



*Note: In the case title, an asterisk (\*) indicates an appellant and a double asterisk (\*\*) indicates a cross-appellant. Decisions of a three-justice panel are not to be considered as precedent before any tribunal.*

**ENTRY ORDER**

DECEMBER TERM, 2023

Allison Farley* v. Department of Labor (TCO, LLC)	} } } }	APPEALED FROM:  Employment Security Board CASE NO. 07-22-020-01
--	------------------	--

In the above-entitled cause, the Clerk will enter:

Claimant appeals an Employment Security Board decision sustaining an administrative law judge's ruling that her appeal of a claims adjudicator's determination was untimely. We affirm.

The record reflects the following. In a determination dated May 27, 2022, a Department of Labor claims adjudicator found that in 2021, claimant was overpaid unemployment compensation benefits because she intentionally misrepresented a material fact when filing her claims. As a result, the claims adjudicator determined that claimant was liable to repay those benefits and imposed a statutory penalty. On July 8, 2022, claimant sent an email to the Department requesting review of the determination by an administrative law judge (ALJ). Claimant acknowledged that the thirty-day appeal period had expired but stated that she gave birth on May 10 and was not residing at the address to which the letter was mailed. In a subsequent email to the Department, claimant alleged that the determination did not reach her mailbox until the end of June because she had recently moved and her mail was being forwarded, coupled with mail delays occasioned by the pandemic. The ALJ held an evidentiary hearing on the limited issue of whether claimant's appeal was timely filed, taking testimony from claimant and admitting exhibits including the U.S. Postal Service tracking information for the determination.

The ALJ then issued a decision containing the following factual findings. Claimant moved to her current Essex Junction address in November 2021. On May 3, 2022, claimant filed a claim for a new benefit year with the Department and reported the same Essex Junction address. Claimant gave birth on May 10, 2022, and was away from her home for eight days. On May 27, 2022, the determination was sent to claimant at the Essex Junction address by certified mail. It was delivered there on June 1, 2022. The last page of the determination warned: "This determination will become final unless, within 30 calendar days of the determination date, a written request for review by an administrative law judge is filed." Claimant filed her appeal on July 8, 2022.

On the basis of these findings, the ALJ dismissed claimant’s appeal as untimely filed. Claimant appealed the decision to the Board. After a hearing, the Board adopted the ALJ’s findings and conclusions and sustained the decision.

On appeal to this Court, claimant argues that the claims adjudicator’s determination was incorrect but does not challenge the Board’s conclusion that her appeal from that determination was untimely.

The Board’s findings will stand “unless clearly erroneous,” and we will uphold its conclusions “if fairly and reasonably supported by those findings of fact.” Bouchard v. Dep’t of Emp. & Training, 174 Vt. 588, 589 (2002) (mem.). We see no basis to disturb the Board’s decision here.

An interested party may appeal a determination to an ALJ “within 30 days after notice thereof.” 21 V.S.A. § 1348(a); id. § 1357 (providing that notice “shall be deemed sufficient if . . . sent by . . . certified mail to the last address of the person appearing upon the records of the Commissioner”). The appeal period runs from the date on which the determination is rendered. Id. § 1357. As a result, the thirty-day appeal period began to run on May 27, the date of the determination, and claimant’s July 8 appeal was untimely. The Board “has no inherent power to extend the statutory appeal period except where the statute so provides.” Allen v. Vt. Emp. Sec. Bd., 133 Vt. 166, 169 (1975); see also Trask v. Dep’t of Emp. & Training, 170 Vt. 589, 590 (mem.) (declining to “carve out a fairness-based public policy exception to Allen”). Under § 1357, a new notice must be issued, triggering a fresh appeal period, where “a person to whom a notice has been sent files with the Commissioner within 60 days from date of said notice a sworn statement to the effect that the notice was not received, or if the Commissioner is satisfied that the addressee did not receive the notice.” 21 V.S.A. § 1357. The emails claimant sent to the Department are not sworn statements, and nothing in the record suggests that claimant filed any such affidavit. There was no finding that claimant did not receive the notice. Claimant’s appeal was properly dismissed as untimely filed.

Affirmed.

BY THE COURT:

---

Paul L. Reiber, Chief Justice

---

William D. Cohen, Associate Justice

---

Nancy J. Waples, Associate Justice