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IN THE
COURT OF APPEALS OF INDIANA

L.M.,
Appellant-Claimant,

v.

Review Board of the Indiana
Department of Workforce
Development,
Appellee

February 18, 2022

Court of Appeals Case No.
21A-EX-990

Appeal from the Review Board of
the Indiana Department of
Workforce Development

Steven F. Bier, Chairperson
Larry A. Dailey, Member
Heather D. Cummings, Member
Review Board No. 21-R-1777

Vaidik, Judge.

Case Summary

- [1] L.M. appeals the decision of the Review Board of the Indiana Department of Workforce Development affirming the administrative law judge’s decision that

she did not appeal the denial of benefits within ten days of the denial being sent. Although the denial contained a statement that it was sent to L.M. on October 30, 2020, the Department of Workforce Development did not appear at the hearing and thus presented no evidence about when or how the denial was sent. In addition, L.M. testified, and the administrative law judge found, that L.M. did not electronically receive the denial until November 3. Absent evidence to the contrary, we presume a denial sent electronically was sent the same day it was received. Accordingly, L.M.'s appeal filed November 13 was timely. We therefore reverse and remand.

Facts and Procedural History

[2] On October 30, 2020, a claims investigator with the Department of Workforce Development issued a Determination of Eligibility that L.M. was not eligible for Pandemic Unemployment Assistance (PUA) benefits. Ex. p. 3. The Determination contained a statement that it was “sent” to L.M. that same day, although it did not specify how it was “sent.” *Id.* (“Date Determination Sent: 10/30/2020” (formatting altered)). In addition, the Determination provided it would become “final on 11/9/2020 if not appealed . . . within ten days of the date this determination was sent.” *Id.* (capitalization omitted).

[3] L.M. appealed on November 13. A hearing on the issue of whether L.M.'s appeal was timely was held before an administrative law judge (ALJ) in February 2021. The Department of Workforce Development did not appear and thus presented no evidence about when or how the Determination was

sent. L.M. testified she did not receive the Determination in the mail, but she did receive it in her Uplink account.¹ However, she testified it was not until November 3 that she “could see [the Determination] on the Uplink account.” Tr. pp. 7, 8. The ALJ concluded L.M.’s appeal was not timely and affirmed the decision of the claims investigator, finding as follows:

The Determination of Eligibility dated October 30, 2020 was sent or otherwise delivered to [L.M.] (“Claimant”) by mail at her address on record with the Department of Workforce Development by United States Mail, First Class Postage prepaid and also was electronically transmitted to her Claimant Uplink self-service account. See Division Exhibit 1. **Although the Claimant did not receive the Determination of Eligibility in the mail, she received the Determination of Eligibility in her Claimant Uplink self-service account on November 3, 2020.** To be timely filed, a request for appeal was due on or before November 9, 2020.

Ex. pp. 23-24 (emphasis added). L.M. appealed to the Review Board, which adopted the ALJ’s findings of fact and conclusions of law and affirmed her decision. Appellant’s App. Vol. II p. 238.

[4] L.M., pro se, now appeals.

¹ “Uplink is the name of Indiana Department of Workforce Development’s automated self service Unemployment Insurance system.” Ind. Dep’t of Workforce Dev., *Uplink FAQ*, <https://www.in.gov/dwd/indiana-unemployment/individuals/uplink-faq/> [<https://perma.cc/6L84-ELQ8>].

Discussion and Decision

[5] L.M. contends the Review Board’s conclusion that her appeal was not timely was “contrary” to its finding that she did not “receive” the Determination until November 3.² Appellant’s Br. p. 2. As the Review Board points out, whether an appeal is timely is a conclusion of law. *See* Appellee’s Br. p. 9. Conclusions of law are reviewed for correctness. *Q.D.-A., Inc. v. Ind. Dep’t of Workforce Dev.*, 114 N.E.3d 840, 845 (Ind. 2019).

[6] Indiana Code section 22-4-17-2(f) provides that claimants must file an appeal within ten days of a determination of eligibility being “sent” by the Department of Workforce Development. The determination can be sent in one of two ways: (1) “by United States mail, with proof of mailing being prima facie evidence of service” or (2) “by facsimile or electronic means, addressed to the parties’ addresses of record on file with the department.” 646 Ind. Admin. Code 5-10-19(a). “A document mailed or electronically transmitted to a party is presumed to be received if the document was mailed or electronically transmitted to the complete, correct address of record unless”:

(1) there is tangible evidence of nondelivery, such as the document being returned to the department by the United States Postal Service; or

² The Review Board argues L.M. has waived review of the timeliness issue because the only issue she raised to the Review Board was whether she was entitled to PUA benefits. However, the Review Board adopted the ALJ’s findings and conclusions, which only address the timeliness issue. Accordingly, this issue is properly before us.

(2) credible and persuasive evidence is submitted to the department to establish nondelivery, delayed delivery, or misdelivery of the document.

Id. at (d).

[7] Here, the Determination contained a statement that it was “sent” to L.M. on October 30. However, the Department of Workforce Development did not appear at the hearing and thus presented no evidence about when or how the Determination was sent. *See Digbie v. Review Bd. of Ind. Dep’t of Workforce Dev.*, 9 N.E.3d 254, 257 (Ind. Ct. App. 2014) (in an appeal concerning whether a notice of hearing was mailed, holding it was “hardly difficult” for the Department of Workforce Development to “offer testimony that the notice was mailed or produce evidence of a contemporaneous notation in the claimant’s file, similar to a CCS entry, that the notice was placed in the mail on a specific date”). The ALJ found L.M. did not receive the Determination in the mail. As such, the issue is when the Determination was sent to L.M.’s Uplink account. The presumption is that when a document is transmitted electronically, it is received that same day. *See* I.C. § 22-4-17-2; 646 I.A.C. 5-10-19. But the ALJ found L.M. did not receive the Determination until November 3. Because the Department of Workforce Development presented no evidence as to when the Determination was sent, the only reasonable conclusion is that it was not sent until L.M. received it on November 3. Therefore, L.M. had until November 13 to appeal. The ALJ’s conclusion that L.M.’s appeal was not timely was not correct. We reverse and remand this case for further proceedings.

[8] Reversed and remanded.

Najam, J, and Weissmann, J., concur.