

Cite as 2022 Ark. App. 305

**ARKANSAS COURT OF APPEALS**

DIVISION II

No. E-21-548

MARLON BROOM

APPELLANT

V.

DIRECTOR, ARKANSAS  
DEPARTMENT OF COMMERCE,  
DIVISION OF WORKFORCE  
SERVICES

APPELLEE

Opinion Delivered August 31, 2022

APPEAL FROM THE ARKANSAS  
BOARD OF REVIEW

[NO. 2021-BR-02175]

AFFIRMED

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**PHILLIP T. WHITEAKER, Judge**

In this briefed employment-security case, Marlon Broom appeals the Arkansas Board of Review's (Board's) decision concluding that his appeal of his unemployment claim was untimely. We affirm.

Marlon Broom was employed by Chenal Pines Retirement Community as a dishwasher and kitchen helper. In October 2020, Chenal Pines discharged him from employment, and he filed a claim for unemployment benefits.

On March 4, 2021, the Department of Workforce Services (DWS) issued a notice of agency determination denying his claim for benefits, informing Broom that he could file an appeal within twenty calendar days after the mailing of the notice to his last known address. Thus, Broom had until March 24, 2021, to timely file an appeal of the agency's determination. After receiving the determination letter, Broom contacted an attorney who

filed an appeal on his behalf. However, his attorney mailed the notice of appeal to the Appeal Tribunal (Tribunal) on March 25, 2021—one day after the appeal deadline.

The Tribunal conducted a hearing pursuant to *Paulino v. Daniels*, 269 Ark. 676, 599 S.W.2d 760 (Ark. App. 1980), to determine whether the untimely filing of the appeal was due to circumstances outside Broom's control. At the hearing, Broom admitted receiving and reading the notice of agency determination and that he was aware of the twenty-day rule. He acknowledged that his appeal exceeded the twenty-day rule. He stated that he contacted Center for Arkansas Legal Services to help him with his appeal and that he filed his appeal as quickly as he could. He did not testify as to when he contacted legal services or how much time had elapsed between receiving the notice and contacting legal services. His only explanation for exceeding the twenty-day rule was that a substantial snowstorm occurred in February, resulting in delays of his mail service for several weeks. The hearing officer noted that the snowstorm in Pine Bluff occurred on February 14 and 15—two weeks prior to the mailing of the agency determination. Broom took no exception to this notation from the hearing officer.

After the hearing, the Tribunal found that Broom had not shown that the late filing was due to circumstances beyond his control and concluded that it did not have jurisdiction. Broom filed a timely appeal of that decision to the Board. After reviewing the Tribunal record, the Board upheld the Tribunal's dismissal of Broom's claim for unemployment benefits without a hearing.

Here, Broom appeals the Board's decision dismissing his claim. In order to perfect an administrative appeal of a DWS decision, a claimant must file or postmark the appeal

within twenty calendar days from the date the adverse decision was mailed; however, late appeals may be considered as timely if the lateness was due to circumstances beyond the appellant's control. Ark. Code Ann. § 11-10-524(a) (Supp. 2021). In this matter, the initial adverse decision was mailed on March 4, 2021; therefore, Broom had until March 24 to file a timely appeal. He did not do so.

Before us, Broom asserts that the Board lacked substantial evidence to support its finding that the appeal was late under circumstances beyond his control and that it had to resort to speculation to reach its conclusion. He contends that he presented evidence that inclement weather delayed the delivery of the notice-of-agency-determination letter and that this delay resulted in his inability to file a timely appeal. He further contends that there was nothing in the record to rebut his evidence and asserts that the hearing officer erred in her determination that the February snowstorm was irrelevant. He argues that it would be reasonable to infer that “a snowstorm that brought over twenty inches of snow to a state that is not used to seeing that would cause mail to run slower for several weeks” and that the hearing officer resorted to speculation in concluding that the snowstorm did not cause a delay in the receipt of the notice of agency determination. Broom carried the burden of proof that circumstances beyond his control prevented him from timely filing an appeal. *See Erives v. Dir.*, 2022 Ark. App. 226, at 5.

In appeals of unemployment-compensation cases, we review the evidence and all reasonable inferences deducible therefrom in the light most favorable to the Board's findings, treating the findings of fact made by the Board as conclusive if supported by substantial evidence. *Term v. Williams*, 2015 Ark. App. 144, 457 S.W.3d 291. Substantial evidence is

such evidence as a reasonable mind might accept as adequate to support a conclusion. *Id.* Even when there is evidence on which the Board might have reached a different decision, the scope of judicial review is limited to a determination of whether the Board could have reasonably reached its decision on the basis of the evidence before it. *Id.* Issues of credibility of witnesses and the weight to be afforded their testimony are matters for the Board to determine. *Id.* In matters involving untimely appeals, the reasons for late filing involve factual issues to be determined by the Board and not this court on appeal. *See Erives, 2022 Ark. App. 226, at 5.* After reviewing the evidence and all reasonable inferences deducible therefrom in the light most favorable to the Board's findings, we conclude that there is substantial evidence to support the Board's conclusion that the untimely filing was due to circumstances within Broom's control.

While Broom claims that a postal-service delay caused by a substantial snowstorm contributed to his untimeliness, he never claimed that he received the decision after the deadline or without sufficient time to file the actual appeal. In fact, he testified that other unemployment correspondence he received after the snowstorm was delayed by only a few days. He offered no testimony as to when he received the notice or the length of the alleged delay. He further admitted that, while he received mail at the listed address, he was not living there at the time and that this also may have contributed to the delay in receiving the notice. Finally, he admitted receiving the notice and contacting counsel to assist in the appeal but did not provide any evidence as to when he contacted counsel or why counsel mailed the notice of appeal one day late. Essentially, Broom requests that we reweigh the evidence on appeal, which we will not do. Broom bore the burden of proving that the

untimely filing was due to circumstances outside his control. He simply failed to sustain that burden. Therefore, we affirm the decision of the Board.

Affirmed.

HARRISON, C.J., and MURPHY, J., agree.

*Jay P. Coleman*, Center for Arkansas Legal Services, for appellant.

*Jennifer Janis*, for appellee.