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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2005-356

MAY TERM, 2006

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| Blue Ridge Construction | } | APPEALED FROM: |
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| | } | |
| v. | } | Employment Security Board |
| | } | |
| Department of Employment and Training | } | |
| | } | DOCKET NO. C-02-05-163-01 |

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

Employer Ty C. Rolland, doing business as Blue Ridge Construction, appeals from the Employment Security Board=s decision dismissing his request for a hearing under 21 V.S.A. ' 1330 as untimely filed. He argues that: (1) his request was not an Aappeal,@ and it therefore should not have been dismissed on jurisdictional grounds; and (2) application of the thirty-day filing requirement violates his due process and equal protection rights. We affirm.

On January 10, 2005, the Department of Labor mailed an assessment of contributions to employer. The letter informed employer that the assessment would become final in thirty days unless employer filed a petition

for a hearing. The Department received employer=s request for a hearing by fax on February 17, 2005, outside of the thirty-day limit. In April 2005, an administrative law judge (ALJ) held a hearing on the timeliness of the request. Employer explained that his request was late because time had gotten away from him. The ALJ concluded that the appeal was untimely filed and that he therefore lacked jurisdiction to consider the case on the merits. Employer appealed to the Employment Security Board, which held a hearing and issued an order affirming the ALJ=s decision. The Board found that this Court had made it clear that the statutory appeal periods set forth in the unemployment compensation statute were jurisdictional in nature, and neither the Board nor an ALJ had authority to extend those appeal periods for good cause or otherwise. Employer appealed.

Employer first argues that the Board erred in concluding that the late filing was a jurisdictional defect. He asserts that the Board improperly relied on Allen v. Vermont Employment Security Board, 133 Vt. 166 (1975), in reaching its conclusion. According to employer, his filing was not an Aappeal@ but rather a request for an evidentiary hearing, a distinction that he asserts the legislature recognized in drafting 21 V.S.A. ' 1330. In support of his argument, employer also relies on 21 V.S.A. ' 1351=s statement that the Board is not bound by Atechnical or formal rules of procedure.@

Because this case presents questions of law, our review is de novo. Thompson v. Dewey=s S. Royalton, Inc., 169 Vt. 274, 276 (1999). We reject employer=s construction of the relevant unemployment statutes. Section 1330 provides that when an assessment against an employer is made and notice provided to the employer, Athe assessment shall be final unless the employer petitions for a hearing on such assessment within the time hereinafter specified.@ Section 1331 requires a petition to be filed within thirty days from the date of the assessment. The deadlines established by 21 V.S.A. " 1330 & 1331 are mandatory. See In re Middlebury Coll. Sales & Use Tax, 137 Vt. 28, 31 (1979) (when the meaning of a statute is plain, it must be enforced according to its terms). Section 1351 does not provide a basis for concluding otherwise. That section addresses the manner in which claims are presented at the hearings before the referee and the Board, and the rules and requirements applicable at the hearing. Thus, it provides that, at the hearing, Athe referee and the board shall not be bound by common law or statutory rules of evidence or by technical or formal rules of procedure except as provided in this chapter, but may conduct a hearing or trial in such manner as to ascertain

the substantial rights of the parties.@ 21 V.S.A. ' 1351 (emphasis added). This provision does not provide a basis for creating an exception to the filing deadlines specifically established by 21 V.S.A. " 1330-1331.

We held in Allen that the filing requirements established for claimants challenging their unemployment benefit awards under 21 V.S.A. " 1348(a) & 1349 were jurisdictional, and that the Board had Ano inherent power to extend the statutory appeal period except where the statute so provides.@ 133 Vt. at 169 (recognizing that Aa timely appeal is jurisdictional@). Pursuant to 21 V.S.A. ' 1357, an appeal period may be extended when an individual files a sworn affidavit that he did not receive notice of the Department=s decision or if the commissioner is satisfied that the addressee did not receive notice. In such situations, the Department mails a new notice and the appeal period begins to run from the date of mailing. Id. As noted above, in this case, employer acknowledged receiving the Department=s assessment in a timely fashion.

We find no basis to distinguish our holding in Allen from the present case. It simply does not follow, as employer argues, that a timely filing is not a jurisdictional requirement merely because the word Aappeal@ is not used in 21 V.S.A. ' 1330. A request for a hearing under 21 V.S.A. ' 1330 is plainly an Aappeal@ under a common sense understanding of that termCit is the method by which the employer may challenge the Department=s assessment before a higher authority. See Black=s Law Dictionary 94 (7th ed. 1999) (defining Aappeal@ as A[a] proceeding undertaken to have a decision reconsidered by bringing it to a higher authority@). As the State points out, like an Aappeal@ under 21 V.S.A. ' 1348(a), a request for a hearing under 21 V.S.A. ' 1330 similarly involves a de novo evidentiary proceeding before a neutral adjudicator. We note that employer referred to his request as an Aappeal@ in the proceedings below. We conclude that the filing requirements at issue in this case are jurisdictional, and we find no basis to disturb the Board=s dismissal of employer=s untimely request.

We do not address employer=s assertion that his due process and equal protection rights were violated by the application of the thirty-day filing requirement because employer failed to raise this argument below. See Allen, 133 Vt. at 169 (declining to address constitutional question not raised by parties below).

Affirmed.

BY THE COURT:

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Paul L. Reiber, Chief Justice

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Marilyn S. Skoglund, Associate Justice

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Brian L. Burgess, Associate Justice