

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Wayne L. Childs, :
 :
 Petitioner :
 :
 v. :
 :
 :
 Unemployment Compensation Board :
 of Review, : No. 1649 C.D. 2010
 Respondent : Submitted: January 14, 2011

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: February 1, 2011

Wayne L. Childs (Claimant) petitions *pro se* for review of the order of the Unemployment Compensation Board of Review (Board) finding him ineligible for Emergency Unemployment Compensation (EUC) benefits under Section 4001(b) of the Emergency Unemployment Act of 2008 (Act)¹ because he failed to exhaust his

¹ Title IV of the Supplemental Emergency Appropriations Act of 2008, P.L. 110-252, 122 Stat. 2323, Section 4001, 26 U.S.C. §3304. Section 4001(b) provides that payments of emergency unemployment compensation shall be made 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);

(Footnote continued on next page...)

entitlement to regular unemployment compensation benefits. Because Claimant failed to properly preserve any issues on appeal, we affirm.

Claimant worked for Acme Markets as a clerk cashier beginning on February 3, 2001. It is unclear from the record exactly when his employment ended. Claimant filed a claim for EUC benefits in October 2009, and then filed a new claim for regular unemployment compensation benefits in January 2010. The Scranton UC Service Center issued a Notice of Financial Determination finding Claimant financially eligible for regular unemployment compensation benefits effective January 3, 2010, with a weekly benefit rate of \$237. On February 9, 2010, the Office of UC Benefits issued a Notice of Determination disapproving Claimant's application for EUC benefits pursuant to Section 4001(b) of the Act because he had not exhausted all of the regular unemployment compensation to which he was entitled. Claimant appealed this determination.

At a hearing held before the Referee, Claimant agreed that on approximately January 3, 2010, he filed a regular unemployment compensation claim and was found financially eligible for regular unemployment benefits at a rate of

(continued...)

(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.

\$237 per week. Claimant repeatedly attempted to testify to events surrounding a *prior* EUC claim, with a hearing held before a different referee and then appealed to the Board. Claimant was reminded by the Referee several times that the sole issue that was the subject of his appeal dealt with the Notice of Determination mailed on February 9, 2010. Claimant did not testify to or put forth any other evidence regarding the current issue.

The Referee found Claimant ineligible for EUC benefits because he was financially eligible for regular unemployment benefits and, therefore, failed to exhaust his entitlement to regular unemployment compensation benefits. Because Section 4001(b) of the Act states that EUC payments shall only be made to individuals who have exhausted all rights to regular compensation under state or federal law with respect to a benefit year, the Referee found Claimant was not eligible for EUC benefits and affirmed the Notice of Determination. Claimant appealed to the Board, which affirmed the Referee's decision. He also requested reconsideration, which was denied. This appeal followed.²

The only issue which was decided by the Board and which, therefore, could be appealed to this Court, was whether Claimant was eligible for EUC benefits under Section 4001(b) of the Act. However, Claimant failed to address this issue in the hearing, his petition for review or brief on appeal to this Court. Instead, Claimant focuses on allegations of mail fraud as well as the denial of his prior EUC claim,

² 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).

which involved a different base year as well as a different employer. We have repeatedly held that failure to raise an issue in a petition for review or address an issue in one's brief, even by a *pro se* claimant, constitutes waiver of that issue. See *Jimoh v. Unemployment Compensation Board of Review*, 902 A.2d 608, 611 (Pa. Cmwlth. 2006); *McDonough v. Unemployment Compensation Board of Review*, 670 A.2d 749, 750 (Pa. Cmwlth. 1996) (citing *Tyler v. Unemployment Compensation Board of Review*, 591 A.2d 1164 (Pa. Cmwlth. 1991)).

Based on the foregoing, Claimant has failed to properly preserve any issues for this Court's consideration. Accordingly, the decision of the Board is affirmed.

DAN PELLEGRINI, JUDGE

