

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Sally A. Silbaugh, :
Petitioner :
v. : No. 1526 C.D. 2010
: Submitted: March 4, 2011
Unemployment Compensation :
Board of Review, :
Respondent :

BEFORE: HONORABLE DAN PELLEGRINI, Judge
HONORABLE MARY HANNAH LEAVITT, Judge
HONORABLE JAMES R. KELLEY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE PELLEGRINI

FILED: March 30, 2011

Sally A. Silbaugh (Claimant) petitions *pro se* for review of the order of the Unemployment Compensation Board of Review (Board) affirming the decision of the Unemployment Compensation Referee (Referee) finding her ineligible for Emergency Unemployment Compensation (EUC) benefits under Sections 4001(b) and (c) of the Emergency Unemployment Act of 2008 (Act)¹

¹ Title IV of the Supplemental Emergency Appropriations Act of 2008, P.L. 110-252, 122 Stat. 2323, Sections 4001(b) and (c), 26 U.S.C. §3304 Note. Section 4001 provides as follows:

(b) Provisions of Agreement – Any agreement under subsection (a) shall provide that the State Agency of the State will make payment of

(Footnote continued on next page...)

because she did not exhaust all of the regular unemployment compensation benefits to which she was entitled and had a non-fraud overpayment in the amount

(continued...)

emergency unemployment compensation to individuals who –

(1) have exhausted all rights to regular compensation under the State law or under Federal law with respect to a benefit year (excluding any benefit year that ended before May 1, 2007);

(2) have no rights to regular compensation or extended compensation with respect to a week under such law or any other State unemployment compensation law or to compensation under any other Federal law (except as provided under subsection (e)); and

(3) are not receiving compensation with respect to such week under the unemployment compensation law of Canada.

(c) Exhaustion of Benefits – For purposes of subsection (b)(1), an individual shall be deemed to have exhausted such individual's rights to regular compensation under a State law when –

(1) no payment of regular compensation can be made under such law because such individual has received all regular compensation available to such individual based on employment or wages during such individual's base period; or

(2) such individual's rights to such compensation have been terminated by reason of the expiration of the benefit year with respect to which such rights existed.

of \$5,369. Because we do not have the proper information in the record to determine the issue before us, we remand.

Claimant first filed and was determined financially eligible for regular unemployment compensation benefits effective September 21, 2008. She stopped receiving benefits when she accepted full-time employment with the Erie County Court as tip staff at the Court House from February 2009, through August 2009, earning \$9.40 per hour. When she was laid off, she again applied for benefits.² For reasons unknown, the Department of Labor and Industry (Department) created an EUC claim for Claimant on September 22, 2009, rather than a regular unemployment compensation claim. Claimant contacted the Unemployment Compensation (UC) Service Center several times regarding her benefits inquiring as to whether she should be receiving EUC or regular benefits.

Notwithstanding her inquiries on January 21, 2010, the UC Service Center issued a Notice of Determination finding Claimant ineligible for EUC benefits beginning October 17, 2009, because she became financially eligible for regular unemployment compensation benefits after being laid off from her employment with the Erie County Court House. Given her ineligibility, the UC Service Center determined that Claimant had received an overpayment of benefits

² It is not clear from the record whether Claimant's claim was for regular unemployment compensation or EUC benefits because the claim petition is not part of the record and the Referee did not include this information in his findings. Claimant attached to her brief to this Court a Notice of Financial Determination with a mail date of September 24, 2009, indicating that based upon her claim for *regular* unemployment compensation, the UC Service Center determined that she was financially eligible for EUC benefits. However, we cannot consider this document because it is not part of the official record.

in the amount of \$5,369. Claimant appealed this determination claiming that because she was eligible for regular unemployment compensation benefits, which she allegedly did not receive, the amount of these regular benefits should be offset against the overpayment.

Before the Referee, Claimant admitted she was overpaid and stated that she was only appealing the amount of the overpayment. According to Claimant, even though she became eligible for regular unemployment compensation benefits as of September 20, 2009, she did not receive any regular benefits until the end of October 2009. She asserted that when calculating her overpayment, the UC Service Center should have subtracted the regular benefit amounts she was entitled to and should have received during this three-week period from the amount of EUC benefits she incorrectly received. Claimant testified that she contacted the UC Service Center repeatedly about her benefits and whether or not she should have been receiving regular or EUC benefits, but no action was taken until January 2010.

The Referee found Claimant ineligible for EUC benefits under Sections 4001(b) and (c) of the Act because she became financially eligible for a regular unemployment compensation claim beginning September 20, 2009, and as of that date she was no longer an exhaustee as required in order to be eligible for EUC benefits. The Referee also found that Claimant “did not intentionally or deliberately give the UC Service Center any fraudulent or misleading information.” However, the Referee refused to credit Claimant with an offset against her EUC overpayment for the regular unemployment compensation benefits to which she

was entitled and determined that Claimant had a non-fraud overpayment for claim weeks ending September 26, 2009, through December 5, 2009, which totaled \$5,369. Claimant appealed and the Board affirmed, noting that Claimant's ineligibility began with the week ending September 26, 2009, not October 17, 2009, as indicated by the Notice of Determination. This appeal followed.³

On appeal, neither party disputes the fact that Claimant was entitled to receive regular unemployment compensation benefits beginning September 20, 2009. The question is whether she was entitled to an offset to her charged overpayment in the amount of these regular benefits. While the Board contends this issue was not properly before it because Claimant only appealed her EUC claim and not her UC claim, the issue and amount of her EUC overpayment was clearly before the Board. Resolution of the matter of whether or not Claimant is entitled to an offset depends upon what type of benefits Claimant applied for. If Claimant specifically applied for EUC benefits, she may not be entitled to an offset. However, if Claimant applied for regular unemployment compensation benefits and the Department's error led to her incorrectly being deemed financially eligible for EUC benefits instead, she most certainly would be entitled to an offset.

Unfortunately, the Board did not forward the entire record of the claim – only that portion beginning with the Department's Notice of Determination

³ Our scope of review of the Board's decision is limited to determining whether an error of law was committed, constitutional rights were violated, or whether the necessary findings of fact are supported by substantial evidence. *Rock v. Unemployment Compensation Board of Review*, 6 A.3d 646, 648 n.5 (Pa. Cmwlth. 2010).

of Overpayment of Benefits mailed on January 21, 2010 – and the file does not include the claim petition. In addition, it is not clear from the record and the Board did not make a finding as to when Claimant began receiving regular unemployment compensation benefits. All of these matters must be resolved before this Court can decide this appeal.

Accordingly, the decision of the Board is vacated and the case is remanded for further findings consistent with this opinion.

DAN PELLEGRINI, JUDGE

