

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1735

September Term, 2013

BRENDA E. PINDER-BEY

v.

BOARD OF APPEALS, DEPARTMENT OF
LABOR, LICENSING AND REGULATION

Krauser, C.J.,
Zarnoch,
Reed,

JJ.

Opinion by Reed, J.

Filed: December 23, 2014

Appellant, Brenda Pinder-Bey, seeks our review of a decision issued by appellee, the Board of Appeals of the Department of Labor, Licensing and Regulation, in an unemployment benefits case. The Board of Appeals declined to hear Ms. Pinder-Bey's appeal on jurisdictional grounds, and she sought judicial review of that decision in the Circuit Court for Baltimore City, which affirmed the Board's decision.

Ms. Pinder-Bey raises a single question for our consideration, which we have rephrased for clarity as follows:¹

Whether the Board of Appeals erred where it declined to exercise jurisdiction over appellant's appeal because her petition for review was not timely filed.

We answer her question in the negative, and, accordingly, we affirm the judgment of the circuit court and shall explain.

FACTUAL AND PROCEDURAL BACKGROUND

Ms. Pinder-Bey requests our assistance in her ongoing dispute with the Department of Labor, Licensing and Regulation ("DLLR") regarding its denial of her request for unemployment benefits. Blocking her path to the receipt of these benefits is a jurisdictional issue.

¹ Appellant originally presented the following question in her brief:

Was the Department Of Labor, Licensing And Regulation justified in denying the Appellant's appeal for unemployment benefits solely on the assumption that the Appellant conscientiously filed her unemployment claim appeal too late; because they assumed that the Appellant received proper notice?

Ms. Pinder-Bey began her quest for unemployment benefits on October 7, 2012, when she filed a claim with the Office of Unemployment Insurance at the DLLR. In a letter mailed on November 2, 2012, a claims examiner from the agency denied Ms. Pinder-Bey's request for not meeting the requirements of § 8-903 of the Maryland Unemployment Insurance Law, codified in Title 8 of the Maryland Code's Labor and Employment Article ("LE").² Specifically, the examiner's determination stated that

The claimant has requested to be paid unemployment insurance benefits during a time when []she was not able to work due to illness. The Maryland Unemployment Insurance Law requires that in order to receive benefits a claimant must be able to work, available for work and actively seeking work. As the claimant is not meeting all of these requirements, benefits are denied under section 8-903 of the Maryland Unemployment Insurance Law

Ms. Pinder-Bey did not receive a copy of the denial letter, which was problematic for her because the letter also set forth her appeal rights. Pursuant to LE Title 8 and the applicable regulations in the Code of Maryland Regulations ("COMAR"), Ms. Pinder-Bey had fifteen days after the denial was mailed, *i.e.*, November 19, 2012,³ to appeal that

² As is relevant to this appeal, LE § 8-903(a)(1) provides:

Except as otherwise provided in this section, to be eligible for benefits an individual shall be:

- (i) able to work;
- (ii) available for work; and
- (iii) actively seeking work.

³ Although fifteen days after the date of mailing was November 17, 2012, that date fell on a Saturday. We presume that the agency extended the deadline to the following business day, Monday, November 19, 2012, in the interest of fairness.

decision.⁴ Ms. Pinder-Bey learned from a DLLR employee on December 6, 2012, that her claim was denied. She quickly acted upon this new information and appealed the claim examiner's decision on December 11, 2012—well after the deadline—via a facsimile to the Lower Appeals Division of the Office of Unemployment Insurance (“LAD”).

Fortunately, because COMAR 09.32.11.01(B)(3) permits late-filed petitions to LAD for good cause shown, Ms. Pinder-Bey's appeal was able to proceed. A LAD hearing examiner held a telephonic hearing on December 29, 2012, and rendered her written decision on January 9, 2013. The late-filed appeal was allowed because LAD determined that, through no fault of her own, Ms. Pinder-Bey did not receive the denial letter. The decision of the claims examiner, however, was affirmed.

Like appeals from the determination of a claims examiner, appeals to the DLLR's Board of Appeals (the “Board”) must be filed within fifteen calendar days of the date LAD mails its decision. *See* COMAR 09.32.06.02(B)(1). Accordingly, Ms. Pinder-Bey's filing

⁴ COMAR states the procedure for filing an appeal of an unemployment insurance claim determination. Per COMAR 09.32.11.01(B)(2):

(2) An appeal is considered filed on the earliest of the following dates:

(a) The date an appeal is delivered in person to the administrative office of the Lower Appeals Division;

(b) The U.S. Postal Service postmark date on which an appeal, properly addressed and stamped, is mailed to the administrative office of the Lower Appeals Division;

(c) The date on the appeal itself when the envelope has an illegible postmark; or

(d) The date an appeal is received by facsimile or electronic mail at the administrative office of the Lower Appeals Division.

deadline was set for January 24, 2013. The fourth page of the LAD decision mailed to Ms. Pinder-Bey provided notice of her rights of appeal and set forth the filing deadline for that appeal. She contends this fourth page was missing from the copy of the written decision she received on January 14, 2013.

Notwithstanding the January 24 deadline, Ms. Pinder-Bey sent her appeal petition to the Board via facsimile on January 30, 2013.⁵ Unlike appeals to LAD, the period for filing an appeal with the Board may *not* be extended. *See* COMAR 09.32.06.02(B)(2). Because of this strict filing deadline, the Board disallowed Ms. Pinder-Bey's appeal. In its decision letter dated April 5, 2013, the Board explained that it could not exercise jurisdiction over her appeal because of the late-filed petition.

On May 2, 2013, Ms. Pinder-Bey petitioned the Circuit Court for Baltimore City for judicial review of the Board's determination. The circuit court heard the matter on September 18, 2013, and affirmed the Board's decision via a written order docketed on September 23, 2013.

Ms. Pinder-Bey timely noted her appeal to this Court on October 17, 2013.

DISCUSSION

A. Parties' Contentions

Ms. Pinder-Bey submits only a brief factual argument in support of our reversal of the Board's decision. She explains that the fourth page of the LAD decision letter set forth her rights of appeal to the Board as well as the filing deadline. That fourth page, however,

⁵ As in COMAR 09.32.11.01(B)(2)(d), appeals to the Board may be filed via facsimile. *See* COMAR 09.32.06.02(B)(3)(d).

was missing in the copy of the decision she received. Because she did not receive adequate notice of the filing deadline, she argues that the Board should have accepted her late-filed appeal. The Board, however, disagrees with Ms. Pinder-Bey, explaining that the relevant statute and regulation makes no exceptions for late-filed appeals. In addition, the Board argues that Ms. Pinder-Bey has failed to preserve her notice argument for our review.

B. Standards of Review

We employ several well-established standards of review for those cases arising from a circuit court's review of a decision of an administrative agency.

When we review the decision of an administrative agency or tribunal, “we [assume] the same posture as the circuit court . . . and limit our review to the agency’s decision.” *Anderson v. Gen. Cas. Ins. Co.*, 402 Md. 236, 244 (2007) (citation omitted). The circuit court’s decision acts as a lens for review of the agency’s decision, or in other words, “we look not *at* the circuit court decision but *through* it.” *Emps. Ret. Sys. of Balt. Cnty. v. Brown*, 186 Md. App. 293, 310 (2009), *cert. denied*, 410 Md. 560 (2009) (emphasis in original) (citations omitted).

We “review the agency’s decision in the light most favorable to the agency” because it is “prima facie correct” and entitled to a “presumption of validity.” *Anderson v. Dep’t of Pub. Safety & Corr. Servs.*, 330 Md. 187, 213 (1993) (internal quotation marks and citation omitted).

The overarching goal of judicial review of agency decisions is to determine whether the agency’s decision was made “in accordance with the law or whether it is arbitrary, illegal, and capricious.” *Long Green Valley Ass’n v. Prigel Family Creamery*, 206 Md.

App. 264, 274 (2012) (citation omitted). With regard to the agency’s factual findings, we do not disturb the agency’s decision if those findings are supported by substantial evidence. *See id.* (citations omitted). Substantial evidence is defined as “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion[.]” *Catonsville Nursing Home, Inc. v. Loveman*, 349 Md. 560, 569 (1998) (internal quotation marks and citation omitted). We are not bound, however, to affirm those agency decisions based upon errors of law and may reverse administrative decisions containing such errors. *Id.*

C. Analysis

As explained *supra*, in those appeals arising from a circuit court’s decision on a petition for judicial review, we review the agency’s determination and not that of the circuit court. Because our review is focused solely on the agency’s final decision, we cannot consider any issue that is not encompassed by that final decision. *See Schwartz v. Md. Dep’t of Natural Res.*, 385 Md. 534, 555 (2005) (citation omitted). Accordingly, issues not raised before the agency are not preserved for our review on appeal.

Ms. Pinder-Bey’s notice argument falls outside that scope of review. Nowhere in the record does it appear she raised the issue of the missing fourth page of LAD’s decision letter before the Board. Rather, she explained in her petition for judicial review that she thought she timely filed her appeal with the Board based on the date she received the letter. It appears to us, then, that she sought reversal not on a lack of notice, but on an improper application of the filing deadline. Accordingly, because the Board never passed on the notice issue, we cannot review the issue as it is not preserved on appeal to this Court.

What is preserved is the question of whether she timely filed an appeal to the Board. We hold, based on our review of the record, that she did not, even though she had ample opportunity to do so.

The Maryland Unemployment Insurance Law explains that initial claims determinations may be appealed to the DLLR's LAD "[w]ithin 15 days after the date of mailing of the [claims determination] notice or the date of delivery[.]" *See* LE § 8-806(g)(1); *see also* COMAR 09.32.11.01(B)(1). Ms. Pinder-Bey's claim was initially denied on November 2, 2012, but she received no notice of that denial until approximately a month later after she spoke with DLLR personnel regarding her claim. Technically, therefore, her appeal was not timely filed when she faxed her request to LAD on December 11, 2012. She was saved, however, by the good cause provision in LE § 8-806(e)(2), which provides that "[t]he chief hearing examiner of the Lower Appeals Division, for good cause, may extend the time for an appeal under this subsection." *See also* COMAR 09.32.11.01(B)(3).

Although we understand why Ms. Pinder-Bey might have thought her appeal to the Board would have been accepted, regardless of its late filing, that is not what the law states. A party aggrieved by a LAD decision may seek the Board's review of that decision "within 15 days after the mailing or other delivery of notice of the decision[.]" LE § 8-806(g)(6); *see also* COMAR 09.32.06.02(B)(1) ("An appeal or petition for review from a hearing examiner's decision shall be filed within 15 calendar days *after a decision is mailed* to the last known address of the party." (emphasis added)). Absent from the statute is a good cause provision saving late-filed petitions; indeed, COMAR expressly prohibits such

petitions. COMAR 09.32.06.02(B)(2) (“The period for filing an appeal or a petition for review *may not be extended* by the Board of Appeals.” (emphasis added)). Accordingly, the absolute deadline for Ms. Pinder-Bey’s appeal to the Board was January 24, 2013—fifteen calendar days after the decision was mailed; her appeal was received by the DLLR on January 30, 2013.

We are concerned by the inconsistencies in the dates surrounding Ms. Pinder-Bey’s appeal to the Board that appear throughout the record. In her letter seeking the Board’s review of her claim, Ms. Pinder-Bey notes LAD’s letter was mailed on January 9, 2013, and states she received that letter two days later on January 11. Yet, in her petition to the circuit court, Ms. Pinder-Bey’s date of receipt changed. There, she claimed that, in fact, she received LAD’s letter on January 14, 2013—three days after her original representation of January 11. Moreover, she relied on purported representations of the LAD examiner to argue she had fifteen days to file from the date she received the decision letter. Extrapolating from Ms. Pinder-Bey’s calculations, the deadline was set at February 1, 2013. She stated she complied with this deadline by filing her appeal two days earlier on January 30.⁶

⁶ The relevant text from the petition for judicial review states:

I made/filed(faxed) my appeal on January 30, 2013. I did not receive the denial notice until January 14, 2013. According to [the LAD examiner], I had fifteen days to file an appeal after January[] 14, 2013. I filed my appeal on January 30, 2013, which was two days before the deadline, therefore, I am requesting that you grant me another appeal.

Ms. Pinder-Bey misconstrues the facts and the applicable regulations. First, COMAR explicitly states that the deadline is fifteen *calendar* days from the mailing date—not fifteen days from the date of her receipt of the LAD decision. Ms. Pinder-Bey’s deadline, therefore, was January 24, 2013. Second, even if the period ran from the date of receipt, the deadline would then be January 29, 2013, which would *still* make her January 30 filing not timely.⁷

The substantial evidence in the record demonstrates Ms. Pinder-Bey had ample opportunity to comply with the statutory deadline to file an appeal to the Board. For reasons unbeknownst to us, she chose to file her petition on January 30, 2013, which would fall outside any deadline—real or miscalculated. We hold that the Board’s decision to decline exercise of its jurisdiction on account of an appeal not timely filed was supported by substantial evidence in the record and was not arbitrary and capricious.

**JUDGMENT OF THE CIRCUIT COURT FOR
BALTIMORE CITY AFFIRMED. COSTS TO BE
PAID BY THE DEPARTMENT OF LABOR,
LICENSING AND REGULATION.**

⁷ We are perplexed as to how Ms. Pinder-Bey reached the conclusion that fifteen calendar days after January 14, 2013, is February 1, 2013. Assuming that Ms. Pinder-Bey thought the date calculation excluded weekends and public holidays, February 1 would still be an incorrect date; rather, that deadline would be February 5, 2013. *See* Timeanddate.com: Business Date Calculator, <http://www.timeanddate.com/date/weekdayadd.html> (last visited Dec. 9, 2014).