

**IN THE COMMONWEALTH COURT OF PENNSYLVANIA**

Sharon M. Lamoreaux,	:	
Petitioner	:	
	:	
v.	:	No. 1312 C.D. 2009
	:	SUBMITTED: February 19, 2010
Unemployment Compensation	:	
Board of Review,	:	
Respondent	:	

**BEFORE: HONORABLE BONNIE BRIGANCE LEADBETTER, President Judge  
HONORABLE ROBERT SIMPSON, Judge  
HONORABLE PATRICIA A. McCULLOUGH, Judge**

**OPINION NOT REPORTED**

**MEMORANDUM OPINION BY  
PRESIDENT JUDGE LEADBETTER**

**FILED: April 14, 2010**

Sharon M. Lamoreaux petitions for review of the order of the Unemployment Compensation Board of Review (Board), which denied her unemployment compensation benefits on the ground that she had failed to establish that her self-employment was not her primary source of livelihood. We affirm.

Lamoreaux was self-employed as a newspaper carrier for Wilkes-Barre Publishing beginning in 2005 and continuing through the time period at issue in this case. In 2007, she began supplementing her income with a series of additional jobs. In 2008, while still working the newspaper job, she worked as a school van driver for Simonitis Enterprises and in a sales position with Wilkes-Barre Dodge. She voluntarily left those positions to take a sales job with Ken

Pollack Chevrolet, from which she was terminated on December 1, 2008. Before, during and after her work for Ken Pollack Chevrolet, Lamoreaux continued her newspaper work virtually unchanged.

In general, a claimant is ineligible for unemployment benefits in any week “[i]n which he is engaged in self-employment.” Section 402(h) of the Unemployment Compensation Law,<sup>1</sup> 43 P.S. § 802(h). However, under what is commonly referred to as the sideline business exception:

an employe who is able and available for full-time work shall be deemed not engaged in self-employment by reason of continued participation without substantial change during a period of unemployment in any activity including farming operations undertaken while customarily employed by an employer in full-time work whether or not such work is in “employment” as defined in this act and continued subsequent to separation from such work when such activity is not engaged in as a primary source of livelihood.

*Id.* Interpreting that provision of the Law, this court has found claimants engaged in self-employment ineligible for benefits, unless:

1) the self-employment began prior to the termination of the employe's full-time employment; 2) the self-employment continued without substantial change after the termination; 3) the employe remained available for full-time employment; and 4) the self-employment was not the primary source of the employe's livelihood.

*O’Hara v. Unemployment Comp. Bd. of Review*, 648 A.2d 1311 (Pa. Cmwlt. 1994); *see LaChance v. Unemployment Comp. Bd. of Review*, 987 A.2d 167 (Pa. Cmwlt. 2009). The claimant has the burden of proving all the elements of this

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<sup>1</sup> Act of December 5, 1936, Second Ex. Sess., P.L. (1937) 2897, *as amended*, 43 P.S. §§ 751-914.

exception. *O'Hara*, 648 A.2d 1311. In this case, it is undisputed that the first three elements of the exception are met, and the fourth presents the only issue.

At the hearing in front of the Referee, Lamoreaux provided evidence showing that in 2008 she made \$13,522.32 from jobs other than her newspaper work. To establish her income from the newspaper job, she provided the Referee with billing statements covering the first half of 2008, and tax documents covering 2007. In addition, she testified that she earned approximately \$245 a week from her newspaper job. The Referee found this insufficient, because without evidence of all of Lamoreaux's newspaper earnings from 2008, it was impossible to compare her earnings from that job with that of her other jobs in 2008 in order to determine if the newspaper job was her primary source of livelihood. The Referee also found that Lamoreaux's failure to provide documentary evidence of her earning from the second half of 2008 hurt her credibility. On appeal, the Board affirmed, noting that Lamoreaux failed to offer sufficient credible testimony or documentary evidence establishing that the newspaper job was not her primary source of income. An appeal to this court followed.

On appeal, Lamoreaux argues that she provided the evidence necessary for the Board to find that the newspaper job was not her primary source of income.<sup>2</sup> However, this court has held that without adequate financial information to compare income from self-employment with income from other employment, the Board is correct to deny benefits. *Parente v. Unemployment Comp. Bd. of Review*, 366 A.2d 629 (Pa. Cmwlth. 1976). In this case, the Board

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<sup>2</sup> In front of this court, Lamoreaux also submits, for the first time, tax forms showing all of her 2008 earnings from the newspaper job. See exhibits attached to Lamoreaux's brief. However, we are precluded from considering it, as it is not a part of the record certified on appeal. See *Commonwealth v. Young*, 456 Pa. 102, 317 A.2d 258 (1974).

correctly concluded that there was not adequate information to determine her primary source of income because there was no evidence of Lamoreaux's self-employment earnings for the second half of 2008, when she was working for Ken Pollack Chevrolet. In addition, Lamoreaux's testimony as to her earnings was found not to be credible. By not providing documentary evidence of her earnings, Lamoreaux failed to meet her burden to prove that her self-employment was not the primary source of her livelihood, and therefore the Board was correct to deny benefits.

For all the foregoing reasons, we affirm.

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**BONNIE BRIGANCE LEADBETTER,**  
President Judge

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**ORDER**

AND NOW, this 14th day of April, 2010, the order of the Unemployment Compensation Board of Review in the above-captioned matter is hereby AFFIRMED.

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**BONNIE BRIGANCE LEADBETTER,**  
President Judge