

Claimant was last employed as a carpenter by the Tom Wentzel Company, Inc. (Employer) from September 2007 until his last day of work on February 20, 2008. On February 20, 2008, Claimant sustained a work-related injury to his ankle. Claimant voluntarily separated from his employment due to his injury.

In September 2009, Claimant informed Employer's project manager that Claimant had settled with Employer's workers' compensation insurance carrier. Claimant did not inform Employer that he was released to do work as a carpenter or for light duty work.

On or about September 20, 2009, Claimant filed a claim for unemployment compensation benefits with the Erie UC Service Center (Service Center). In response, Employer notified the Service Center that Claimant's doctor determined that Claimant would not be able to return to work as a carpenter for Employer; therefore, Claimant was given a monetary settlement in exchange for a compromise and release agreement.

By notice mailed February 25, 2010, the Service Center determined that Claimant was eligible for benefits under Sections 402(b) and 401(d)(1) of the Law. Employer appealed the Service Center's determination and a hearing ensued on April 6, 2010, before a Referee. Claimant did not appear at the hearing. The president and project manager both appeared on behalf of Employer.

By decision mailed April 6, 2010, the Referee reversed the Service Center's determination and ruled that Claimant was ineligible to receive benefits under both Sections 402(b) and 401(d)(1) of the Law. Claimant appealed the Referee's decision to the Board. Therein, Claimant alleged that he did not receive notice of the hearing before the Referee. Claimant stated that he had moved out of his home and that his wife did not open any mail addressed to him; therefore, he

did not read the notice until April 15, 2010. Claimant stated further that he applied for unemployment compensation benefits because Employer did not have any work available.

By letter dated May 13, 2010, the Board acknowledged Claimant's request for a remand hearing. By decision and order mailed July 12, 2010, the Board denied Claimant's remand request on the basis that Claimant did not establish good cause for a remand. The Board found that Claimant did not attend the Referee's hearing because he was not living at home at the time and his wife did not open his mail for him.

With respect to the merits of Claimant's appeal, the Board concluded that Claimant's separation from employment due to his work-related injury, which Employer was aware of, qualified Claimant for benefits under Section 402(b) of the Law. However, the Board concluded that Claimant was not able and available for suitable work. The Board opined that while Claimant advised Employer that he had settled his worker's compensation claim, he did not advise Employer that he had been released for work as a carpenter. The Board pointed out that Claimant did not provide Employer or the Department of Labor documentation to establish that he is able and available for any work in the local labor market. The Board stated further that "[o]nce the claimant is released for work he should provide proof to the Department. Until that time the claimant is ineligible for benefits under the provisions of Section 401(d)(1) of the Law." Board Opinion at 2.

Accordingly, the Board modified the Referee's decision and denied Claimant benefits pursuant to Section 401(d)(1) of the Law. This appeal followed.³

³ This Court's review of the Board's decision is set forth in Section 704 of the Administrative
(Continued...)

Herein, Claimant raises five issues in the Statement of Questions portion of his *pro se* brief. However, in his Petition for Review, Claimant contends that he was not informed of the Referee's hearing due to marital complications and he would like to defend himself against the false allegations made by Employer at the Referee's hearing. Thus, we conclude that Claimant has only preserved the issue of whether the Board abused its discretion by denying Claimant's request for a remand hearing.⁴

Pursuant to Section 504 of the Law, 43 P.S. § 824, the Board has discretion to decide whether to grant a request for remand. Skowronek v. Unemployment Compensation Board of Review, 921 A.2d 555, 558 (Pa. Cmwlth. 2007); Harrison v. Unemployment Compensation Board of Review, 457 A.2d 238 (Pa. Cmwlth. 1983). Generally, a rehearing is granted to allow a party the opportunity to adduce evidence not offered at the original hearing because it was not then available. Flores v. Unemployment Compensation Board of Review, 686

Agency Law, 2 Pa.C.S. §704, which provides that the Court shall affirm unless it determines that the adjudication is in violation of the claimant's constitutional rights, that it is not in accordance with law, that provisions relating to practice and procedure of the Board have been violated, or that any necessary findings of fact are not supported by substantial evidence. See Porco v. Unemployment Compensation Board of Review, 828 A.2d 426 (Pa. Cmwlth. 2003).

⁴ Issues that are not raised in a petition for review, or that are not fairly comprised therein, are waived and will not be addressed by this Court. Pa.R.A.P. 1513(d); McDonough v. Unemployment Compensation Board of Review, 670 A.2d 749 (Pa. Cmwlth. 1996) (“[A]n issue argued in the brief on appeal, but not raised in the petitioner's Petition for Review or ‘fairly comprised therein,’” will not be considered.). M&B Inn Partners, Inc. v. Workers' Compensation Appeal Board (Petriga), 940 A.2d 1255 (Pa. Cmwlth. 2008).

It is well established within our jurisprudence that a claimant who chooses to appear *pro se* assumes the risk that his lack of expertise and legal training may adversely affect his case. Griffith v. Workers' Compensation Appeal Board (New Holland North America, Inc.), 798 A.2d 324 (Pa. Cmwlth. 2002). Thus, Claimant's decision to file his Petition for Review without legal assistance must bear the consequences of that risk.

A.2d 66, 75 (Pa. Cmwlth. 1996) (citing Brady v. Unemployment Compensation Board of Review, 539 A.2d 936 (Pa. Cmwlth. 1988)). The denial of an application for a remand will be reversed only for a clear abuse of discretion. Department of Auditor General v. Unemployment Compensation Board of Review, 484 A.2d 829 (Pa. Cmwlth. 1984).

Requests for an additional hearing by a party who did not attend a scheduled hearing are governed by the Board's regulation set forth at 34 Pa. Code §101.24, which provides in pertinent part:

(a) If a party who did not attend a scheduled hearing subsequently gives written notice, which is received by the tribunal prior to the release of a decision, and it is determined by the tribunal that his failure to attend the hearing was for reasons which constitute "proper cause," the case shall be reopened. Requests for reopening, whether made to the referee or Board, shall be in writing; shall give the reasons believed to constitute "proper cause" for not appearing;

34 Pa. Code §101.24(a). The negligence of a disinterested third party may constitute proper cause for the nonappearance of a party at a hearing. Verdecchia v. Unemployment Compensation Board of Review, 657 A.2d 1341 (Pa. Cmwlth. 1995). However, the negligence of a party, or someone acting on the party's behalf, does not constitute proper cause for the non-appearance of a party at a hearing. Sanders v. Unemployment Compensation Board of Review, 524 A.2d 1031 (Pa. Cmwlth. 1987).

Herein, the only reason given by Claimant for his failure to appear at the Referee's hearing is that he had moved out of his home due to marital problems and his wife did not open his mail. Thus, the reason for Claimant failing to appear was his own negligence in not timely collecting his mail, having his mail

forwarded, or changing his address with the Department. Moreover, Claimant does not assert that if the Board would have granted his request for a remand, he would have been able to offer evidence that the reason he did not pick up his mail was caused by the negligence of a disinterested third party and not his own actions or those of his wife. Therefore, we cannot conclude that the Board abused its discretion in denying Claimant's request to reopen the record.

Accordingly, the Board's order is affirmed.⁵

JAMES R. KELLEY, Senior Judge

⁵ As stated previously in this opinion, the Board pointed out in its decision that “[o]nce claimant is released for work he should provide proof to the Department.” Board Opinion at 2. But until that time, Claimant remains ineligible for benefits pursuant to Section 401(d)(1) of the Law. In other words, once Claimant provides the aforementioned proof to the Department, he may be eligible for unemployment compensation benefits as he would be able and available for work.

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Stephen Maier,	:	
	:	
Petitioner	:	
	:	
v.	:	No. 1729 C.D. 2010
	:	
Unemployment Compensation	:	
Board of Review,	:	
	:	
Respondent	:	

ORDER

AND NOW, this 18th day of May, 2011, the order of the Unemployment Compensation Board of Review in the above-captioned matter is affirmed.

JAMES R. KELLEY, Senior Judge