

Third District Court of Appeal

State of Florida, July Term, A.D. 2009

Opinion filed December 23, 2009.
Not final until disposition of timely filed motion for rehearing.

No. 3D09-2021
Lower Tribunal No. 09-652

Humberto Talavera,
Appellant,

vs.

**Royal American Mills, Inc., and Florida Unemployment Appeals
Commission,**
Appellees.

An Appeal from the Florida Unemployment Appeals Commission.

Humberto Talavera, in proper person.

M. Elaine Howard (Tallahassee), for appellee Florida Unemployment Appeals Commission.

Before ROTHENBERG, LAGOA, and SALTER, JJ.

ROTHENBERG, J.

Humberto Talavera appeals the final order of the Florida Unemployment Appeals Commission affirming the dismissal of his appeal as untimely filed. Because the transcript of the telephonic April 16, 2009, hearing contains numerous confusing exchanges between the appeals referee, the interpreter for the hearing, Talavera, and a third party he enlisted for assistance with his appeal, and the transcript suggests that Talavera may have a valid due process argument, we reverse and remand for another evidentiary hearing.

Although the Commission concluded that Talavera's appeal was untimely filed, the Commission correctly notes that Florida courts have created an exception to untimely appeals based on due process concerns. E.g., Stanley v. Florida Unemployment Appeals Comm'n, 864 So. 2d 1160 (Fla. 4th DCA 2004) (holding that an appeal was timely filed where the claimant attempted to timely fax her appeal but was unsuccessful); Francois v. Florida Unemployment Appeals Comm'n, 852 So. 2d 953 (Fla. 4th DCA 2002) (reversing a Commission finding that an appeal was untimely where the claimant timely complied with the agency representative's instruction to fax her appeal to an Orlando office for forwarding to the appeals office).

The record below demonstrates that Talavera's and Selena Rodriguez's, the third party he enlisted to assist him, command of the English language was very limited. The notice sent by the Commission to Talavera rejecting his application

for unemployment benefits was written entirely in English, except for the following statement that was written in Spanish: “This document contains important information, dates, or eligibility status regarding your Unemployment Compensation claim. It is important for you to understand this document. If you do not read or understand English, call 1-800-204-2418 for free translation assistance regarding your Unemployment Compensation claim.”¹

The record below demonstrates that Talavera, with the help of Rodriguez, attempted to timely respond to the Commission’s notice with an appeal letter dated February 12, 2009. The record further demonstrates that Rodriguez tried calling for assistance several times without success. However, the details regarding these failed attempts remain unclear because the translation by the interpreter during the telephonic hearing and the questioning by the appeals referee were inadequate and confusing. Because the record is unclear as to whether Talavera’s failure to respond to the Commission’s notice was frustrated by an inability to obtain the assistance offered by the Commission or for other reasons related to his right to due process under the law, we reverse the order under review and remand for further proceedings consistent with this opinion.

Reversed and remanded.

¹ The English translation provided on the form is provided here.