

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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2004-035

MARCH TERM, 2004

	} APPEALED FROM:
	}
	} Employment Security Board
Department of Employment and Training	}
	}
v.	} DOCKET NO. C-02-03-020-01
	}
Vermont Courier	}
	}
	}
	}

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

Employer appeals the Vermont Employment Security Board's determination that it failed to file a timely appeal of the referee's decision sustaining an assessment of contributions on wages paid. We affirm.

The facts are not in dispute. The decision of the appeals referee was dated October 16, 2003. The decision stated in bold that it would become final unless a written request for review was filed with the Board " within 30 calendar days of the decision date." See 21 V.S.A. § 1349 (interested party may appeal referee's decision within thirty days after date of decision). The decision also stated that the filing date for the appeal would be considered the day the notice was either brought into the office and date-stamped, post-marked by mail, e-mailed, or faxed. On Monday, November 17, 2003, the thirty-second day following the referee's decision, the employer's attorney mailed, faxed, and e-mailed employer's notice of appeal. On December 9, 2003, the Board dismissed the appeal as untimely filed.

On appeal, employer argues that its appeal should be considered timely filed. In support of this argument, employer cites several federal cases construing F.R.C.P. 6, which mirrors V.R.C.P. 6. Under V.R.C.P. 6(a), when the last day of a prescribed time period ends on a Saturday, Sunday, or legal holiday, the period runs until the end of the following day. Employer's argument is unavailing. This Court has already concluded that V.R.C.P. 6 does not apply in the unemployment compensation administrative appeal process. See Allen v. Employment Sec. Bd., 133 Vt. 166, 168 (1975). Further, in upholding a decision of the Vermont Labor Relations Board that dismissed an appeal as untimely filed, a majority of this Court reaffirmed the following general rule: " in the absence of a statute excluding weekends and holidays, or extending the time when the last day for computing time in cases like this one falls on a Sunday, proceedings taken the following day come too late." In re Roy, 147 Vt. 403, 405 (1986). We did not disturb this general rule in Trask v. Dep't of Employment & Training, 170 Vt. 589, 591 (2000) (mem.), where we affirmed the Board's ruling that an administrative appeal was untimely filed when mailed on a Monday, the thirty-first day after the appeal period began to run. Notwithstanding employer's argument to the contrary, no language in Trask suggests that a notice of appeal filed as it was in this case should be considered timely filed. The applicable statute, the Board's rule, and the notice in the referee's decision unambiguously informed employer of the time period within which the appeal had to be filed, and employer had the opportunity to file the appeal in a timely manner. See Roy, 147 Vt. at 405. Employer's failure to do so left the Board without jurisdiction to consider the merits of its appeal.

Affirmed.

BY THE COURT:

John A. Dooley, Associate Justice

Denise R. Johnson, Associate Justice

Paul L. Reiber, Associate Justice