

Circuit Court for Montgomery County
Case No. 433410V

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 444

September Term, 2018

JEREMY COOPER

v.

DEPARTMENT OF LABOR, LICENSING,
AND REGULATION

Beachley,
Wells,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: November 26, 2019

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

On November 7, 2016, a Department of Labor, Licensing and Regulation (DLLR) claims specialist determined that Jeremy Cooper, appellant, was ineligible to receive unemployment benefits because he was not actively seeking work. The same day, a Notice of Benefit Determination (the Notice) was mailed to Mr. Cooper at his address of record advising him that he had the right to file an appeal “within 15 days” and that the deadline for filing the appeal was November 22, 2016. Mr. Cooper filed an appeal by mail that was postmarked November 23, 2016.

Thereafter, a DLLR hearing examiner conducted an evidentiary hearing to determine whether the appeal was timely and, if not, whether Mr. Cooper could show good cause to excuse his late filing. At the hearing, Mr. Cooper acknowledged that his appeal was untimely and testified that he “just forgot about it” and that it “must have slipped [his] mind.” Tina Burton-Cooper, Mr. Cooper’s wife, subsequently testified that she handled “all the computer stuff” for Mr. Cooper and had filed the appeal on his behalf. When questioned about the late-filing, Ms. Cooper stated that she had been very busy because she “work[ed] 40 hours a week” and “had . . . minor surgery going on.” She further stated:

I thought I had more time and I didn’t. I read the – I remember reading the bottom [of the Notice] where it said something about you can appeal, you have 15 days and I did not notice that date like a couple paragraphs far up where it said that day because I would have focused specifically on that date. But I totally didn’t even see it and that’s the only reason we were a day late.

Following the hearing, the hearing examiner issued a final decision finding that Mr. Cooper’s appeal was untimely and that he had not demonstrated good cause for the late filing of the appeal. The hearing examiner thus affirmed the claim specialist’s denial of Mr. Cooper’s benefits.

Mr. Cooper appealed and the DLLR Board of Appeals affirmed the decision of the hearing examiner, finding that Mr. Cooper had failed to meet his burden of demonstrating good cause for the late filing. Mr. Cooper then sought judicial review before the Circuit Court for Montgomery County, which affirmed the decision of the Board of Appeals. This appeal followed.

The sole issue raised on appeal is whether the Board should have found good cause to excuse Mr. Cooper’s late notice of appeal, thus permitting his challenge to the denial of unemployment insurance benefits to go forward.¹ Our task in reviewing an administrative decision “is precisely the same as that of the circuit court: [] we must review the administrative decision itself.” *Wisniewski v. Dep’t. of Labor, Licensing and Regulation*, 117 Md. App. 506, 515 (1997) (citations omitted). If the Board’s decision was supported by substantial evidence, and if it committed no error of law, we must affirm. *Paek v. Prince George’s County Bd. of License Comm’rs.*, 381 Md. 583, 590 (2004). The test for determining whether the Board’s findings of fact are supported by substantial evidence is whether reasoning minds could reach the same conclusion from the facts relied on by the

¹ Although Mr. Cooper does not specifically raise the issue, we agree with the Board that his appeal was not timely filed. Section 8-806(e) of the Labor & Employment Article provides that a determination by a claims specialist is final unless “within 15 days after the mailing or other delivery of the notice, the claimant or employer appeals the determination.” Here, the claim specialist’s decision was mailed to Mr. Cooper on November 7, 2016. Therefore, he was required to file his appeal no later than November 22, 2016. Because his appeal was not postmarked until November 23, 2016, it was untimely. See COMAR 09.32.11.01(B)(2)(b) (noting that appeal that is mailed is considered filed on the “U.S. Postal Service postmark date on which [the] appeal . . . is mailed to the administrative office of the Lower Appeals Division[.]”).

Board. *Department of Labor, Licensing, & Regulation v. Hider*, 349 Md. 71, 78 (1998) (citation omitted).

In similar contexts, we have found that the determination of good cause turns on “whether the claimant prosecuted his claim with that degree of diligence that an ordinarily prudent person would have exercised under the same or similar circumstances.” *White v. Prince George’s County*, 163 Md. App. 129, 150-51 (2005) (citation omitted). A lack of due diligence is equivalent to lack of good cause. *See W.D. Curran & Associates, Inc. v. Cheng-Shum Enterprises, Inc.*, 107 Md. App. 373, 390 (1995). Here, there was no evidence that Mr. Cooper did not receive the Notice, that he did not understand the contents of the Notice, or that extenuating circumstances prevented him from filing a timely appeal. Rather, he testified that he did not file a timely appeal because he “just forgot about it.”

Ms. Cooper, who ultimately filed the appeal on Mr. Cooper’s behalf, also acknowledged that she had reviewed the Notice prior to the deadline to file the appeal and had read the section that stated Mr. Cooper had 15 days from the date of the Notice to file an appeal. The only reasons that she provided for not filing the appeal earlier were that she had been busy with work and a minor surgery and that she had failed to read the portion of the Notice that set forth the specific deadline for filing the appeal. Based on this testimony, a reasoning mind could conclude that Mr. Cooper (and Ms. Cooper) did not act with the degree of diligence that an ordinarily diligent person would have under the circumstances. Thus, we hold that the Board’s decision was supported by substantial evidence and must be affirmed.

**JUDGMENT OF THE CIRCUIT
COURT FOR MONTGOMERY
COUNTY AFFIRMED. COSTS TO
BE PAID BY APPELLANT**