

Circuit Court for Baltimore County
Case No. 03-C-18-008537

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 342

September Term, 2019

JEROME BURNETT

v.

DEPARTMENT OF LABOR, LICENSING,
AND REGULATION

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

JJ.

PER CURIAM

Filed: June 3, 2020

*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.

In May 2013, a Department of Labor, Licensing, and Regulation (DLLR) claims specialist determined that Jerome Burnett, appellant, had fraudulently obtained unemployment benefits in numerous cases.¹ Mr. Burnett filed timely appeals from those determinations. An appeals hearing was scheduled for July 10, 2013. However, Mr. Burnett failed to call in for the hearing at the scheduled time. Therefore, a DLLR hearing examiner entered an order dismissing his appeals.

Five years later, Mr. Burnett filed a petition to reopen his dismissed cases. In support of the petition, Mr. Burnett stated that he had been “diagnosed as having Bipolar disorder/psychotic disorders” and that having a “mental disorder is the reason for my late appeal.” He also attached medical records from 2007 and 2018 which documented some of his mental health issues. After a hearing examiner denied the petition to reopen his cases, Mr. Burnett appealed to the Board of Appeals (the Board), which affirmed the hearing examiner’s decision. Specifically, the Board determined that Mr. Burnett had not acted with due diligence in seeking to reopen his dismissed cases and that he had not provided any medical documentation that showed why he could not have participated in the telephone hearing in 2013 or responded to the dismissal order in a reasonable time frame. Mr. Burnett then sought judicial review in the Circuit Court for Baltimore County, which affirmed the Board’s decision. On appeal to this Court, Mr. Burnett raises three issues, which reduce to one: whether

¹ The claims specialist issued 21 separate “Notice of Benefit Determinations” which involved multiple employers and benefits that were received by Mr. Burnett over a number of weeks between 2010 and 2013.

the Board erred in denying his petition to reopen the dismissed appeals.² For the reasons that follow, we shall affirm.

“When we review the decision of an administrative agency or tribunal, ‘we [assume] the same posture as the circuit court . . . and limit our review to the agency’s decision.’” *Sugarloaf Citizens Ass’n. v. Frederick County Bd. of Appeals*, 227 Md. App. 536, 546 (2016) (quoting *Anderson v. Gen. Cas. Ins. Co.*, 402 Md. 236, 244 (2007)). If the Board’s decision was supported by substantial evidence, and if it committed no error of law, we must affirm. *Id.* at 546.

Pursuant to COMAR 09.32.11.02(O)(2), a hearing examiner may only grant a request to reopen a dismissed case if (1) the party received the hearing notice on or after the date of the hearing; (2) an emergency or other unforeseen and unavoidable circumstance prevented the party from both attending the hearing and requesting a postponement of the hearing; or (3) a party requested a postponement before the hearing but it was improperly denied. Moreover, a request to reopen a case “shall be delivered or postmarked within 7 days after the date the dismissal was mailed to the last known address of the requesting party.” COMAR 09.32.11.02(O)(4).

As an initial matter, we note that Mr. Burnett’s petition to reopen the dismissed case was untimely as it was filed more than seven days after the dismissal order was mailed. And,

² In his questions presented, Mr. Burnett raises issues regarding the merits of the claim specialist’s determination that he committed fraud. However, because Mr. Burnett’s appeals from those determinations were dismissed in 2013, the only issue that we may consider in this appeal is whether the Board erred in denying his request to reopen the dismissed cases.

although Mr. Burnett asserted that a “mental disorder” was the reason for his late appeal, he did not specifically indicate why it had prevented him from filing the petition for nearly five years. Thus, the Board’s finding that Mr. Burnett failed to act with due diligence in seeking to reopen his dismissed cases is supported by substantial evidence in the record.

But, even if we were to ignore the lack of timeliness, we would find no error in the Board’s decision to deny Mr. Burnett’s petition. Here, Mr. Burnett did not claim that he had not received the notice of hearing or that he had filed a motion to continue the hearing that had been improperly denied. Thus, the only possible basis for reopening the dismissed cases would have been if his mental disorders had constituted an “emergency or other unforeseen and unavoidable circumstance” that prevented him from participating in the hearing. Although Mr. Burnett demonstrated that he had been diagnosed with bipolar disorder and an unspecified psychotic disorder in 2007, he presented no evidence as to the state of his mental health in 2013, or how those disorders had affected his ability to function at that time. Notably, Mr. Burnett was able to timely appeal from the adverse decisions of the claim specialist despite his mental health issues. And his petition did not identify what, if anything, had changed with his mental health status between the time he appealed those decisions in June 2013 and the time of the scheduled hearing in July 2013. Moreover, Mr. Burnett did not specifically explain how any such change had prevented him from attending the hearing or from requesting a

continuance.³ Consequently, the Board did not err in denying his petition to reopen the dismissed cases.

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

³ In his reply brief, Mr. Burnett contends for the first time that he never received the letter informing him of the hearing and that, on the date of the hearing, he was in a “state of emergency” because he had cut his right arm in an attempt to commit suicide. However, Mr. Burnett did not raise these claims in his petition to reopen the dismissed cases. And as the reviewing Court, we are “prohibited from considering new evidence not presented to the administrative agency.” *Mesbahi v. Maryland State Bd. of Physicians*, 201 Md. App. 315, 341 n.21 (2011).