

the Law, 43 P.S. § 804(a). The Board's Order also denied Claimant's request that the Board remand the case for additional testimony regarding whether Claimant received notice of the hearing before the Referee.

The Referee made the following findings of fact, which were adopted by the Board:

1. The claimant was last employed by Smeltzer Construction as a full-time carpenter from July 3, 2008 to July 25, 2008 at a final rate of pay at \$17.54 per hour.
2. The claimant requested permission and was permitted to leave work early after picking up his paycheck on Friday, July 25, 2008.
3. The claimant's next scheduled work day was Monday, July 28, 2008.
4. The claimant did not report to work or call off work on July 25, 2008.^[2]
5. Claimant did not return to work after July 25, 2008.
6. The claimant abandoned his job.
7. On August 15, 2008, the claimant reopened his previously established application for unemployment compensation benefits.
8. When reopening his application dated October 14, 2007, the claimant did not report that he had voluntarily quit his job.

² It appears that this date should be listed as July 28, 2008. Claimant states in his brief that his last day of work was July 25, 2008, (Claimant's Br. at 5), and Employer's representative testified before the WCJ that the Claimant last worked on July 25, 2008 (WCJ Hr'g Tr. at 6); however, the parties do not raise arguments at this stage that turn on whether Claimant worked on July 25, 2008.

9. The claimant was issued full unemployment compensation benefits of \$241 for the week ending August 9, 2008.

10. This decision issued in conjunction with related decisions at companion appeals numbered EUC-09-09-H-5305 and 09-09-H-5380.

(Referee Decision/Order, Findings of Fact (FOF) ¶¶ 1-10.) The Referee also noted that Claimant failed to attend the hearing before the Referee. (Referee Decision/Order at 2.) Claimant appealed to the Board, arguing that he did not receive notice of the hearing.³ The Board adopted the Referee's factual findings and affirmed the Referee's decision. With regard to Claimant's argument that he did not receive notice of the hearing, the Board stated "[t]he Board discredits the claimant's assertion that he was not notified of the hearing, as the hearing notice was mailed to his proper address, was not returned as undeliverable and, therefore, was presumably received." (Board Op.) Claimant now petitions this Court for review.⁴

³ Claimant gave his reasons for disagreeing with the Referee's decision as follows: "Never received notice of hearing date. Call in requesting information Referee Appeal No 09-09-H-5296 [the appeal at issue]. [R]eferee Did Not determine ineligible on ans [sic] Section[.] No decision in conjunction." (Petition for Appeal at 1, July 20, 2009.)

⁴ This Court's review of a decision of the Board "is limited to determining whether constitutional rights have been violated, errors of law were committed, or whether findings of fact are supported by substantial evidence. Substantial evidence has been defined as such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." Procyson v. Unemployment Compensation Board of Review, 4 A.3d 1124, 1127 n.4 (Pa. Cmwlth. 2010) (citations omitted) (citing Korpics v. Unemployment Compensation Board of Review, 883 A.2d 1217, 1219 n.1 (Pa. Cmwlth. 2003); Sheets v. Unemployment Compensation Board of Review, 708 A.2d 884, 885 n.3 (Pa. Cmwlth. 1998)).

Before this Court, Claimant argues that the Board should have remanded the matter for further factual findings because he should have had an opportunity to provide evidence that he had good cause for failing to attend the hearing before the Referee. In addition, Claimant argues that another decision determined that Claimant was eligible for benefits, at appeal number 09-09-H-4033, and that, since it appears not to have been appealed, this decision became binding and should have controlled the outcome of the current determination. The Board argues that Claimant waived the issue of whether the matter should have been remanded because he failed to raise it in his Petition for Review. The Board also disputes that the decision in the matter at appeal number 09-09-H-4033 granted Claimant benefits.

We first address the Board's argument that Claimant waived the issue of whether the matter should be remanded for further determination. Rule 1513(d) of the Pennsylvania Rules of Appellate Procedure states that a petition for review must contain "a general statement of the objections to the order or other determination; and . . . a short statement of the relief sought." Pa. R.A.P. 1513(d)(5)-(6). Claimant's Petition for Review states that the Board's determination in the current matter did not take into account facts found in a prior referee's decision at appeal number 09-09-H-4033 that would have showed that Claimant did not voluntarily quit his job. Therefore, we find that he did not waive this issue. However, Claimant's Petition for Review makes no statement regarding Claimant's reason for failing to attend the Referee's hearing in the current matter or why the Board should have remanded the matter for further factual findings regarding Claimant's failure to attend the Referee's hearing. Therefore, per Rule

1513(d), Claimant's argument regarding his failure to attend the hearing is waived. Tyler v. Unemployment Compensation Board of Review, 591 A.2d 1164, 1168 (Pa. Cmwlth. 1991) (issues not raised in a petition for review are waived).

However, even were this issue preserved for our review, we would hold in favor of the Board. “[W]here a party fails to appear at a scheduled hearing, the Board may remand the case for an additional hearing only where the Board has made an independent determination that the reasons set forth by the party for its failure to appear constitute proper cause.” Sanders v. Unemployment Compensation Board of Review, 524 A.2d 1031, 1032 (Pa. Cmwlth. 1987). Claimant's only argument to the Board regarding his failure to attend the Referee's hearing was that he “[n]ever received notice of hearing date.” (Petition for Appeal at 1, July 20, 2009.) Claimant does not dispute, either in his Petition for Review or his brief to this Court, that notice of the Referee's hearing was, in fact, mailed to him at his last known address and that this notice was not returned as undeliverable. These facts create a presumption that Claimant received proper notice. Gaskins v. Unemployment Compensation Board of Review, 429 A.2d 138, 140 (Pa. Cmwlth. 1981). Although Claimant maintained in his Petition for Appeal that he did not receive this notice, he provided no factual support for this statement and the Board, in its Order, found this statement not to be credible. Because the Board is the ultimate fact finder in unemployment cases and is empowered to make credibility determinations, Peak v. Unemployment Compensation Board of Review, 509 Pa. 267, 272, 276-77, 501 A.2d 1383, 1386, 1388 (1985), we would not disturb that finding had it been preserved for appeal. Therefore, were the issue preserved for our determination, we would hold that the Board did not abuse its

discretion in declining to remand the matter for further factual findings on the issue of whether Claimant received notice of the Referee's hearing.

We now address Claimant's argument that the Referee and the Board failed to address the outcome of another referee's determination at appeal number 09-09-H-4033. On April 22, 2010, the Board filed an Application for Remission of the Record to the Board (Application), acknowledging that the referee's decision at appeal number 09-09-H-4033, as well as related documents, "were made part of the record below, but were erroneously omitted from the certified record filed with the court." (Application ¶ 4.) The Board requested the opportunity to correct the certified record, which this Court granted by order dated May 6, 2010. Upon examination of the record, however, we find that, although the record contains a referee's determination at appeal number 09-09-H-4034 and related documentation, we do not find the referee's determination at appeal number 09-09-H-4033 in the certified record. This determination is attached to the Board's brief and indicates that, at the request of the service center, the matter was remanded back to the service center. There is no indication what the service center determined on remand. Obviously, such information would be important to Claimant's argument of res judicata or collateral estoppel. Therefore, before resolving this matter we must, once again, remand this matter to the Board to correct the record to include the referee's determination at appeal number 09-09-H-4033 along with documentation relating to that appeal, including, but not limited to, the service center's determination being appealed and any determination made by the service center on remand. Due to the uncertainty regarding the proceedings

below, the parties shall be permitted to file amended or supplemental briefs upon recertification of the record.

RENÉE COHN JUBELIRER, Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

James T. King, Jr.,	:	
	:	
Petitioner	:	
	:	
v.	:	No. 1964 C.D. 2009
	:	
Unemployment Compensation	:	
Board of Review,	:	
	:	
Respondent	:	

ORDER

NOW, January 24, 2011, the certified record in the above-captioned matter is hereby **REMANDED** to the Unemployment Compensation Board of Review (Board) for supplementation. The Board shall recertify the corrected record and serve James T. King, Jr., (Petitioner) with notice of such recertification within thirty (30) days of the date of this order. The Petitioner may file and serve an amended or supplemental brief within thirty (30) days of the recertification of the record. The Board may file and serve an amended or supplemental brief within thirty (30) days of the filing and service of such amended or supplemental brief by Petitioner or, if Petitioner files no brief, within sixty (60) days of the recertification of the record.

Jurisdiction retained.

RENÉE COHN JUBELIRER, Judge