

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Matt M. Miller, :  
Petitioner :  
 :  
v. : No. 1508 C.D. 2010  
 : Submitted: December 17, 2010  
Unemployment Compensation :  
Board of Review, :  
Respondent :

BEFORE: HONORABLE RENÉE COHN JUBELIRER, Judge  
HONORABLE MARY HANNAH LEAVITT, Judge  
HONORABLE JOHNNY J. BUTLER, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION  
BY JUDGE LEAVITT

FILED: August 11, 2011

Matt M. Miller (Claimant) petitions, *pro se*, for review of an adjudication of the Unemployment Compensation Board of Review (Board) that dismissed Claimant's appeal as untimely. The Board affirmed the decision of the Referee that Claimant's confusion over whether it was more advantageous for him to file for unemployment compensation benefits in Pennsylvania or New Jersey did not excuse his untimely appeal. We affirm.

Claimant was last employed by Eii Electric, Inc., for approximately five months ending on February 14, 2009. On April 5, 2009, Claimant applied for unemployment compensation benefits. On April 8, 2009, the Allentown Unemployment Compensation Service Center (UC Service Center) issued a Notice of Financial Determination finding Claimant eligible for a weekly benefit of \$477. Thereafter, on April 17, 2009, the UC Service Center issued an amended Notice of

Financial Determination, adding income from a New Jersey employer and increasing Claimant's weekly benefit rate to \$558. After Claimant exhausted his entitlement to regular unemployment compensation benefits, he applied for Emergency Unemployment Compensation benefits (EUC benefits). On October 15, 2009, the UC Service Center issued a Notice of Financial Determination finding Claimant eligible for EUC benefits at the weekly benefit rate of \$558.

On January 27, 2010, Claimant telephoned the UC Service Center to inquire whether he would be eligible for Tier 2 EUC benefits when his EUC benefits were exhausted. A UC Service Center representative informed Claimant that he had been granted EUC benefits in error and advised him to file an unemployment benefits claim with New Jersey, backdated to October 10, 2009. Claimant did so, and New Jersey granted him unemployment compensation at a weekly benefit rate of \$584, as of October 11, 2009. On February 4, 2010, Claimant appealed the UC Service Center's April 17, 2009, amended Notice of Financial Determination.<sup>1</sup>

The Referee conducted a hearing on March 31, 2010, on the timeliness of Claimant's appeal. Claimant testified that he was appealing the April 17, 2009, amended Notice of Financial Determination because it was incorrect. Notes of Testimony, 03/31/10, at 4 (N.T.\_\_\_\_). Specifically, Claimant noted that one of Claimant's New Jersey employers had not been included in the Notice. Claimant testified that he would have filed his initial claim in the State of New Jersey, rather than in Pennsylvania, had he realized that the additional income from the omitted New Jersey employer would have rendered him eligible for full

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<sup>1</sup> Claimant also appealed the New Jersey Notice of Financial Determination. At the time of this appeal, Claimant's New Jersey appeal is pending.

benefits in New Jersey, rather than partial benefits. Claimant acknowledged that he did not timely appeal the amended Notice of Financial Determination, explaining that he had “no reason to file for an appeal because [he] was filing in [Pennsylvania] and they were giving [him] a full claim.” N.T. 13. Claimant further explained that he “wasn’t going to risk losing a full claim for a partial.” N.T. 17. On February 4, 2010, Claimant appealed the amended Notice of Financial Determination, nearly eight months after it was issued, when he discovered that he was not eligible to receive Tier 2 EUC benefits in Pennsylvania.

On May 11, 2010, the Referee dismissed Claimant’s appeal as untimely. Claimant appealed to the Board, and it affirmed the Referee’s decision. Claimant then petitioned for this Court’s review of the Board’s adjudication.

Before this Court,<sup>2</sup> Claimant contends that the amended Notice of Financial Determination was inaccurate and misleading. Claimant argues that he should not be held responsible for the decisions he made relying on this inaccurate information, given his lack of legal representation.

The Board counters that Claimant, by his own admission, did not file a timely appeal. The Board further contends that Claimant was not misinformed nor misled by the UC Service Center. Rather, the UC Service Center corrected its initial omission of the New Jersey employer from the April 8, 2009, Notice of Financial Determination with its April 17, 2009, amended Notice of Financial Determination. Claimant failed to timely appeal that decision and cannot do so eight months later. Moreover, Claimant cannot rely on his lack of legal counsel as

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<sup>2</sup> This Court’s review in an unemployment compensation case is limited to a determination of whether constitutional rights were violated, errors of law were committed, or findings of fact were not supported by substantial evidence. *Lee Hospital v. Unemployment Compensation Board of Review*, 637 A.2d 695, 697 (Pa. Cmwlth. 1994).

an excuse for not taking earlier action since “Claimant assumed the risk that his lack of expertise and legal training would prove his undoing.” Board’s Brief at 9 (citing *Vann v. Unemployment Compensation Board of Review*, 508 Pa. 139, 148, 494 A.2d 1081, 1086 (1985)). We agree.

Section 501(e) of the Unemployment Compensation Law (Law), Act of December 5, 1936, Second Ex.Sess., P.L. (1937) 2897, *as amended*, 43 P.S. §821(e), requires appeals of Bureau determinations to be filed within 15 days of the mailing date of the determination or the date on which the determination becomes final.<sup>3</sup> After the 15-day appeal period has expired, the Referee and the Board do not have jurisdiction to consider the appeal. *Darroch v. Unemployment Compensation Board of Review*, 627 A.2d 1235, 1237 (Pa. Cmwlth. 1993).

Nevertheless, the Board may consider an untimely appeal on a *nunc pro tunc* basis. *Unemployment Compensation Board of Review v. Hart*, 348 A.2d 497, 498 (Pa. Cmwlth. 1975). The burden to establish the right to *nunc pro tunc* relief is a heavy one because the statutory time limit established for appeals is mandatory. *Blast Intermediate Unit No. 17 v. Unemployment Compensation Board of Review*, 645 A.2d 447, 449 (Pa. Cmwlth. 1994). An appellant may satisfy this heavy burden by showing: (1) fraudulent, wrongful or negligent conduct on the

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<sup>3</sup> Section 501(e) of the Law provides:

Unless the claimant or last employer or base-year employer of the claimant files an appeal with the board, from the determination contained in any notice required to be furnished by the department under section five hundred and one (a), (c) and (d), within fifteen calendar days after such notice was delivered to him personally, or was mailed to his last known post office address, and applies for a hearing, such determination of the department, with respect to the particular facts set forth in such notice, shall be final and compensation shall be paid or denied in accordance therewith.

43 P.S. §821(e).

part of the administrative agency; or (2) non-negligent conduct beyond the appellant's control that caused the delay. *Bass v. Commonwealth*, 485 Pa. 256, 259-260, 401 A.2d 1133, 1135 (1979).

In this case, Claimant has not satisfied the heavy burden of proving that he is entitled to an untimely appeal on a *nunc pro tunc* basis. Claimant did not establish any fraudulent or negligent conduct on the part of the UC Service Center, the Referee, or the Board. The amended Notice of Financial Determination may have contained an erroneous omission, but the purpose of the appeal is to correct mistakes. Likewise, Claimant did not show any non-negligent conduct beyond his control that excused his failure to appeal the amended Notice in 15 days.

According to Claimant, his lack of legal counsel caused this misunderstanding. While sympathetic to *pro se* litigants, this Court has held, repeatedly, that “any layperson choosing to represent himself in a legal proceeding must, to some reasonable extent, assume the risk that his lack of expertise and legal training will prove his undoing.” *Vann*, 508 Pa. at 148, 494 A.2d at 1086. Simply put, Claimant has not carried his heavy burden to show that he is entitled to appeal the Board's order *nunc pro tunc*.<sup>4</sup>

For all of the foregoing reasons, we affirm the Board's adjudication.

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MARY HANNAH LEAVITT, Judge

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<sup>4</sup> Claimant complains that he received no written determinations from the UC Service Center regarding its denial of Tier 2 EUC benefits. The Referee found this perplexing, but stated that it did not change the outcome of this appeal. Specifically, the Referee stated that Claimant must have appealed the Notices of Financial Determination issued in April 2009 (regular unemployment benefits) or October 2009 (EUC benefits), not the denial of Tier 2 EUC benefits.

