIVERED.

[1] P.M. claims that he was constructively discharged. Amongst his asserted facts in support of this claim were that he was told to do his job and one occasion was called "Mr. Magoo" by one of his supervisors. Tr. pp. 8-10.

Appellant's App. p. 30. The Determination of Eligibility was mailed to P.M.'s last known address at 3487 E. 98th Street, Carmel, Indiana, 46033, on August 12, 2008.

On January 27, 2009, P.M. appealed the Determination of Eligibility. An administrative law judge ("ALJ") conducted a hearing on March 12, 2009, during which both P.M. and Employer participated by telephone. During this hearing, P.M. confirmed that at all relevant times, his mailing address was 3487 E. 98th Street, Carmel, Indiana, 46033. P.M. asserted, however, that he did not receive the Determination of Eligibility in August of 2008. In support of this assertion, P.M. claimed that "there were a couple days back in August, September time period where I received no mail where I should be getting mail every day." Tr. p. 4. P.M. claimed that it was extremely unusual for him to "go a day or so" without getting mail because he normally receives "junk mail" every day. Tr. p. 4. P.M. also claimed that he thought someone was taking mail from his mailbox because he was missing a utility bill during that period. Following the hearing and the ALJ's review of the Determination of Eligibility, the ALJ reversed the claims deputy, finding that "[t]he evidence is not persuasive that a copy of the determination was mailed to the claimant at his correct and last known address." Appellant's App. 40-41. The ALJ further concluded that P.M. was entitled to receive unemployment benefits because a "combination of the different factors justified the claimant's action in leaving the employment." Appellant's App. 40-41.

The Employer appealed the ALJ's decision to the Review Board on March 27, 2009. Upon review, the Review Board found that a copy of the Determination of Eligibility had been mailed to P.M.'s house on August 12, 2008, and that P.M. acknowledged that he had

become aware of the adverse decision no later than September of 2008. The Review Board also found that P.M.'s allegations did not substantiate a finding that the Determination of Eligibility was not received due to mail problems. In light of its factual findings, the Review Board reversed the ALJ's order, concluding that P.M.'s "appeal was not timely filed, and he has not shown good cause for failing to file a timely appeal." Appellant's App. p. 6. The Review Board dismissed P.M.'s appeal of the Determination of Eligibility as untimely and stated that "the Determination of Eligibility is the final order in this matter." Appellant's App. p. 6. This appeal follows.

DISCUSSION AND DECISION

On judicial review of an unemployment compensation proceeding, we determine whether the decision of the Review Board is reasonable in light of its findings. *KLR Inc. v. Ind. Unemploy't Ins. Review Bd.*, 858 N.E.2d 115, 117 (Ind. Ct. App. 2006). We are bound by the Review Board's resolution of all factual matters; thus, we neither reweigh evidence nor reassess witness credibility. *Id*. Rather, we consider only the evidence most favorable to the Review Board's decision and the reasonable inferences to be drawn therefrom, and if there is substantial evidence of probative value to support the Review Board's conclusion, it will not be set aside. *Id*. When, however, an appeal involves a question of law, we are not bound by the agency's interpretation of law, and we will reverse a decision if the Review Board incorrectly interprets a statute. *Id*.

P.M. correctly argues that when a party alleges that notice of an administrative hearing was not received, that party must have an opportunity to present evidence on the issue of

proper notice. *Carter v. Review Bd. of the Ind. Dept. of Employ't & Training Servs.*, 526 N.E.2d 717, 719 (Ind. Ct. App. 1988), *trans. denied*. Here, however, it is undisputed that the ALJ conducted a hearing at which P.M. presented evidence relating both to the timeliness of his appeal and his eligibility for unemployment benefits. Therefore, we conclude that P.M. was afforded the required level of due process of the law. *See id*. (providing that the evidentiary hearing conducted before a referee or ALJ affords the parties to an unemployment compensation claim due process of the law).

It is well-established in Indiana that where an administrative agency sends notice through the regular course of mail, a presumption arises that such notice is received. *KLR Inc.*, 858 N.E.2d at 117. However, that presumption is rebuttable. *Id*. In an attempt to rebut the presumption that he received the Determination of Eligibility, P.M. outlined alleged problems with his mail during August and September 2008. However, the evidence most favorable to the Review Board's decision reveals that the Determination of Eligibility was mailed to P.M.'s correct mailing address on March 12, 2008, that P.M. was aware of the adverse decision regarding eligibility no later than September of 2008, and that P.M. did not file an appeal of the Determination of Eligibility until January 27, 2009. In light of these facts, we are unable to say that the Review Board erred in dismissing P.M.'s appeal of the adverse determination as untimely.

Furthermore, to the extent that P.M. contends that the issue of timeliness should be secondary to eligibility, it is well-settled that "when a statute contains a requirement that an appeal or notice of the intention to appeal shall be filed within a certain time, strict

compliance with the requirement is a condition precedent to the acquiring jurisdiction, and non-compliance with the requirement results in dismissal of the appeal." *Quakenbush v. Review Bd. of the Ind. Dep't of Workforce Dev.*, 891 N.E.2d 1051, 1053 (Ind. Ct. App. 2008).

Indiana Code section 22-4-17-2(e) (2008)[2] provides in pertinent part as follows:

> In cases where the claimant's benefit eligibility or disqualification is disputed, the department shall promptly notify the claimant and the employer … of such determination and the reasons thereof. Except as otherwise hereinafter provided in this subsection … unless the claimant or such employer, within ten (10) days after such notification was mailed to the claimant's or the employer's last known address, or otherwise delivered to the claimant or the employer, asks [for] a hearing before an administrative law judge thereon, such decision shall be final and benefits shall be paid or denied in accordance therewith.… If such hearing is desired, the request therefor shall be filed with the department in writing within the prescribed periods as above set forth in this subsection and shall be in such form as the department may prescribe.

Indiana Code section 22-4-17-14 further provides, "If a notice is served through the United States mail, three (3) days must be added to a period that commences upon service of that notice. Here, the claims deputy mailed the Determination of Eligibility to P.M. on August 12, 2008. Therefore, P.M. was required to file his request for a hearing no later than August 25, 2008. P.M. did not do so. Even accepting, for the sake of argument, P.M.'s claim that he did not receive a copy of the Determination of Eligibility in the mail in mid-August, we observe that P.M. admitted that he was aware of the adverse decision regarding eligibility no later than September of 2008. P.M., however, did not file his request for a hearing until January 27, 2009. There is no question that P.M. admittedly filed his appeal of the adverse determination well beyond the statutorily prescribed time limit. Therefore, we conclude that

[2] Indiana Code section 22-4-17-2 has since been amended but these amendments do not affect the substantive language at issue in this appeal.

the Review Board properly dismissed P.M.'s untimely appeal. *Quakenbush*, 891 N.E.2d at 1053.

The judgment of the Review Board is affirmed.

NAJAM, J., and FRIEDLANDER, J., concur.