

No. 1-10-2965

**NOTICE:** This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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KERRY D. REDMOND,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Cook County.
	)	
v.	)	
	)	No. 10 L 51117
ILLINOIS DEPARTMENT OF EMPLOYMENT	)	
SECURITY; DIRECTOR OF DEPARTMENT OF	)	
EMPLOYMENT SECURITY; BOARD OF REVIEW;	)	
and FOSTER & SON FIRE EXTINGUISHERS,	)	Honorable
	)	Elmer James Tolmaire, III,
Defendants-Appellees.	)	Judge Presiding.

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JUSTICE ROCHFORD delivered the judgment of the court.  
Presiding Justice Hoffman and Justice Karnezis concurred with the judgment.

**ORDER**

¶1 *Held:* Where employee did not appeal denial of unemployment benefits to Board of Review within 30-day period required by statute, despite employee's contention that notice of decision was not promptly mailed to him, Board correctly concluded it lacked jurisdiction to consider appeal; the Board's dismissal of plaintiff's appeal was affirmed.

¶2 Plaintiff, Kerry D. Redmond, appeals the dismissal of his complaint seeking administrative review of the decision of the Illinois Department of Employment Security (IDES) finding him ineligible for unemployment insurance benefits. On appeal, Mr. Redmond contends IDES's Board of Review (the Board) erred in concluding it lacked jurisdiction to consider Mr. Redmond's appeal because the appeal was not filed with the Board within 30 days of the date on which IDES's decision was mailed to him. We affirm.

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¶ 3 The record establishes that in 2008 and 2009, Mr. Redmond was employed by Foster and Son Fire Extinguishers, where his job entailed performing maintenance on exhaust fans in restaurants. Mr. Redmond's last day of work was January 27, 2009, and he applied for unemployment benefits on November 15, 2009. IDES denied Mr. Redmond's application for unemployment benefits, finding he left work voluntarily. On March 25, 2010, Mr. Redmond requested a hearing before IDES. That request listed Mr. Redmond's address as "10850 S. Eggleston."

¶ 4 On April 28, 2010, a Department referee conducted a telephone hearing with Mr. Redmond and Sharon Regan, the company's office manager, which contained the following testimony pertinent to this appeal. When Mr. Redmond was asked by the referee if he "still live[d] on Eggleston in Chicago?" Mr. Redmond replied, "Yes." Ms. Regan testified Mr. Redmond stopped appearing for work and that his last paycheck was mailed to his house.

¶ 5 On May 3, 2010, IDES's referee issued a written decision which stated Mr. Redmond was ineligible to receive unemployment benefits. That decision listed Mr. Redmond's address as 10850 South Eggleston Avenue in Chicago and listed the date of mailing as May 3, 2010. The second page of the decision stated, *inter alia*: "An appeal to the Board of Review must be in writing, and filed within 30 days from the date of mailing shown above."

¶ 6 On June 3, 2010, which was 31 days after the date of mailing, or one day beyond the allowable time period, Mr. Redmond filed an appeal of the referee's decision to the Board. Mr. Redmond wrote on the appeal request that he did not receive his mail. In that filing, Mr. Redmond again listed his address as 10850 South Eggleston Avenue. The Board dismissed Mr. Redmond's appeal because it was not filed within 30 days of the date of mailing.

¶ 7 On July 12, 2010, Mr. Redmond filed a *pro se* complaint for administrative review of the Board's decision in the circuit court. A hearing was held, and on October 6, 2010, the circuit court affirmed the Board's decision. Mr. Redmond has filed a timely notice of appeal to this court.

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¶ 8 As a preliminary matter, we address the Board's motion to strike Mr. Redmond's reply brief, which we have taken with the case and in which the Board raises two main arguments. The Board first contends the reply brief raises new arguments not contained in Mr. Redmond's initial brief. Mr. Redmond began this proceeding *pro se* and filed his own initial brief to this court, and the Board responded. Mr. Redmond then filed a *pro se* reply brief, which he later withdrew. Mr. Redmond obtained counsel, who filed a reply brief advancing new arguments.

¶ 9 The Board contends the reply brief by Mr. Redmond's counsel violates Supreme Court Rules 341(h)(7) and 341(j). Supreme Court Rule 341(h)(7) expressly provides points not argued in the opening brief are waived and cannot be raised in a reply brief. Ill. S. Ct. R. 341(h)(7) (eff. July 1, 2008). Supreme Court Rule 341(j) provides a reply brief "shall be confined strictly to replying to arguments presented in the brief of the appellee." Ill. S. Ct. R. 341(j) (eff. July 1, 2008). Here, the arguments in the reply brief filed by Mr. Redmond's counsel are, in large part, responding to the legal arguments raised by the Board in its appellee brief. Therefore, those contentions by Mr. Redmond raised in the reply brief can be considered by this court. Accordingly, the Board's motion to strike the entire reply brief filed by Mr. Redmond's counsel is denied.

¶ 10 The Board's second argument in its motion to strike Mr. Redmond's reply brief involves the attachment of documents to the brief that were not included in the record on appeal. The record cannot be supplemented by attaching documents to the appendix of an appellate brief. *In re Estate of Matthews*, 409 Ill. App. 3d 780, 783 (2011). Moreover, as the Board points out, this court, in an order on August 24, 2011, has already considered and denied Mr. Redmond's request to supplement the record with those materials. The Board's motion to strike is granted as to the attachments to Mr. Redmond's reply brief.

¶ 11 Having addressed the Board's motion to strike the reply brief filed by Mr. Redmond's counsel, we proceed to the arguments raised on appeal. Mr. Redmond contends his appeal to the Board was not timely filed because he did not receive notice of IDES's referee's denial of benefits.

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He argues IDES did not provide sufficient proof that the referee's decision was mailed on May 3, 2010, which began the 30-day period for Mr. Redmond to appeal to the Board.

¶ 12 This court's review of whether the Board had jurisdiction of Mr. Redmond's appeal is *de novo*. *Thompson v. Department of Employment Security*, 399 Ill. App. 3d 393, 394 (2010) (further noting our review of administrative law proceedings is limited to the propriety of the Board's decision). Mr. Redmond's act of filing his appeal to the Board 31 days after the mailing date of IDES's decision is dispositive of this case.

¶ 13 Mr. Redmond does not dispute he failed to comply with that time frame; rather, he contends he did not receive actual notice of IDES's decision and, thus, is entitled to a new hearing on his claim for unemployment benefits. A party seeking to invoke the Board's review of an administrative decision must strictly comply with the procedures set out by statute. *Id.* at 395 (citing *Collinsville Community Unit School District No. 10 v. Regional Board of School Trustees*, 218 Ill. 2d 175, 181-82 (2006)). In unemployment benefits cases, a referee's decision becomes final unless a party files an appeal with the Board within 30 days of a decision being mailed, pursuant to section 801(A) of the Unemployment Insurance Act (the Act). 820 ILCS 405/801(A) (West 2008).

¶ 14 Mr. Redmond argues that, because his appeal was filed a day late, it is "likely" IDES's decision was not mailed on the stated date of May 3. He contends IDES failed to carry the burden of proving its written decision was actually mailed on May 3, 2010.

¶ 15 The 30 days in which a party must appeal to the Board are calculated from the date of service. *Thompson*, 399 Ill. App. 3d at 395. The Act provides that service in this type of case is completed by a mailing to the last known address of the party entitled to receive it. 820 ILCS 405/804 (West 2008). See *Thompson*, 399 Ill. App. 3d at 395; *Esmail v. Department of Revenue*, 371 Ill. App. 3d 778, 784 (2007). This court has held, in the context of an unemployment benefits hearing, that service by mail is not invalid simply because the aggrieved party denies he received the mailing in question. *Thompson*, 399 Ill. App. 3d at 395; *Esmail*, 371 Ill. App. 3d at 783-84. Mr.

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Redmond does not discuss the applicable provisions of the Act or distinguish *Thompson*.

¶ 16 The facts set out in the record support a conclusion that the decision was mailed to the address where Mr. Redmond resided. Approximately six weeks before IDES's decision, Mr. Redmond listed his address as 10850 South Eggleston Avenue in requesting the hearing. The record before this court establishes that at the telephone hearing on April 28, 2010, Mr. Redmond affirmed when asked by IDES's referee, if he still lived on "Eggleston in Chicago." Additionally, Mr. Redmond's untimely filing before the Board in June 2010 also stated the Eggleston Avenue address. Therefore, the record reflects that throughout the course of these proceedings, Mr. Redmond continually provided to IDES the address to which the notice of the IDES decision was sent.

¶ 17 In summary, because the Act does not confer jurisdiction upon the Board to consider an appeal that is filed more than 30 days after the decision was mailed (820 ILCS 405/801(A) (West 2008)), the Board correctly determined it lacked the authority to review Mr. Redmond's untimely appeal of the decision denying him unemployment benefits.

¶ 18 Accordingly, we affirm the Board's dismissal of Mr. Redmond's appeal.

¶ 19 Affirmed.