VERMONT SUPREME COURT
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Case No. 2021-171

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

MARCH TERM, 2022

Jay Perron* v. Department of Labor	}	APPEALED FROM:
	}	Employment Security Board
	}	CASE NO. 11-20-085-01

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

Claimant Jay Perron appeals the Employment Security Board's decision dismissing as untimely his appeal from an administrative law judge's (ALJ) decision, which concluded that claimant was ineligible for unemployment-compensation benefits. We affirm.

The record indicates that in early 2020 claimant was laid off and filed a claim for unemployment-compensation benefits. Based on information provided by claimant and his employer, a claims adjudicator issued a written decision in October 2020. The claims adjudicator found that although claimant had refused an offer of work, this offer was not "valid" and thus claimant was not disqualified from receiving unemployment benefits. The claims adjudicator allowed claimant's claim for the week ending June 20, 2020, and thereafter, provided that claimant continued to meet all eligibility requirements.

Employer timely appealed the claims adjudicator's decision to an ALJ. The ALJ held an evidentiary hearing in which employer participated. Claimant did not attend the hearing. The ALJ issued a written decision on April 26, 2021, finding as follows. On or about June 17 or 18, 2020, employer sent an email to all laid-off employees, including claimant, stating that employer was preparing to bring some staff back. The email asked for the employees' availability. Claimant responded on June 23, 2020 that he was not interested in returning and was going to take the opportunity to work on his family business. The ALJ concluded that employer's email was not an offer of work but was an initial inquiry to determine employees' availability to return to work. Claimant's response precluded any offer of work, which, the ALJ concluded, disqualified claimant from receiving benefits. The ALJ thus reversed the decision of the claims adjudicator.

The ALJ's written decision contained a warning at the bottom of the last page, in bold font, stating, "The decision of the administrative law judge will become final unless, within 30 calendar days of the decision date, a written request for review by the Employment Security Board is filed." This warning also provided instructions for submitting a request for review to the Department of Labor by email, postal mail, or facsimile.

The record reflects that claimant emailed the Department of Labor on June 4, 2021, seeking to have the Employment Security Board review the ALJ's decision. In his email, claimant acknowledged that his appeal was beyond the thirty-day deadline. The Employment Security Board issued a written decision concluding that the Board did not have jurisdiction to consider claimant's appeal because it was untimely. The Board therefore affirmed the ALJ's decision without reaching the merits.

On appeal to this Court, claimant raises arguments regarding the merits of his claim for unemployment benefits. However, claimant fails to address the timeliness of his appeal to the Employment Security Board.

Claimant's untimely appeal is fatal to his case. The unemployment-compensation statute provides that a party seeking to appeal an ALJ decision must do so "[w]ithin 30 days after date thereof." 21 V.S.A. § 1349. "Regardless of the manner of service, appeal periods shall commence to run from the date of the determination or decision rendered." Id. § 1357. Claimant's appeal to the Board was untimely because it was filed more than thirty days after the date of the ALJ decision. The Board therefore properly concluded that it lacked jurisdiction to consider the appeal. See Allen v. Vt. Emp. Sec. Bd., 133 Vt. 166, 168 (1975) (holding that timely appeal to Employment Security Board is jurisdictional requirement).

The Board does not have discretion to extend this statutory appeal period, except for failure to receive notice as specified in 21 V.S.A. § 1357. Allen, 133 Vt. at 168-69 (stating that "board has no inherent power to extend the statutory appeal period" except for failure to receive notice as specified in 21 V.S.A. § 1357); see 21 V.S.A. § 1357 (describing acceptable manners of service by agents of Commissioner of Labor, including for decisions relating to unemployment compensation); see also Trask v. Dep't of Emp. & Training, 170 Vt. 589, 590 (2000) (mem.) (declining "to carve out a fairness-based public policy exception to Allen"). Claimant did not contend that he failed to receive notice of the ALJ's decision, so there was no basis to extend the appeal period. Indeed, claimant's email seeking review of the ALJ's decision acknowledged its own untimeliness. The Board thus correctly dismissed claimant's appeal.

Affirmed.

BY THE COURT:

Paul L. Reiber, Chief Justice

Harold E. Eaton, Jr., Associate Justice

Karen R. Carroll, Associate Justice