

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Jerimiah K. Miller,	:		
	:	Petitioner	
	:		
v.	:		
	:		
Unemployment Compensation	:		
Board of Review,	:		
	:		No. 1954 C.D. 2009
Respondent	:		Submitted: May 21, 2010

BEFORE: HONORABLE BERNARD L. MCGINLEY, Judge
HONORABLE MARY HANNAH LEAVITT, Judge
HONORABLE JOHNNY J. BUTLER, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION BY
JUDGE BUTLER

FILED: July 2, 2010

Jerimiah K. Miller (Claimant) petitions, pro se, for review of the September 3, 2009 order of the Unemployment Compensation Board of Review (UCBR). The UCBR filed a motion to quash Claimant's petition on December 9, 2009. The issue before this Court is whether Claimant's petition for review should be dismissed for failure to preserve any issues for review. For the reasons that follow, we grant the motion to quash and affirm the UCBR's order.

Claimant worked full-time for nine months as a dishwasher for Cracker Barrel Restaurant (Employer). Employer had a work rule in effect that if an individual was convicted of a misdemeanor or felony he/she was subject to immediate termination. Employer conducted a background check on Claimant and confirmed that Claimant had a criminal record which led to his immediate termination.

Claimant filed for unemployment compensation (UC) benefits, and the UC Service Center issued a determination granting emergency unemployment compensation (EUC) benefits under Section 4001 of the Emergency Unemployment Compensation Act of 2008 (Act),¹ and upon the determination that Claimant was not ineligible for benefits under Section 402(e) of the Unemployment Compensation Law (Law).² Employer appealed the decision and a hearing was held before the Referee. The Referee made a determination that reversed the UC Service Center's decision, and denied Claimant benefits. Claimant appealed to the UCBR on July 25, 2009. On August 18, 2009, Claimant sent a letter to the UCBR withdrawing his appeal. On September 3, 2009, the UCBR granted Claimant's request for withdrawal.

On September 21, 2009, Claimant sent a letter to the UCBR requesting reconsideration of his request for benefits, which the UCBR acknowledged on September 23, 2009. Claimant sent a pro se letter to this Court on September 29, 2009, and filed the subject petition for review on October 2, 2009. In the meantime, on October 7, 2009, the UCBR denied Claimant's request for reconsideration. On December 9, 2009, the UCBR filed a motion to quash the appeal with this Court. On January 4, 2010, this Court ordered that the motion to quash be considered along with the merits of Claimant's petition for review.³

¹ Title IV of the Supplemental Appropriation Act of 2008, Public Law 110-252, 122 Stat. 2323, § 4001, 26 U.S.C. § 3004.

² Act of December 5, 1936, Second Ex. Sess., P.L. (1937) 2897, *as amended*, 43 P.S. § 802(e).

³ The January 4, 2010 order of this Court states, in relevant part: "NOW, January 4, 2010, upon consideration of respondent's motion to quash petitioner's petition for review and the response in opposition thereto, the motion shall be submitted with the merits of the petition for review to a panel of judges of this Court without oral argument."

This Court's review is limited to determining whether the findings of fact were supported by substantial evidence, whether constitutional rights were violated, or whether errors of law were committed. *Johnson v. Unemployment Comp. Bd. of Review*, 869 A.2d 1095 (Pa. Cmwlth. 2005).

The UCBR argues that the only issue that can be reviewed by this Court is whether the UCBR properly granted Claimant's request to withdraw his appeal and, since Claimant did not raise that issue in his petition for review, it was waived.

"A party who has filed an appeal may withdraw and discontinue it with the approval of the tribunal before whom the appeal is pending." 34 Pa. Code § 101.55. Further:

Within 15 days after the issuance of the decision of the Board . . . any aggrieved party may request the Board to reconsider its decision and if allowed, to grant further the opportunity to do the following: (1) Offer additional evidence at another hearing[;] (2) Submit written or oral argument[;] (3) Request the Board to reconsider the previously established record of evidence. The requests will be granted only for good cause in the interest of justice without prejudice to any party. . . .

34 Pa. Code § 101.111. Claimant's withdrawal letter stated:

Dear Appeal systems administrator I wish to withdrawal my appeal for #B-EUC-09-09-D-6728 my reason for this is because I thought I wasn't going to receive unemployment but this appeal was for emergency unemployment my weekly rate was \$280 for EUC. Then the U.C Service center did a quarter change and they redid my claim and now this appeal is holding up my regular U.C determination and benefits. If I am not eligible for regular U.C benefits then I will appeal that determination. I hope this does not inconvenience you.

Original Record (O.R.), Item 10. Claimant's petition for review to this Court relates only to the underlying denial of benefits by the Referee, and makes no mention of the withdrawal of his appeal. Further, Claimant makes no allegations that his request for withdrawal was improper or that he was aggrieved by the outcome.

Pa.R.A.P. 1513(d) states, in relevant part: "An appellate jurisdiction petition for review shall contain . . . (4) reference to the order or other determination

sought to be reviewed, including the date the order or other determination was entered; (5) a general statement of the objections to the order or other determination” Claimant’s petition for review referenced the September 3, 2009 order of the UCBR granting his request to withdraw in his petition for review. His objections, however, are concerned with the underlying denial of his benefits by the Referee, rather than his withdrawal. Claimant’s petition for review clearly fails to articulate any issues related to the granting of his request for the withdrawal of his appeal from the July 23, 2009 Referee decision. *See Maher v. Unemployment Comp. Bd. of Review*, 983 A.2d 1264 (Pa. Cmwlth. 2009); *Deal v. Unemployment Comp. Bd. of Review*, 878 A.2d 131 (Pa. Cmwlth. 2005). Therefore, Claimant has failed to preserve any issues for review by this Court.

It should be noted that Claimant’s challenge to the UCBR’s motion to quash indicated:

Then I was directed by the Altoona Service Center that because my appeal was for an emergency benefits claim that it was delaying my determination for regular U.C. benefits that I should withdrawl [sic] my appeal. After I withdrew my appeal I was then sent a letter stating that my regular benefits were denied based on Referee’s decision I was then told to appeal my claim to the [Commonwealth] Court.

While it could be inferred that the only reason Claimant withdrew his appeal was due to information he received from the UC Service Center, Claimant did not raise this issue in his petition for review, and this Court cannot consider issues raised for the first time in briefs or, by extension, motions filed subsequent to the petition for review. *Maher; Patla v. Unemployment Comp. Bd. of Review*, 962 A.2d 724 (Pa. Cmwlth. 2008). Moreover, the fact that Claimant may have been unaware of the intricacies of appellate procedure cannot be remedied by this Court.

Any lay person who chooses to represent himself in a legal proceeding must assume the risk that his lack of expertise and legal training may prove to be his undoing. Claimant's failure to adhere to the rules of appellate procedure and his failure to raise any issues within our scope of review preclude any meaningful review by this Court.

Daly v. Unemployment Comp. Bd. of Review, 631 A.2d 720, 722 (Pa. Cmwlth. 1993) (citation omitted). Accordingly, Claimant's appeal must be dismissed.

For the reasons stated above, the UCBR's motion to quash Claimant's Petition for Review is granted.

JOHNNY J. BUTLER, Judge

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	:	
Respondent	:	

ORDER

AND NOW, this 2nd day of July, 2010, the Unemployment Compensation Board of Review's motion to quash Claimant's Petition for Review is granted.

JOHNNY J. BUTLER, Judge