

Circuit Court for Baltimore City
Case No. 24-C-19-004220

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2553

September Term, 2019

CLIFTON S. DIAZ, JR.

v.

DEPARTMENT OF LABOR, LICENSING,
AND REGULATION

Fader, C.J.,
Zic,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: April 8, 2021

*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.

Clifton S. Diaz, Jr., appellant, appeals from an order, issued by the Circuit Court for Baltimore City, affirming two final decisions of the Maryland Department of Labor, Licensing and Regulation (DLLR) Board of Appeals (the Board). In Decision No. 1222-BR-19 (first Board decision), the Board held that Mr. Diaz had failed to file a timely appeal from an adverse decision of a DLLR claims specialist. In Decision No. 1225-BR-19 (second Board decision) the Board held that Mr. Diaz had knowingly made a false statement or failed to disclose a material fact in order to obtain unemployment benefits within the meaning of Section 8-809 of the Labor and Employment Article. Although Mr. Diaz’s brief is not a model of clarity, he essentially contends that the Board’s decisions should be reversed.¹ For the reasons that follow, we shall affirm.

BACKGROUND

The first Board decision involved a February 14, 2019 determination by a DLLR claims specialist finding that Mr. Diaz had requested unemployment benefits while failing to report wages that he had earned with Express Services, Inc. The last day to appeal that determination, as stated in the Notice of Benefit Determination, was March 4, 2019. Mr. Diaz filed two untimely appeals, one on March 11, 2019, and one on March 14, 2019. At a hearing before a DLLR hearing examiner, Mr. Diaz did not attempt to establish good cause for his late filing. Rather, he testified that he had, in fact, filed a timely appeal on

¹ At one point in his brief Mr. Diaz also appears to claim that the circuit court erred by not holding a hearing on his motion for reconsideration or motion for attorney’s fees. However, he provides no background facts or argument to support this claim. And it is not clear from the record that he even filed such motions. Consequently, we do not consider these contentions on appeal. See *Klauenberg v. State*, 355 Md. 528, 552 (1999) (stating that “arguments not presented . . . with particularity will not be considered on appeal”).

February 24, 2019 by certified mail. The hearing examiner held the hearing open for several days so that Mr. Diaz could submit documentary evidence, such as a certified return receipt, to corroborate his testimony. However, Mr. Diaz failed to provide such evidence. The hearing examiner subsequently issued a decision finding that Mr. Diaz's appeal was untimely, and that he had not demonstrated good cause to excuse the untimeliness. In doing so, the hearing examiner found that Mr. Diaz's testimony that he had filed a timely appeal on February 24, 2019 was not credible. Mr. Diaz appealed to the Board of Appeals, which adopted the factual findings of the hearing examiner and affirmed the decision.

The second Board decision involved a March 11, 2019 determination by a DLLR claims specialist finding that Mr. Diaz had committed a fraudulent act in order to obtain unemployment benefits by failing to report wages that he had earned with EBB II, Inc (EBB). Mr. Diaz filed a timely appeal from that determination. At the hearing, Maryland Unemployment Insurance Agency employee Ranae Myers, testified that Mr. Diaz had filed a claim for unemployment benefits in May 2018. She further testified that from September 28, 2018 through December 2, 2018, Mr. Diaz had filed weekly requests for unemployment benefits with the Agency certifying that he was not employed or earning wages. However, she indicated that during that same time period he was working as a truck driver for EBB earning gross wages of \$120 per day. That testimony was corroborated by Beth Rolle, an employee for EBB, who testified that she remembered Mr. Diaz and that he had worked there during the relevant time period. She also confirmed the amount of weekly wages that Mr. Diaz had received. Mr. Diaz testified that he had never worked for EBB at any point. The hearing examiner affirmed the determination of the claim specialist, specifically

finding that Ms. Myers’s and Ms. Rolle’s testimonies were credible, and that Mr. Diaz’s contrary testimony was not credible. Mr. Diaz also appealed that decision to the Board, which adopted the findings of the hearing examiner and affirmed his decision.

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

On appeal, Mr. Diaz essentially challenges the two dispositive factual findings supporting the Board’s decisions. Specifically, with respect to the first Board decision he takes issue with the finding that he did not file an appeal until after March 4, 2019. And with respect to the second Board decision he contests the finding that he was employed by EBB from September 28 to December 2, 2018. However, both of those findings are well-supported by evidence in the record. To be sure, Mr. Diaz gave contrary testimony as to each issue. However “credibility determinations are the sole province of the agency,” *DLLR v. Propper*, 108 Md. App. 595, 605 (1996) and it is not our role on appeal to second-guess the Board’s decision to give no weight to his testimony. Mr. Diaz does not specially address any other aspect of the Board’s orders by either claiming that its findings were not

supported by the record or that it made an error of law. And ultimately, he carries the burden on appeal to demonstrate that the Board committed prejudicial error. Because he has not met that burden, we shall affirm.

**JUDGMENT OF THE CIRCUIT
COURT FOR BALTIMORE CITY
AFFIRMED. COSTS TO BE PAID BY
APPELLANT.**