

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Roberta E. Mendolia,	:	
Petitioner	:	
	:	
v.	:	
	:	
Unemployment Compensation	:	
Board of Review,	:	No. 731 C.D. 2025
Respondent	:	Submitted: July 24, 2026

BEFORE: HONORABLE PATRICIA A. McCULLOUGH, Judge
HONORABLE CHRISTINE FIZZANO CANNON, Judge
HONORABLE MATTHEW S. WOLF, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE FIZZANO CANNON

FILED: August 20, 2026

Roberta E. Mendolia (Claimant), *pro se*, petitions for review from the May 21, 2025 order of the Unemployment Compensation Board of Review (Board), which affirmed the Referee's decision dismissing Claimant's appeal as untimely pursuant to Section 501(e) of the Unemployment Compensation (UC) Law.¹ Upon review, we affirm.

I. Background

Claimant applied for UC benefits effective April 21, 2024, following her termination from employment with BNY Trust Co. (Employer). Certified Record (C.R.) at 3-4. On April 22, 2024, the Department of Labor and Industry

¹ Act of December 5, 1936, Second Ex. Sess., P.L. (1937) 2897, *as amended*, 43 P.S. § 821(e).

(Department) issued a determination which found Claimant financially eligible for benefits at a weekly benefit rate of \$453. *Id.* at 15. The determination expressly stated that the weekly benefit rate was calculated based on reported wages from Employer, which were included in a chart within the determination. *Id.* The Department's determination further provided that the final date to request a wage protest or appeal the determination was May 13, 2024. *Id.* at 15-16. On December 23, 2024, Claimant filed a facially untimely appeal² of the Department's determination and asserted that the wages reported by Employer were incorrect. *Id.* at 25-33.

A Referee conducted a hearing on March 25, 2025, at which Claimant appeared and testified regarding her contention that Employer mishandled her pay during her employment because she often worked more than 40 hours per week. C.R. at 84, 87. Employer was sent a notice of hearing but did not appear. *Id.* at 85. Upon being questioned by the Referee as to the timeliness of her appeal,³ Claimant

² Section 501(e) of the UC Law states:

Unless the claimant or last employer or base-year employer of the claimant files an appeal with the [B]oard, from the determination contained in any notice required to be furnished by the [D]epartment . . . , no later than twenty-one calendar days after the "Determination Date" provided on such notice, and applies for a hearing, such determination of the [D]epartment, with respect to the particular facts set forth in such notice, shall be final and compensation shall be paid or denied in accordance therewith.

43 P.S. § 821(e).

³ The original hearing notice was amended the day before the hearing to add that the timeliness of the appeal was at issue and to offer Claimant an extension of the hearing date if she wished one in order to prepare to address that issue. C.R. at 80-81. At the hearing, the Referee also explained that there was a timeliness issue and asked Claimant if she wanted more time to prepare to address it, but Claimant stated she was ready to address it at that time. *Id.* at 85-88.

testified that she was “not aware of” the appeal deadline on the determination and thought her appeal was timely because she filed for the hearing online. *Id.* at 85-86. On March 28, 2025, the Referee issued a decision dismissing Claimant’s appeal as untimely⁴ pursuant to Section 501(e) of the UC Law. *Id.* at 115-16.

Claimant timely appealed to the Board on March 29, 2025, and the Board issued an order affirming the Referee’s decision dismissing Claimant’s appeal as untimely on May 21, 2025. C.R. at 143-44. Claimant timely filed a petition for review in this Court without addressing the issue of timeliness. *See* Petition for Review at 1-2.

II. Issues

Before this Court,⁵ Claimant only argues that she was subjected to a hostile work environment and does not address the timeliness issue. *Id.* The Board

⁴ Where a claimant’s appeal from a UC determination is facially untimely, the initial hearing before a referee must be limited solely to the issue of timeliness, as a timely appeal is a jurisdictional prerequisite to the administrative review of the determination. *See Walthour v. Unemployment Comp. Bd. of Rev.*, 276 A.3d 837, 842 (Pa. Cmwlth. 2022) (observing that the appeal deadline from a UC determination is mandatory and that if an appeal from a Department determination is not timely filed, the determination becomes final, and the merits of the matter cannot be considered) (citing *Vereb v. Unemployment Comp. Bd. of Rev.*, 676 A.2d 1290, 1293 (Pa. Cmwlth. 1996))). Here, the Referee improperly heard substantive evidence concerning Claimant’s assertion of error, as well as addressing the timeliness issue. *See* C.R. at 85-93. However, the Referee ultimately based dismissal of Claimant’s appeal solely on the untimeliness of the appeal. C.R. at 115-16. Therefore, the error in allowing Claimant to present evidence on other issues at the hearing was harmless. *See Gallitzin Apparel Corp. v. Unemployment Comp. Bd. of Rev.*, 569 A.2d 392, 395 (Pa. Cmwlth. 1990) (explaining that an appellate court will not disturb an unemployment decision on the basis of a harmless error and that the petitioner must “show that the alleged error resulted in prejudice and had a material effect on the outcome of the case”).

⁵ This Court’s review is limited to determining “whether constitutional rights were violated, whether an error of law was committed, or whether necessary findings of fact were supported by

argues that Claimant’s failure to address the sole issue of timeliness before this Court mandates dismissal of Claimant’s petition for review, as there is nothing for this Court to review.⁶ Board’s Br. at 6-7.

III. Discussion

Under Section 501(e) of the UC Law, 43 P.S. § 821(e), a claimant must appeal a notice furnished by the Department to the Board within 21 calendar days from the “determination date” on such notice. A statutory appeal deadline is mandatory and a claimant’s failure to timely appeal within the deadline is a jurisdictional defect, which this Court cannot overlook or disregard. *Carney v. Unemployment Comp. Bd. of Rev.*, 181 A.3d 1286, 1288 (Pa. Cmwlth. 2019); *Hessou v. Unemployment Comp. Bd. of Rev.*, 942 A.2d 194, 197 (Pa. Cmwlth. 2008). Further, this Court may not extend an appeal deadline as a matter of grace or mere indulgence. *Russo v. Unemployment Comp. Bd. of Rev.*, 13 A.3d 1000, 1003 (Pa. Cmwlth. 2010). To justify an untimely appeal and obtain *nunc pro tunc* relief, a claimant bears a heavy burden of demonstrating extraordinary circumstances involving (1) fraud or a breakdown in the administrative authority’s operation or (2) non-negligent conduct of the claimant that was beyond his control. *Hessou*, 942 A.2d at 198. Failure to file an appeal within 21 days “without an adequate excuse for the late filing, mandates dismissal of the appeal.” *United States Postal Serv. v. Unemployment Comp. Bd. of Rev.*, 620 A.2d 572, 573 (Pa. Cmwlth. 1993).

substantial evidence.” *Hessou v. Unemployment Comp. Bd. of Rev.*, 942 A.2d 194, 197 n.3 (Pa. Cmwlth. 2008) (citing *Sheets v. Unemployment Comp. Bd. of Rev.*, 708 A.2d 884, 885 n.3 (Pa. Cmwlth. 1988)).

⁶ While the Board requests that this Court dismiss Claimant’s petition for review, we note that the correct procedural disposition would be to affirm the Board’s May 21, 2025 order dismissing Claimant’s appeal.

Here, Claimant presents no argument regarding the timeliness of her appeal or her right to proceed with an appeal *nunc pro tunc*. Nor does Claimant contend that the Board erred or abused its discretion in dismissing her appeal based on its untimeliness. Instead, Claimant raises a completely unrelated argument regarding the hostility of her work environment, which contains no legal analysis or citation to legal authority. *See* Claimant’s Br. at 12. We conclude, therefore, that Claimant has waived the issue of timeliness. *See Rapid Pallet v. Unemployment Comp. Bd. of Rev.*, 707 A.2d 636, 638 (Pa. Cmwlth. 1998) (holding that failure to develop issue in appellate brief results in waiver). Because timeliness was the only basis on which the Board dismissed Claimant’s appeal, Claimant has failed to preserve any issue for this Court’s review.⁷ *See Cunningham v. Unemployment Comp. Bd. of Rev.* (Pa. Cmwlth., No. 1646 C.D. 2023, filed May 6, 2025), slip op. at 8 (“[The c]laimant does not address, let alone provide good cause for, the untimeliness of his appeal from the referee’s decision to the Board, which is the jurisdictional hurdle he needed to overcome to get to his underlying claim.

⁷ We note that, even if Claimant had preserved the issue of timeliness on appeal, we would still affirm the Board’s May 21, 2025 order. The record, including Claimant’s testimony, clearly demonstrates that Claimant failed to appeal the Department’s financial eligibility determination within the statutory time period. *See* C.R. at 86. Moreover, Claimant’s testimony that she was unaware of the deadline and “how [the appeal] got late” after filing for a hearing online does not justify *nunc pro tunc* relief. *Id.* at 85-86. The “final day to file a timely appeal to [the Department’s] determination” was plainly listed in bold on the first page of the determination. *Id.* at 15; *see also Naborn v. Unemployment Comp. Bd. of Rev.*, 246 A.3d 373, 380 (Pa. Cmwlth. 2021) (holding that a claimant’s ignorance or negligence of the UC claim process is not a basis upon which this Court can reverse a decision by the Board); *Roman-Hutchinson v. Unemployment Comp. Bd. of Rev.*, 972 A.2d 1286, 1289 (Pa. Cmwlth. 2009) (holding that a claimant assumes the risk of any delays that may result from the electronic filing process). Accordingly, the Board did not err or abuse its discretion in dismissing Claimant’s appeal.

Consequently, the issue is waived.”);⁸ *Pitsikoulis v. Unemployment Comp. Bd. of Rev.* (Pa. Cmwlth., No. 535 C.D. 2021, filed December 19, 2022), slip op. at 7 (“[The c]laimant does not explain why her appeal was filed late, nor does she argue any applicable exception. Because [the c]laimant fails to address or develop any argument on the only issue before this Court, we conclude that she has waived the issue.”); *Hessou*, 942 A.2d at 199 (holding that the Board’s findings regarding untimeliness of appeal were conclusive, where the claimant did not specifically challenge those findings and instead challenged only the Board’s overall determination to deny him relief). Accordingly, we are constrained to affirm the Board’s dismissal of Claimant’s appeal as untimely under Section 501(e) of the UC Law, 43 P.S. § 821(e).

IV. Conclusion

Based on the foregoing discussion, the May 21, 2025 order of the Board is affirmed.

CHRISTINE FIZZANO CANNON, Judge

⁸ Under Rule 414(a) of the Commonwealth Court’s Internal Operating Procedures, unreported decisions of the Commonwealth Court issued after January 15, 2008, may be cited for their persuasive value. 210 Pa. Code § 69.414(a).

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ORDER

AND NOW, this 20th day of August, 2026, the May 21, 2025 order of the Unemployment Compensation Board of Review is AFFIRMED.

CHRISTINE FIZZANO CANNON, Judge