

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Lynn Marie McCullaugh,	:	
Petitioner	:	
	:	
v.	:	No. 1552 C.D. 2010
	:	Submitted: December 17, 2010
Unemployment Compensation Board	:	
of Review,	:	
Respondent	:	

**BEFORE: HONORABLE BONNIE BRIGANCE LEADBETTER, President Judge
HONORABLE ROBERT SIMPSON, Judge
HONORABLE P. KEVIN BROBSON, Judge**

OPINION NOT REPORTED

**MEMORANDUM OPINION
BY JUDGE BROBSON**

FILED: May 19, 2011

Petitioner Lynn Marie McCullaugh (Claimant), acting pro se, petitions for review of an order of the Unemployment Compensation Board of Review (Board), which affirmed an order of a Referee denying benefits under Section 404 of the Pennsylvania Unemployment Compensation Law.¹ We now affirm.

Claimant was terminated from her employment with Advanced Family Chiropractic (Employer) in May 2008. In January 2010, Claimant filed a claim for unemployment compensation benefits, which the Altoona UC Service Center denied on the basis that Claimant was not financially eligible. Claimant

¹ Act of December 5, 1936, Second Ex. Sess., P.L. (1937) 2897, *as amended*, 43 P.S. § 804.

appealed, and a referee (Referee) conducted a hearing and issued the following findings of fact:

1. The claimant was last employed at Advanced Family Chiropractic as a part-time manager for 32 hours per week, at the rate of \$10.50 per hour from January 23, 2008 through May 13, 2008.
2. The claimant's separation from employment is not at issue in this case.
3. The claimant filed an application for benefits with an effective date of January 10, 2010, thereby establishing a base year for covered wages commencing October 1, 2008 through September 30, 2009.
4. During said base year, the claimant was not employed by any employer and therefore received no wages for work performed during said period of time.

(Certified Record (C.R.), Item 7.)

Based upon these findings, the Referee concluded that Claimant is not entitled to unemployment compensation because Claimant had no wages for the base year at issue. Claimant appealed the Referee's decision to the Board, stating:

The appeal hearing was requested to back date qualifying base year wages to October 1, 2007 through September 30, 2008. Claimant was told she was not eligible to file for [unemployment compensation] benefits by Employer and their accountant at time of dismissal because she did not work full time.

The Board adopted the referee's decision. Claimant filed a petition for review with this Court, in which she asserts the following:

The entire basis of my appeal is that I was told by my prior employer and their accountant, when I inquired after my final paycheck, that I was not entitled to unemployment insurance benefits because I did not work full time. It was only after a neighbor of mine was laid

off from her parttime job . . . and told me she was collecting unemployment compensation that I realized I was lied to by my prior employer and their accountant. I then immediately filed my claim for unemployment compensation. I was advised by the local Altoona U.C. Office that I could request that a retroactive date be set to establish wages for my base year and qualify for my benefits. No mention of setting this retroactive date and establishing my minimum base year wages is stated in the referee's decision/order. I challenge that this is an error and petition for review.

Claimant essentially argues that the Board erred in adopting the Referee's decision because Claimant's failure to file an application for benefits immediately following her termination resulted from the misinformation she alleges Employer gave her regarding her potential right to benefits as a part-time employee. Claimant contends that she would have filed an application for benefits for that preceding period if she had not been misinformed. For those reasons, Claimant argues that the Referee and Board erred when they failed to recognize wages that Claimant received during the period preceding the base year. Claimant has offered no legal citation for the proposition that a claimant may be entitled to have a base year calculated on a backdated basis based upon misinformation an employer provides to a potential claimant upon termination of employment.

In response, the Board asserts that the Court should quash Claimant's brief for failure to comply with the Pennsylvania Rules of Appellate Procedure. Alternatively, the Board argues that the record contains no information indicating that Claimant formally requested backdating. The Board contends that if the Court proceeds to address the merits of Claimant's petition for review, the Court should confine its analysis to the findings of fact of the Board regarding Claimant's base year.

With regard the Board’s first argument, we must agree with the Board that Claimant’s brief is so lacking in essentials that we may deem any issues she purports to raise as being waived. This Court may deem an issue waived when an appellant fails to develop legal argument or cite relevant legal authority in support of an issue. *Rapid Pallet v. Unemployment Comp. Bd. Rev.*, 707 A.2d 636 (Pa. Cmwlth. 1998); Pa. R.A.P. 2119. Claimant has failed to engage in any discussion of the issue she seeks to raise and has failed to identify and discuss any provisions of the Law or regulations that might apply in her favor. Further, she has referred the Court to no Pennsylvania appellate decisions that might aid the Court in analyzing this issue. Consequently, we agree with the Board that Claimant has waived her right to have this Court consider her issue.

The Board also argues that, even if Claimant had properly briefed the issue relating to her alleged request for backdating, her argument would have no merit. The Board helpfully refers the Court to a regulation the Board contends describes the circumstances under which the Board may consider a request by a claimant to backdate a base year.² That regulation provided for “predating,” but, as the Board argues, this regulation does not appear to provide support for Claimant’s claim. The regulation provides:

- (a) A claim for a week of total, partial, or part-total unemployment may be deemed to be constructively filed as of the first day of a calendar week previous to the week which includes the day on which it is actually filed

² The Board refers the Court to 34 Pa. Code § 65.33, but the Department of Labor and Industry (Department) appears to have “rescinded” that regulation on February 12, 2011, after Claimant filed her appeal. 41 Pa. Bulletin 848. On the same date, the Department promulgated a new regulation, 55 Pa. Code § 65.43a, which contains similar provisions to the former Section 65.33. The text of the applicable former regulation can be found at Pennsylvania Code Serial Page Nos. 19128-19129 and 337168; 2 Pa. Bulletin 1731 and 4 Pa. Bulletin 581.

when, in the opinion of the Bureau, the claimant was prevented, through no fault of his own, from filing his claims during the week immediately subsequent to the week for which the claim is filed because of one or more of the following

This regulation lists eight situations, such as inaccessibility to a compensation office and sickness or death of a claimant's relative, as a basis to invoke the "predating" regulation quoted above. Our review of the above-quoted provision and the eight situations identified in the regulation confirm the Board's position that, even if Employer misled Claimant, and, even if Claimant had not waived the issue, she could not have been successful on the merits.

Accordingly, because Claimant waived the issue for which she sought review, and because Claimant has not claimed that the Board erred in its calculation using the identified base year, we affirm the Board's order.

P. KEVIN BROBSON, Judge

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ORDER

AND NOW, this 19th day of May, 2011, the order of the Unemployment Compensation Board of Review is AFFIRMED.

P. KEVIN BROBSON, Judge