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IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

Appendix A

LENA LASHER,

Petitioner

v.

BUREAU OF PROFESSIONAL AND
OCCUPATIONAL AFFAIRS, STATE
BOARD OF PHARMACY,

Respondent

: No. 52 MAL 2018

:
:
: Petition for Allowance of Appeal from
: the Order of the Commonwealth Court

ORDER

PER CURIAM

AND NOW, this 10th day of July, 2018, the Petition for Allowance of Appeal is
DENIED.

A True Copy Elizabeth E. Zisk
As Of 07/10/2018

Attest: Elizabeth E. Zisk
Chief Clerk
Supreme Court of Pennsylvania

IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

Appendix B

LENA LASHER,

: No. 52 MAL 2018

Petitioner

: Application for Reconsideration

v.

BUREAU OF PROFESSIONAL AND
OCCUPATIONAL AFFAIRS, STATE
~~BOARD OF PHARMACY,~~

Respondent

ORDER

PER CURIAM

AND NOW, this 16th day of August, 2018, the Application for Reconsideration is denied.

A True Copy Elizabeth E. Zisk
As Of 08/16/2018

Attest: Elizabeth E. Zisk
Chief Clerk
Supreme Court of Pennsylvania

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Lena Lasher,

Petitioner

v.

Bureau of Professional and Occupational :
Affairs, State Board of Pharmacy, :
Respondent :

No. 1491 C.D. 2017

Submitted: December 26, 2017

MEMORANDUM AND ORDER

NOW, December 28, 2017, upon consideration of respondent's Motion To Quash, and petitioner's answer thereto, the Motion is granted.

The State Board of Pharmacy (Board) issued a June 3, 2016 final order revoking petitioner's pharmacy license and imposing a \$3,000 penalty.

More than a year later, petitioner filed a September 6, 2017 *pro se* communication indicating her intent to appeal the Board's June 3, 2016 order. The Chief Clerk advised petitioner in a September 29, 2017 letter that the Court would preserve September 6, 2017, as the filing date of her appeal if she filed an ancillary petition for review within 30 days of the Chief Clerk's letter. Petitioner timely complied with the Chief Clerk's directive.

The Board filed this motion to quash and petitioner filed a timely answer thereto. In her answer, petitioner alleges that she did not receive the Board's June 3, 2016 adjudication until April 17, 2017. She avers that she attempted to clarify the matter with the Board and only received its response in mid-September 2017.

Pennsylvania Rule of Appellate Procedure 1512(a)(1) provides that "[a] petition for review of a quasijudicial order ... shall be filed with the prothonotary of the appellate court within 30 days after the entry of the order." Timeliness of an appeal is jurisdictional, and the Court may not extend the time for filing an appeal

as a matter of grace. *Bass v. Commonwealth*, 401 A.2d 1133 (Pa. 1979). It is clear that petitioner's petition for review was not filed within 30 days of June 3, 2016.

A court may permit a late appeal, however, upon a showing of fraud, a breakdown in the administrative process, or non-negligent circumstances. *Cf. Smith v. Dep't of Transp., Bureau of Driver Licensing*, 749 A.2d 1065 (Pa. Cmwlth. 2000); *Hanoverian, Inc. v. Lehigh County Bd. of Assessment*, 701 A.2d 288 (Pa. Cmwlth. 1997). A party seeking permission to file a late appeal, which petitioner has not done, must establish that the petitioner filed an appeal shortly after learning of and having the opportunity to address the untimeliness, the elapsed time is one of short duration, and the respondent will not suffer prejudice. *J.A. v. Dep't of Public Welfare*, 873 A.2d 782 (Pa. 2005).

Neither petitioner's petition for review nor her answer to the Board's motion to quash allege fraud, a breakdown in the administrative process, or non-negligent circumstances caused the late filing of her appeal.

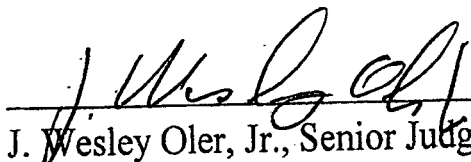
Petitioner is not entitled to file a late appeal even if we accept her claim that she received the Board's order on April 17, 2017. If petitioner received a copy of the Board's order on April 17, 2017 as she alleges, petitioner filed her *pro se* communication with this Court on September 6, 2017. Petitioner waited five months to file her petition for review, which is not shortly after learning of and having the opportunity to address the untimeliness. *V.S. v. Dep't of Public Welfare*, 131 A.3d 523 (Pa. Cmwlth. 2015) (forty-five day delay after period to appeal elapsed was not of short duration); *Amicone v. Rok*, 839 A.2d 1109 (Pa. Super. 2004) (four-month delay in filing late appeal not reasonable); *Dep't of Transp., Bureau of Traffic Safety v. Johnson*, 569 A.2d 409 (Pa. Cmwlth. 1990) (two month delay in filing late appeal not reasonable).

Accordingly, we grant the Board's motion to quash.

Certified from the Record

DEC 28 2017

and Order Ent


J. Wesley Oler, Jr., Senior Judge

**Additional material
from this filing is
available in the
Clerk's Office.**