

**IN THE COMMONWEALTH COURT OF PENNSYLVANIA**

Rashawn Lowe,	:	
	:	
Petitioner	:	
	:	
v.	:	No. 1925 C.D. 2010
	:	
Unemployment Compensation	:	Submitted: March 4, 2011
Board of Review,	:	
	:	
Respondent	:	

BEFORE: HONORABLE RENÉE COHN JUBELIRER, Judge  
HONORABLE ROBERT SIMPSON, Judge  
HONORABLE JAMES R. KELLEY, Senior Judge

OPINION NOT REPORTED

**MEMORANDUM OPINION  
BY JUDGE COHN JUBELIRER**

**FILED: June 14, 2011**

Rashawn Lowe (Claimant), pro se, petitions for review of the Order of the Unemployment Compensation Board of Review (Board), which reversed in part the decision of an Unemployment Compensation Referee (Referee) that found Claimant eligible for Emergency Unemployment Compensation (EUC) benefits for the weeks of April 17, 2010, and April 24, 2010, under the Emergency

Unemployment Act of 2008 (EUC Act)<sup>1</sup> and the Unemployment Compensation Law (Law).<sup>2</sup>

Claimant became unemployed and received regular Pennsylvania unemployment compensation (UC) benefits effective October 4, 2009. (Board's Decision Findings of Fact (FOF) ¶ 1.) Claimant exhausted those benefits, and the Department of Labor and Industry (Department) processed Claimant's application for Pennsylvania EUC benefits. (FOF ¶¶ 2-3.) However, Claimant was informed that, because he had wages in New Jersey, he should process an application for regular UC benefits in New Jersey. (FOF ¶ 4.) New Jersey's UC officials processed Claimant's application for regular UC benefits effective February 21, 2010. (FOF ¶ 5.) New Jersey paid Claimant regular UC benefits for the weeks ending: February 27, 2010, March 20, 2010, and April 10, 2010. (FOF ¶ 6.) Claimant's New Jersey UC benefits were exhausted the week ending April 10, 2010. (FOF ¶ 7.) New Jersey UC officials then processed Claimant's application for EUC benefits against New Jersey and, on April 13, 2010, New Jersey UC authorities notified Claimant that he was ineligible for EUC benefits "because he did not have 20 base year weeks of employment on his original claim or 40 times his weekly benefits rate in the base year period." (FOF ¶¶ 8-9.) Thereafter, on April 27, 2010, the Department issued a determination finding Claimant ineligible

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<sup>1</sup> Title IV of the Supplemental Appropriations Act of 2008, Act of June 30, 2008, P.L. 110-252, as amended, Sections 4001-4007, 26 U.S.C. § 3304 note.

<sup>2</sup> Act of December 5, 1936, Second Ex. Sess., P.L. (1937) 2897, as amended, 43 P.S. §§ 751 – 914.

under Section 402(c) of the Law, 43 P.S. § 802(c),<sup>3</sup> “for weeks ending February 27, 2010, March 6, 2010, April 17, 2010, and April 24, 2010, because the [C]laimant established an eligible regular UC claim against another state.” (FOF ¶ 10.) Claimant appealed this determination, and the Referee reversed with respect to weeks ending April 17, 2010, and April 24, 2010, concluding that Claimant was eligible for EUC benefits from Pennsylvania pursuant to Section 4001(d)(2) of the EUC Act and Section 402(c) of the Law. (FOF ¶ 11; Referee’s Decision at 2.)

The Department appealed the Referee’s determination, asserting that Claimant was ineligible for EUC benefits. On appeal, the Board affirmed in part and reversed in part. The Board affirmed the Referee’s decision pertaining to weeks ending February 27, 2010, and March 6, 2010, because Claimant was receiving UC benefits from New Jersey and, therefore, was ineligible for benefits in Pennsylvania pursuant to Section 402(c) of the Law. Citing Section 4001(b)(1) of the EUC Act and guidelines and interpretative documents issued by the United States Department of Labor (USDOL), the Board held that, because Claimant has exhausted two regular UC benefit years, the most recent benefit year must be used to determine Claimant’s eligibility for EUC benefits. Here, the most recent benefit

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<sup>3</sup> Section 402(c) of the Law provides, in relevant part:

[a]n employe shall be ineligible for compensation for any week . . . [w]ith respect to which or a part of which he has received or is seeking unemployment benefits under an unemployment compensation law of any other state or of the United States: Provided, That if the appropriate agency of such other state or of the United States finally determines that he is not entitled to such unemployment benefits, the disqualification shall not apply.

43 P.S. § 802(c).

year exhausted was in New Jersey; therefore, Claimant's EUC eligibility must be based on his New Jersey benefit year, and his earlier Pennsylvania benefit year could not be used to qualify him for EUC benefits. (Board Op. at 2-3.) Thus, the Board reversed the Referee's decision regarding the week ending April 17, 2010, and subsequent weeks. Claimant now petitions this Court for review.<sup>4</sup>

Preliminarily, we note, as the Board observes, that Claimant's brief does not conform to the Pennsylvania Rules of Appellate Procedure, particularly Rules 2119(a) (requiring, *inter alia*, that a brief include citations to the record and precedential authority) and 2119(c) (requiring, among other things, that a brief must make "reference to the place in the record where the matter referred to appears"). Pa. R.A.P. 2119(a), (c). However, our Court is generally inclined to construe *pro se* filings liberally, Robinson v. Schellenberg, 729 A.2d 122, 124 (Pa. Cmwlth. 1999), and Claimant's non-compliance with the Rules of Appellate Procedure does not impair our ability to discern his issues and arguments or otherwise preclude meaningful appellate review. Accordingly, we will not quash Claimant's Petition for Review on these grounds as the Board requests.

From Claimant's brief, we discern the following argument. Claimant argues that the Board erred in finding him ineligible for EUC benefits because: he has exhausted *two* sets of regular UC benefits, Pennsylvania and New Jersey, for two benefit years; he was not eligible for EUC benefits in New Jersey; and

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<sup>4</sup> In reviewing the Board's determination, "[o]ur scope of review is limited to determining whether constitutional rights were violated, whether the adjudication is in accordance with the law and whether necessary findings of fact are supported by substantial evidence." Orrs v. Unemployment Compensation Board of Review, 910 A.2d 110, 112 n.5 (Pa. Cmwlth. 2006).

Pennsylvania UC officials told him that he was eligible for EUC benefits in Pennsylvania once he exhausted his regular New Jersey benefits.<sup>5</sup>

Section 4001(b)(1) of the EUC Act states, in relevant part, that “the State . . . will make payments of 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).” 26 U.S.C. § 3304 note. Section 4001(d)(2)(A) of the EUC Act provides:

(A) that an individual shall not be eligible for emergency unemployment compensation under this title unless, in the base period with respect to which the individual exhausted all rights to regular compensation under the State law, the individual had 20 weeks of full-time insured employment or the equivalent in insured wages, as determined under the provisions of the State law implementing section 202(a)(5) of the Federal-State Extended Unemployment Compensation Act of 1970 (26 U.S.C. 3304 note).

26 U.S.C. § 3304 note. Claimant has the burden of proving his eligibility for EUC benefits. McKenna v. Unemployment Compensation Board of Review, 981 A.2d 415, 417 n.4 (Pa. Cmwlth. 2009). The USDOL has offered guidance to States in administering the EUC Act, which explains, *inter alia*, the eligibility requirements and State procedures for determining who is eligible for EUC benefits. In one such document, the Unemployment Insurance Program Letter (UIPL) 23-08, relied upon

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<sup>5</sup> Claimant does not appear to challenge the Referee’s and Board’s decisions denying him benefits for weeks ending February 27, 2010, and March 6, 2010. In fact, as the Board observes in its brief, Claimant acknowledged at the hearing before the Referee that he was not eligible for Pennsylvania UC benefits for those weeks. (Referee Hr’g Tr. at 7.)

first by the Department in support of its appeal and then by the Board, the USDOL indicates that the term “Applicable Benefit Year”

means, with respect to an individual, the current benefit year if, at the time an initial claim for EUC [benefits] is filed, the individual has an unexpired benefit year only in the state against which claim is filed, or, in any other case, the individuals most recent benefit year ending on or after May 1, 2007. *For this purpose, the most recent benefit year, for an individual who has unexpired benefit years in more than one state when an initial claim for EUC [benefits] is filed, is the benefit year with the latest ending date or, if such benefit years have the same ending date, the benefit year in which the latest continued claim for regular compensation was filed.*

(Attachment A, UIPL 23-08 at A-1 (emphasis added).) Anticipating situations like the one presently before this Court, the USDOL provided the following instructions:

3. Question: An individual has two different benefit years that ended on or after May 1, 2007. However, on the most recent benefit year, the individual does not meet the 20 weeks of work requirement. The individual’s prior benefit year does meet this requirement. Since the most recent benefit year does not meet the EUC [Act’s] monetary requirements, might the individual qualify for EUC [benefits] based on the prior benefit year?

**Answer:** No. The applicable benefit year, which is used as the basis for an EUC [Act] claim, is the most recent benefit year.

(Attachment to UIPL 23-08, Change 1 at 3.) The USDOL’s interpretations of the statutes and regulations it is charged with implementing are entitled to great weight. See Orrs v. Unemployment Compensation Board of Review, 910 A.2d 110, 112 (Pa. Cmwlth. 2006) (referring to the USDOL’s interpretation of the Trade Act of 1974 and the regulations promulgated under that statute). In Orrs, this Court relied upon “a Trade and Employment Guidance Letter,” issued by the

USDOL, that provided guidance on the exact issue before our Court in that case. Id.

Here, as in Orrs, the UIPL 23-08 and the question and answer found in the attachment to UIPL 23-08 provide us with the answer in this matter. Claimant has exhausted two benefit years of regular UC benefits, one in Pennsylvania and one in New Jersey. When Claimant's Pennsylvania EUC claim was filed, he had unexpired regular UC benefits in New Jersey available. Thus, pursuant to the definition of "Applicable Benefit Year" in UIPL 23-08, "the benefit year with the latest ending date" is considered the applicable benefit year from which Claimant's EUC eligibility will be determined. (Attachment A, UIPL 23-08 at A-1(4); Attachment to UIPL 23-08, Change 1 at 3.) Because Claimant's New Jersey UC benefit year is the year with the latest ending date, that is the year on which his EUC eligibility must be determined. Claimant's EUC benefit eligibility may not be determined from his earlier Pennsylvania benefit year. Although we sympathize with Claimant, this "Court has no equitable power to ignore federal law." Lowe v. Unemployment Compensation Board of Review, 877 A.2d 494, 498 (Pa. Cmwlth. 2005). Accordingly, the Board did not err or abuse its discretion in finding Claimant ineligible for Pennsylvania EUC benefits for the week ending April 17, 2010, and subsequent weeks.

Claimant also asserts that he should not have to pay any overpayment as it would result in a financial hardship. However, this issue is not presently before our Court because the Board's Order being appealed, finding Claimant ineligible for EUC benefits, does not order Claimant to repay any overpayment. Claimant

attaches to his brief several “Notice[s] of Determination on Waiver of EUC Overpayment Repayment,” which indicate that Claimant received an overpayment of EUC payments and that Claimant’s request for waiver of the overpayment was denied. However, none of these notices are in the original record before this Court and all are dated after the Board’s August 19, 2010, Order at issue in this matter. Accordingly, this issue is not before our Court at this time, and we may not consider it further.

For the foregoing reasons, we are constrained to affirm the Board’s Order.

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**RENÉE COHN JUBELIRER, Judge**

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Board of Review,	:	
	:	
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**ORDER**

**NOW**, June 14, 2011, the Order of the Unemployment Compensation Board of Review in the above-captioned matter is hereby **AFFIRMED**.

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**RENÉE COHN JUBELIRER, Judge**