

SIXTH DIVISION
Order filed: June 29, 2018

No. 1-17-2890

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

DONALD PERRY,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellant,)	Cook County
)	
v.)	No. 17 L 50832
)	
THE ILLINOIS DEPARTMENT OF EMPLOYMENT)	
SECURITY; DIRECTOR OF ILLINOIS DEPARTMENT)	
OF EMPLOYMENT SECURITY; THE BOARD OF)	
REVIEW; and THE CHICAGO TRANSIT AUTHORITY)	
c/o NSN,)	Honorable
)	Carl Anthony Walker,
Defendants-Appellees.)	Judge, Presiding.

PRESIDING JUSTICE HOFFMAN delivered the judgment of the court.
Justices Cunningham and Connors concurred in the judgment.

ORDER

¶ 1 *Held:* The Board of Review's decision dismissing plaintiff's appeal for lack of jurisdiction is affirmed where plaintiff did not file his appeal within the statutorily-required 30 days after the referee's decision was mailed.

¶ 2 Plaintiff, Donald Perry, appeals from an order of the circuit court affirming the decision of the Board of Review (Board) of the Illinois Department of Employment Security (IDES), dismissing, for lack of jurisdiction, his untimely appeal of an IDES referee's denial of unemployment benefits. On appeal, plaintiff contends that the Board erred by dismissing his appeal without first holding an evidentiary hearing and affording him the opportunity to show good cause for the delay in filing his appeal. We affirm.

¶ 3 Plaintiff worked for the Chicago Transit Authority (CTA) as a bus operator from November 2007 through January 31, 2017. On February 12, 2017, plaintiff applied for unemployment benefits. On March 1, 2017, an IDES claims adjudicator issued a determination denying plaintiff's application for unemployment benefits because plaintiff was discharged due to misconduct connected with his work, *i.e.*, using his cellular phone while operating a CTA bus. On March 19, 2017, plaintiff appealed the claims adjudicator's determination and requested a hearing before an IDES referee.

¶ 4 On April 12, 2017, the referee held a telephone hearing. James Lachowicz, a business manager for the CTA at North Park Garage, testified that plaintiff was discharged on January 31, 2017, because, on December 13, 2016, plaintiff used a cellular phone while operating a CTA bus. On December 16, 2016, a CTA customer called and reported that, on December 13, 2016, the customer saw a CTA bus operator using a cellular phone while operating a bus. Surveillance video from above the bus's driver's seat, taken at approximately 8 a.m. on December 13, 2016, showed plaintiff using a cellular phone for about five minutes. Still frame photographs extracted from the video were admitted as exhibits and showed plaintiff sitting in the driver's seat with a cellular phone in his lap. A report of the bus's global positioning system (GPS) coordinates was

admitted as an exhibit and showed that the bus was in motion during the period plaintiff was using his phone.

¶ 5 Lachowicz further testified that CTA had a policy prohibiting the use of electronic devices while operating CTA vehicles and a single violation was punishable by discharge. The CTA electronics policy was issued in a 2009 CTA bulletin which was provided to all employees and was posted in CTA's North Park Garage. Illinois state law, with which CTA trained its bus operators to comply, also prohibited cellular phone use while driving.

¶ 6 Plaintiff testified that he worked for the CTA from July 2000 until he was discharged in January 2017. In an administrative hearing on January 24, 2017, plaintiff learned he was being discharged for using a cell phone while on duty. The CTA gave differing dates for when the alleged cellular phone use occurred, but plaintiff eventually learned that that his use of a cell phone while on duty occurred on December 13, 2016, and that a customer complaint was received on December 16, 2016. Plaintiff was shown the bus surveillance video during the January 24, 2017, administrative hearing and it showed his personal cellular phone in his lap. Plaintiff explained that the phone had been vibrating and making a noise in his pocket, so he took it out, looked at it, and placed it on his lap. He was trying to stop the phone from making noise. Plaintiff only looked at his phone when the bus was standing still, not while it was moving. Plaintiff was never informed of the CTA rule prohibiting the use of a cellular phone while operating CTA vehicles. He was aware of state laws prohibiting cellular phone use while driving.

¶ 7 On April 13, 2017, the referee issued a decision affirming the claim's adjudicator's determination that plaintiff was ineligible for unemployment benefits because he was discharged for misconduct. In doing so, the referee found that plaintiff violated CTA rules and state laws,

prohibiting driving while using a cellular phone because the evidence showed that he had his cell phone in his lap for several minutes while he was operating a CTA bus. The referee's decision informed plaintiff that he could appeal to the Board within 30 days of the decision's April 13, 2017, mailing date.

¶ 8 On August 2, 2017, plaintiff filed an appeal of the referee's decision to the Board. In the notice of appeal, he alleged that he had obtained newly discovered evidence from his union that CTA management was biased against him before his discharge hearing. Specifically, plaintiff learned that a CTA manager was videotaped at a Christmas party openly discussing his case with others and stating that he would be fired regardless of the evidence presented because he had lied to that manager. Plaintiff's union representative advised him to appeal the denial of his benefits while the union filed a grievance to reinstate him.

¶ 9 In a second notice of appeal, dated August 21, 2017, plaintiff alleged that he was submitting evidence that showed he did not violate CTA's rule prohibiting the use of cellular phones while operating a CTA vehicle. He attached a copy of his cellular phone bill with his log of phone calls and text messages, and asserted that the absence of calls and text messages during the time that his alleged phone use occurred proved he did not use his phone while operating the bus. Plaintiff attached a disc to the notice of appeal and claimed it contained a recording that showed a CTA manager discussing his case with others prior to the CTA holding internal hearings or discharging him. Plaintiff asserted that this video showed his discharge was the result of that manager's personal bias.

¶ 10 On September 13, 2017, the Board issued a decision dismissing plaintiff's appeal for lack of jurisdiction because his appeal to the Board was not filed within 30 days of the referee's

decision. The Board explained that the referee's decision was mailed on April 13, 2017, and plaintiff had to file his appeal within 30 days of that date. Plaintiff did not file his appeal until August 2, 2017.

¶ 11 On September 14, 2017, plaintiff filed a *pro se* complaint for administrative review of the Board's decision in the circuit court. After a hearing, the circuit court affirmed the Board's decision. Plaintiff appeals.

¶ 12 On appeal, plaintiff contends that the Board erred in dismissing his appeal for lack of jurisdiction without holding an evidentiary hearing and affording him the opportunity to show good cause for the delay in filing his appeal.

¶ 13 Final administrative decisions are appealable only as provided by law, and a party seeking administrative review must strictly comply with the relevant statutory provisions. *Thompson v. Department of Employment Security*, 399 Ill. App. 3d 393, 395 (2010). This court reviews *de novo* an agency's determination that it lacks the jurisdiction to hear an untimely appeal. *Id.* at 394-95.

¶ 14 Pursuant to section 801(A) of the Unemployment Insurance Act, the decision of a referee becomes final unless, within 30 calendar days after the date that the decision is mailed, an appeal to the Board is filed. 820 ILCS 405/801(A) (West 2016). The 30-day period is calculated from the date of service. *Thompson*, 399 Ill. App. 3d at 395. Service is completed by mailing the decision to the last known address of the party entitled to receive it. *Id.*

¶ 15 Here, the record shows that the referee's decision was mailed to plaintiff on April 13, 2017. There was no appeal filed in the 30 day period after April 13, 2017. Rather, on August 2, 2017, more than 100 days after the referee's decision, plaintiff filed an appeal to the Board. As

such, plaintiff's appeal of the referee's decision was not within 30 days of the date that the decision was mailed and, thus, was untimely (820 ILCS 405/801(A) (West 2016)). As the Board lacks jurisdiction to consider untimely appeals (*Thompson*, 399 Ill. App. 3d at 395), the Board properly dismissed plaintiff's appeal. Accordingly, we affirm the Board's dismissal of plaintiff's appeal.

¶ 16 In reaching this conclusion, we are not persuaded by *Huggins v. Board of Review*, 10 Ill. App. 3d 140 (1973), cited by plaintiff in support of his argument that the Board erred by dismissing his appeal without providing him an opportunity to show good cause for the delay in filing his appeal. Here, unlike in *Huggins*, plaintiff does not dispute that he received "actual notice" of the administrative decision which he was appealing. See *Gutierrez v. Board of Review, Department of Labor*, 35 Ill. App. 3d 186, 189-191 (1975) (discussing *Huggins*). Rather, in this case, the record shows that the referee's decision was mailed to plaintiff on April 13, 2017, and informed him that he could appeal to the Board within 30 days from the mailing date of the decision. Plaintiff nevertheless filed his appeal to the Board on August 2, 2017.

¶ 17 In sum, because the Act does not confer jurisdiction upon the Board to consider an appeal that is filed more than 30 days after the referee's decision was mailed (820 ILCS 405/801(A) (West 20016)), the Board correctly determined it lacked the jurisdiction to review plaintiff's appeal of the decision denying him unemployment benefits.

¶ 18 We affirm the judgment of the circuit court of Cook County.

¶ 19 Affirmed.