

Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.

ENTRY ORDER

SUPREME COURT DOCKET NO. 2007-062

AUGUST TERM, 2007

| | | |
|---------------------|---|---------------------------|
| Sierra Fiata | } | APPEALED FROM: |
| | } | |
| v. | } | Employment Security Board |
| | } | |
| Department of Labor | } | |
| | } | DOCKET NO. 11-06-079-05 |

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

Claimant Sierra Fiata appeals from the Employment Security Board's order dismissing her appeal as untimely filed. We affirm.

Claimant began receiving unemployment compensation benefits in August 2006. In September 2006, she enrolled in beauty school, taking classes approximately thirty-five hours per week. Claimant did not inform the Department of Labor of this fact, however, and she continued to receive benefits. In October 2006, a claims adjudicator determined that claimant was ineligible for benefits as of September 10 because she was not available for work as required by law. Claimant was ordered to repay the Department of Labor \$636 in benefits, and she was also assessed six penalty weeks. Claimant appealed this decision to an administrative law judge. The ALJ did not assess any penalty weeks but she ordered claimant to repay \$636 to the Department. The written decision informed claimant that if she wanted to appeal, she needed to file a written request for review by the Employment Security Board within thirty calendar days. The ALJ's decision was dated December 15, 2006, but claimant did not file her notice of appeal until January 15, 2007, one day late. The Board dismissed claimant's appeal for lack of jurisdiction, and this appeal followed.

On appeal, claimant acknowledges that her appeal was untimely filed and that she received \$636 in benefits to which she was not entitled. She asks the Court to consider her financial and personal circumstances, however, and hold that she is not obligated to repay the Department. While we are sympathetic to claimant's situation, we find no basis to disturb the Board's decision. An appeal to the Board must be taken within thirty days of the date of the ALJ's decision. 21 V.S.A. § 1349. The Board has no inherent authority to extend this appeal period, and a timely appeal is a jurisdictional requirement. Allen v. Vermont Employment Security Bd., 133 Vt. 166, 168-69 (1975). Thus, because claimant's notice of appeal was untimely filed, the Board lacked jurisdiction over her case, and the appeal was properly dismissed.

Affirmed.

BY THE COURT:

Paul L. Reiber, Chief Justice

John A. Dooley, Associate Justice

Denise R. Johnson, Associate Justice

