

No. 1-11-3440

**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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LAREATHA S. SLUE,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Cook County.
	)	
v.	)	
	)	
ILLINOIS DEPARTMENT OF EMPLOYMENT SECURITY;	)	No. 11 L 50937
DIRECTOR OF THE ILLINOIS DEPARTMENT OF	)	
EMPLOYMENT SECURITY; BOARD OF REVIEW; and	)	
ANDERSON BUFFALO RESTAURANT, INC.,	)	
JOE'S ON HOWARD,	)	Honorable
	)	Robert Lopez-Cepero,
Defendants-Appellees.	)	Judge Presiding.

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JUSTICE HOWSE delivered the judgment of the court.  
Presiding Justice Epstein and Justice McBride concurred in the judgment.

**ORDER**

¶ 1 *Held:* Where plaintiff's appeal to the referee of the Illinois Department of Employment Security contesting the denial of unemployment insurance benefits was filed more than two months after the statutory 30-day time limit, the Board of Review's final administrative decision affirming the referee's dismissal of plaintiff's appeal for lack of jurisdiction is affirmed.

¶ 2 *Pro se* plaintiff Lareatha Slue appeals from an order of the circuit court affirming a final administrative decision by defendant, the Board of Review of the Illinois Department of Employment Security (the Board). The Board found that plaintiff's appeal of the denial of her unemployment insurance benefits was properly dismissed for lack of jurisdiction because it was untimely filed. On appeal, plaintiff acknowledges her appeal was untimely, but contends the late filing was not her fault because she was given incorrect information from a customer service representative. Plaintiff asks this court to reverse the Board's decision and allow her to pursue the appeal of the denial of benefits. We affirm.

¶ 3 The record shows plaintiff was employed part time as a cashier at Buffalo Joe's Restaurant from July 27, 2009, until October 13, 2009, when she left the restaurant during her shift and did not return. Nearly a year later, in September 2010, plaintiff applied to the Illinois Department of Employment Security (the Department) for unemployment insurance benefits. Restaurant owner Enoch Anderson protested plaintiff's claim for benefits stating plaintiff was late to work several times, was suspended from work for one week, then walked out of the restaurant, abandoning her work station.

¶ 4 A claims adjudicator with the Department found that plaintiff quit her job at the restaurant for unknown reasons by telling a co-worker she needed to quit. Anderson denied creating an environment that caused plaintiff to feel the need to quit. Consequently, the claims adjudicator found plaintiff voluntarily left her employment without good cause attributable to her employer, and therefore, was not eligible for unemployment insurance benefits.

¶ 5 The claims adjudicator's decision was mailed to plaintiff at her last known address on December 2, 2010. The decision expressly stated that the claims adjudicator's determination would be considered final unless plaintiff filed an appeal within 30 calendar days after the notification of the decision was mailed to her last known address.

¶ 6 On March 25, 2011, plaintiff filed an appeal to the referee of the Department stating she did not receive a proper adjudication of her claim. Plaintiff said her employer did not agree with her daughter being at the restaurant for five minutes and removed plaintiff from the work schedule for two weeks. Plaintiff said that when she returned, Anderson scheduled her for only one day for the week.

¶ 7 At the April 22, 2011, telephone hearing, plaintiff told the referee she was unsure about the purpose of the hearing because she had been denied unemployment benefits for her job at the restaurant and thought that decision was final. Plaintiff appealed only because the Department reduced the benefits she was receiving from another job. Plaintiff stated "I did voluntarily leave." The referee noted that the claims adjudicator's decision was issued on December 2, 2010, and that plaintiff's appeal filed on March 25, 2011, was nearly four months late. Plaintiff stated she was homeless at the time and not receiving her mail. She said she moved out of her residence at the end of December 2010. When the referee told plaintiff she should have received the notice before then, plaintiff said she moved out at the end of October. Plaintiff went to the Department when she noticed a reduction in her benefits. She could not recall the date because she had been there "so many times." A representative at the Department told plaintiff an appeal was not necessary because she would still receive the same amount of money. Plaintiff testified that she "went behind him and appealed anyway." Plaintiff then said she did not quit her job at the restaurant and that it was unprofessional of her employer to remove her from the work schedule for two weeks after her daughter was at the restaurant for five minutes.

¶ 8 The appeals hearing referee issued a written decision finding that plaintiff's appeal was filed late without good cause. The referee noted that the denial of benefits was mailed to plaintiff at her last known address on December 2, 2010. Her statutory 30-day appeal period expired on

January 3, 2011. Accordingly, the referee concluded that plaintiff's appeal filed on March 25, 2011, was untimely, and dismissed her appeal.

¶ 9 Plaintiff appealed the referee's decision to the Board claiming she did not appeal the denial of benefits immediately because staff at the Department told her that filing an appeal was unnecessary because it would not affect her benefits. The Board found plaintiff failed to file her appeal within the statutory 30-day time period. Therefore, the referee had no jurisdiction to review plaintiff's case and was required by law to dismiss the appeal. Accordingly, the Board affirmed the referee's dismissal of plaintiff's appeal. Plaintiff appealed the Board's ruling to the circuit court, which affirmed that decision on November 8, 2011.

¶ 10 On appeal, plaintiff acknowledges her appeal was untimely, but contends the late filing was not her fault because she was given incorrect information from a Department customer service representative who told her she did not need to appeal. Plaintiff claims she returned to the Department in March 2011 after she stopped receiving benefits and was then advised to file an appeal. Plaintiff asks this court to reverse the Board's decision and allow her to pursue the appeal of the denial of benefits.

¶ 11 Initially, we note that plaintiff has attached two letters to her appellate brief that are not in the record on appeal. These letters are dated November 17, 2011, and November 29, 2011, seven months after her telephone hearing and after the circuit court affirmed the Board's decision. It is well established that our review is confined to the issues, arguments and evidence that were presented before the Board. *Texaco-Cities Service Pipeline Co. v. McGaw*, 182 Ill. 2d 262, 278-79 (1998). Consequently, the attachments are not properly before this court and cannot be used to supplement the record. *Revolution Portfolio, LLC v. Beale*, 341 Ill. App. 3d 1021, 1024 (2003). We, therefore, give no consideration to these letters.

¶ 12 We review the propriety of the decision of the Board. *Thompson v. Department of Employment Security*, 399 Ill. App. 3d 393, 394 (2010). Whether the Board properly concluded that the referee lacked jurisdiction to consider plaintiff's appeal is a question of law which we review *de novo*. *Id.* at 395.

¶ 13 Pursuant to section 800 of the Unemployment Insurance Act, a claimant who wishes to appeal the claims adjudicator's decision must file an appeal to the Department's referee within 30 calendar days after the claims adjudicator's determination was mailed to the claimant's last known address. 820 ILCS 405/800 (West 2010). Failure to file an appeal within the 30-day time limit renders the claims adjudicator's determination final. 820 ILCS 405/800. Consequently, compliance with the 30-day time limit is mandatory and operates as a statute of limitations. *Hernandez v. Department of Labor*, 83 Ill. 2d 512, 517 (1981). Where an appeal of an adjudicator's decision is untimely filed, both the referee and the Board lack jurisdiction to reach the merits of that appeal. *Lachenmyer v. Didrickson*, 263 Ill. App. 3d 382, 385 (1994). Significantly, our supreme court has determined that this "statute does not provide for late filings for excusable neglect or for good cause." *Hernandez*, 83 Ill. 2d at 519. In addition, service of the claims adjudicator's determination by mail is not invalid merely because the claimant denies receiving it. *Thompson*, 399 Ill. App. 3d at 395, citing *Esmail v. Department of Revenue*, 371 Ill. App. 3d 778, 784 (2007).

¶ 14 Here, the record shows that the claims adjudicator's determination denying plaintiff unemployment insurance benefits was mailed to plaintiff at her last known address on December 2, 2010. Thirty calendar days after that date was January 1, 2011, which was a Saturday; therefore, Monday, January 3, 2011, was the mandatory deadline for plaintiff to file her appeal to the referee. Plaintiff did not file her appeal until March 25, 2011, more than two months late. Accordingly, the referee lacked jurisdiction to consider the merits of plaintiff's appeal. Plaintiff's

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claim that she did not receive the mailed copy of the claims adjudicator's determination does not invalidate the service of that notice. Similarly, plaintiff's claim that she received incorrect advice from a representative at the Department is inconsequential as the statute prohibits filing late appeals, even where there may be excusable neglect or good cause. We thus find that the Board's decision affirming the referee's dismissal of plaintiff's appeal for lack of jurisdiction was proper.

¶ 15 For these reasons, we affirm the judgment of the circuit court of Cook County.

¶ 16 Affirmed.