

# ARKANSAS COURT OF APPEALS

DIVISION III

No. E11-273

KELLY SIGEL

APPELLANT

V.

DIRECTOR, DEPARTMENT OF  
WORKFORCE SERVICES, and THE  
DUNCAN LAW FIRM

APPELLEES

Opinion Delivered March 14, 2012

APPEAL FROM THE ARKANSAS  
BOARD OF REVIEW  
[NO. 2011-BR-02475]

REVERSED AND REMANDED

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## RAYMOND R. ABRAMSON, Judge

Appellant Kelly Sigel was denied unemployment benefits under Arkansas Code Annotated section 11-10-513 when the Department of Workforce Services (the Department) found that she voluntarily left her last work as a paralegal at The Duncan Law Firm without good cause connected with the work. Ms. Sigel appealed to the Appeal Tribunal (the Tribunal), which affirmed the Department's denial of benefits. Ms. Sigel then filed an untimely appeal to the Board of Review (the Board). Under *Paulino v. Daniels*, 269 Ark. 676, 599 S.W.2d 760 (Ark. App. 1980), Ms. Sigel was afforded a hearing to establish whether the late filing was the result of circumstances beyond her control. The Board found that the circumstances were not beyond her control and dismissed her appeal. She now appeals to this court, and we reverse and remand for the Board to address the merits of Ms. Sigel's appeal.



Arkansas Code Annotated section 11-10-524(a)(1) (Supp. 2011) provides in pertinent part that a claimant

may appeal a determination made by the agency by filing a written notice of appeal with the appeal tribunal or at any office of the Department of Workforce Services within twenty (20) calendar days after the date of mailing the notice to his or her last known address, or if the notice is not mailed, within twenty (20) calendar days after the date of delivery of the notice.

If the Board of Review determines that an appeal is not perfected within the twenty-calendar-day period as a result of circumstances beyond the appellant's control, the appeal may be considered as having been filed timely. Ark. Code Ann. § 11-10-524(a)(2). Thus, the Board has the discretion to find that a tardy appeal is actually timely. *Price v. Director*, 2011 Ark. App. 100, at 5.

On appeal, we affirm the decision of the Board of Review if it is supported by substantial evidence. *Subteach USA v. Williams*, 2010 Ark. 400, at 2, 373 S.W.3d 884, 886. When we are called upon to interpret provisions of the Arkansas Code, however, we conduct a de novo review of the statutory-construction issues. *Id.*

At the telephone hearing before the Tribunal, Ms. Sigel informed the hearing officer that her mailing address had changed, and the officer noted the change on the hearing's "appearance sheet." At the conclusion of the hearing, the officer informed the parties that each would receive a copy of the Tribunal decision along with instructions about appealing,



that decisions are typically received within seven to ten days, and that if a decision was not received within that time frame, they should contact the Tribunal.

The Tribunal decision was mailed on August 29, 2011, making the twentieth day of the appeal period Sunday, September 18; thus, the latest the appeal could have been timely filed was Monday, September 19. It was not mailed to the address Ms. Sigel provided at the hearing; rather, it was sent to her previous address. Ms. Sigel faxed her appeal to the Board on Tuesday, September 20, 2011.

The Board, in making its determination that the late filing was not due to circumstances beyond Ms. Sigel's control, emphasized the following: Ms. Sigel was a paralegal and did not attempt to verify whether she would be given an extra day due to the Tribunal's mistake; Ms. Sigel could have submitted an appeal on September 19,<sup>1</sup> the day it was due, and then supplemented it at a later time; Ms. Sigel, had she followed the hearing officer's directive regarding contacting the Tribunal if a decision had not been received within ten days, would have been provided another copy of the decision at an earlier date; and finally, the hearing officer's purpose in communicating to the parties that they should contact the Tribunal if a decision has not been received by them within ten days is to remedy a situation like this one.

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<sup>1</sup>Ms. Sigel testified that when she had not received the Tribunal decision by Sunday, September 18, she contacted the person residing at her former address and was told that mail had been received for her but that he had returned it to the post office. Ms. Sigel further testified that on September 19, she went to the post office on her lunch break and obtained the Tribunal decision.



Cite as 2012 Ark. App. 213

Under Arkansas Code Annotated section 11-10-524(a)(1), Ms. Sigel had twenty calendar days after the date of mailing the notice to her *last known address* in which to appeal. The record of the telephone hearing before the Tribunal reflects that Ms. Sigel very clearly informed the hearing officer that her current address was no longer the address that the Tribunal had on file for her, that Ms. Sigel communicated her current address to the hearing officer, and that the hearing officer received the information from Ms. Sigel. At the conclusion of the telephone hearing, the hearing officer said, “[W]e’ll send [a copy of the written Tribunal decision along with instructions on how to appeal] to the address, the addresses that you confirmed at the beginning of the hearing.” In its decision dismissing the appeal, the Board stated, “It is obvious that the Tribunal decision was not mailed to the address which the claimant furnished to the hearing officer and which the hearing officer noted in the written record.” Clearly, Ms. Sigel’s last known address was the address that she provided to the Tribunal’s hearing officer, which was not the address to which the decision was mailed. Since Ms. Sigel had not, as far as the record reflects, had the Tribunal’s decision mailed to her last known address, the twenty-day period in which to file a timely appeal had not yet begun to run, and thus Ms. Sigel’s appeal was not untimely filed.

Reversed and remanded.

GRUBER and MARTIN, JJ., agree.