

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

NO. 2020-CC-00626-COA

BRENDA HUDNALL

APPELLANT

v.

**MISSISSIPPI DEPARTMENT OF
EMPLOYMENT SECURITY AND SELECT
EMPLOYMENT SERVICES INC.**

APPELLEES

DATE OF JUDGMENT: 05/11/2020
TRIAL JUDGE: HON. CHARLES W. WRIGHT JR.
COURT FROM WHICH APPEALED: LAUDERDALE COUNTY CIRCUIT COURT
ATTORNEYS FOR APPELLANT: GALE NELSON WALKER
CLAYTON MATTHEW GILES
ATTORNEYS FOR APPELLEES: ALBERT B. WHITE
JAMES RANDALL BUSH
NATURE OF THE CASE: CIVIL - STATE BOARDS AND AGENCIES
DISPOSITION: APPEAL DISMISSED - 07/20/2021
MOTION FOR REHEARING FILED:
MANDATE ISSUED:

BEFORE BARNES, C.J., GREENLEE AND LAWRENCE, JJ.

GREENLEE, J., FOR THE COURT:

¶1. The Mississippi Department of Employment Security (MDES) awarded unemployment benefits to Brenda Hudnall after she was discharged from her employment. Hudnall's employer appealed, and the administrative law judge (ALJ) reversed MDES's decision. Subsequently, the ALJ's decision was affirmed by MDES's Board of Review and the Lauderdale County Circuit Court. Because Hudnall did not timely file her notice of appeal, we dismiss the appeal for lack of jurisdiction.

FACTS AND PROCEDURAL HISTORY

¶2. In 2019, Hudnall worked as a telemetry technician for Regency Hospital, which was owned by Select Employment Services Inc. Hudnall was responsible for monitoring screens that tracked patients' vital signs and notifying medical staff when the patients' vital signs were not within certain ranges. On April 9, 2019, an incident occurred in which a patient's vital signs stopped recording, and ultimately the patient died. As a result, Hudnall was discharged from her employment.

¶3. On April 17, 2019, Hudnall filed a claim for unemployment benefits. Hudnall seemingly acknowledged that she should have called a rapid response team via the intercom, which would have signaled everyone on the floor to respond to the patient's room. Instead, Hudnall said she orally alerted a nurse about the patient's issues, and the nurse allegedly did not timely respond. According to Hudnall's employer, Hudnall failed to escalate the incident "up to and including call[ing] a Rapid Response Team." Ultimately, MDES determined that Hudnall's employer had not proved misconduct and that Hudnall was eligible to receive unemployment benefits.

¶4. Subsequently, Hudnall's employer appealed to the ALJ. During a telephonic hearing, the following witnesses testified on behalf of Hudnall's employer: the employer representative, Gayle Alsobrooks; the chief nursing officer and Hudnall's direct supervisor, Eliza Gavin; and the director of quality management, Jodie Robert. Hudnall testified on her behalf.¹

¹ At the beginning of the hearing, Alsobrooks stated that she had submitted documents to the ALJ and mailed copies to Hudnall prior to the hearing. However, Hudnall stated that she had not received any documents. The ALJ ruled that witnesses could testify as to the documents, but the documents would not be admitted into evidence.

¶5. Alsobrooks testified that witness statements and the report from the monitoring system indicated that Hudnall failed to perform the duties of her job on April 9, 2019. Specifically, Hudnall did not properly respond to the monitors “up to and including a call for a rapid response team” Additionally, Alsobrooks testified that the incident on April 9, 2019, led to Hudnall’s discharge, but she later explained that Hudnall had failed to initiate a response during a drill in March 2017.

¶6. Similarly, the chief nursing officer (Eliza Gavin) testified that protocol required Hudnall to notify the patient’s nurse or the charge nurse of the patient’s issue. If there was no response, then protocol required Hudnall to escalate the process by “calling a rapid response [team or] whatever needs to happen” to ensure that the issue was addressed.

¶7. Likewise, the director of quality management (Jodie Robert) testified that Hudnall was required to notify a nurse of the patient’s change in vital signs and call a rapid response team if the nurse did not respond. According to Robert, Hudnall failed to escalate the process.

¶8. Hudnall admitted that she did not call a rapid response team. But later she testified that she “verbally” called a rapid response team. She explained that at the time, there were several nurses present, and she told them that the patient was critical. According to Hudnall, she told the patient’s nurse, and the nurse responded, “I put her back to bed. She’s okay, honey. I’ve got to do some charting. I’ll check on her later.” Hudnall testified that she then told the charge nurse, and he responded, “She told you . . . the patient is okay.” According to Hudnall, a respiratory therapist entered the patient’s room approximately two to three minutes after she raised the issue with the nurse. The respiratory therapist noted that the

patient had pulled her “trach” out. The patient’s monitor leads were reapplied, CPR was performed, but the patient died. Hudnall also testified that she was “overloaded with a lot of work,” and if the nurse had completed her rounds, she would have caught the incident.

¶9. In rebuttal, Robert testified that according to the system the last recorded heart rate was at 5:20 p.m., the patient’s monitor leads were off at 5:22 p.m., the last recorded oxygen stat was at 5:41 p.m., the probe that measured oxygen saturation was off at 5:42 p.m., and at 5:55 p.m., the respiratory therapist entered the room and discovered that the patient’s tracheostomy tube was out and that the patient was unresponsive.

¶10. After the hearing, the ALJ found that Hudnall had committed misconduct and ultimately reversed the award of unemployment benefits. Subsequently, Hudnall appealed to the Board, which affirmed the ALJ’s decision. Then Hudnall appealed to the circuit court. On May 11, 2020, the court affirmed the Board’s decision, and Hudnall filed a notice of appeal on June 11, 2020. On appeal, Hudnall claims (1) the Board’s decision was not supported by substantial evidence, and (2) the Board applied an erroneous legal standard in finding that her actions constituted misconduct.

DISCUSSION

¶11. “Regardless of whether the parties raise jurisdiction, the Court is required to note its own lack of jurisdiction, and if the notice of appeal is not timely filed, the appellate court simply does not have jurisdiction.” *Alexander v. Lawrence County*, 305 So. 3d 1252, 1254 (¶11) (Miss. Ct. App. 2020) (quoting *Smith v. Parkerson Lumber Inc.*, 890 So. 2d 832, 834 (¶12) (Miss. 2003)). Further, “the timely filing of a notice of appeal is jurisdictional[,]”

and . . . notice must, under M.R.A.P. 4(a), be filed within thirty days following entry of the judgment from which the appeal is taken.” *Id.*; *see also* M.R.A.P. 2(a)(1) (“An appeal shall be dismissed if the notice of appeal was not timely filed pursuant to Rules 4 or 5.”).

¶12. The circuit court affirmed the Board’s decision with a “Judgment Affirming Decision of Board of Review” file-stamped May 11, 2020. The next document in the record is file-stamped June 11, 2020. This document was Hudnall’s notice of appeal. However, the document was not filed until 31 days after the entry of the judgment—one day beyond the time specified for appeal under Rule 4(a).

¶13. Accordingly, the attempt to file a notice of appeal was untimely, and we do not have jurisdiction to review the underlying judgment. *See Alexander*, 305 So. 3d at 1255 (¶¶12-14) (appeal dismissed when notice of appeal was filed 31 days after judgment was entered); *McChester v. McChester*, 300 So. 3d 1035, 1038 (¶13) (Miss. Ct. App. 2020) (finding we lacked jurisdiction when notice of appeal was untimely filed).

¶14. **APPEAL DISMISSED.**

BARNES, C.J., CARLTON AND WILSON, P.JJ., WESTBROOKS, McDONALD, LAWRENCE, McCARTY, SMITH AND EMFINGER, JJ., CONCUR.