

IN THE UTAH COURT OF APPEALS

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Sione Tavake,	)	MEMORANDUM DECISION
	)	(Not For Official Publication)
Petitioner,	)	
	)	Case No. 20100295-CA
v.	)	
	)	F I L E D
Department of Workforce	)	(June 4, 2010)
Services,	)	
	)	<span style="border: 1px solid black; padding: 2px;">2010 UT App 149</span>
Respondent.	)	

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Original Proceeding in this Court

Attorneys: Sione Tavake, Taylorsville, Petitioner Pro Se  
            Jaceson R. Maughn, Salt Lake City, for Respondent

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Before Judges McHugh, Thorne, and Voros.

PER CURIAM:

Petitioner Sione Tavake seeks judicial review of a decision of the Workforce Appeals Board (the Board) affirming the dismissal of his untimely appeal from the decision of an Administrative Law Judge (the ALJ). The ALJ's decision had dismissed an earlier appeal of the initial decision of the Department of Workforce Services (the Department) because that appeal was also untimely. This case is before the court on a sua sponte motion for summary disposition.

We must determine whether the Board's decision holding that the appeal of the ALJ's decision was untimely without good cause was reasonable and rational. By administrative rule, a late appeal may be considered "if it is determined that the appeal was delayed for good cause." Utah Admin. Code R994-508-104. Good cause is limited to the circumstances stated in the rule. See id. If a claimant receives the decision after the expiration of the appeal time, an appeal may be considered "if the appeal was filed within ten days of actual receipt of the decision and the delay was not the result of willful neglect." See id. R994-508-104(1). Good cause may also be demonstrated where "the

delay in filing the appeal was due to circumstances beyond the appellant's control or . . . the appellant delayed filing the appeal for circumstances which were compelling and reasonable." Id. R994-508-104(2)-(3).

The Board allowed Tavake an opportunity to explain the circumstances causing his late filing of an appeal from the ALJ's decision. The ALJ's decision clearly outlined the appeal procedure and stated the appeal deadline in bold type. Although Tavake said he had difficulty getting mail at his home address--the same argument he made with regard to his late appeal of the Department's decision in August 2009--he did not claim that he did not receive the decision within the time to appeal. Instead, he said that he elected not to file an appeal because he believed he had obtained a new job. He also promptly replied to the February 9, 2010 letter, which was sent to the same home address, that requested an explanation of the circumstances of the late filing of the appeal of the ALJ's decision. The Board concluded that Tavake did not demonstrate good cause for the late appeal and also did not demonstrate that his late appeal resulted from circumstances that were compelling and reasonable. The Board further stated that it had reviewed the merits of the case and found no mistake as to the facts that would justify exercising continuing jurisdiction over the benefits claim.

Tavake claims, without factual support, that his failure to timely appeal was beyond his control. Tavake also claims that he was denied due process in the agency proceeding and would be denied due process if this court grants summary disposition. In fact, Tavake participated in a hearing before an ALJ. The Board also allowed Tavake an opportunity to explain the late filing of his appeal from the ALJ's decision. Tavake filed both appeals in the agency proceedings late, despite clear notice of the appeal period. Although he claimed that he was denied access to his mail by his wife, he did not claim that he did not receive the ALJ's decision within the appeal period. Tavake provided his home address to the Department, and he did not change that address even after he claimed he had difficulty receiving mail at that address when he filed his first untimely appeal in August 2009 from the initial decision of the Department.

We will reverse an agency's findings of fact "only if the findings are not supported by substantial evidence." Drake v. Indus. Comm'n, 939 P.2d 177, 181 (Utah 1997). We will not disturb the Board's conclusion regarding the application of law to facts unless it "exceeds the bounds of reasonableness and rationality." Nelson v. Department of Employment Sec., 801 P.2d

158, 161 (Utah Ct. App. 1990). Based upon the foregoing, we affirm as reasonable and rational the Board's decision that it lacked jurisdiction to consider the merits of Tavake's appeal of the ALJ's decision.

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Carolyn B. McHugh,  
Associate Presiding Judge

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William A. Thorne Jr., Judge

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J. Frederic Voros Jr., Judge