

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Richard Creasy, :  
Petitioner :  
 :  
v. :  
 :  
Unemployment Compensation Board :  
of Review, : No. 2116 C.D. 2010  
Respondent : Submitted: March 25, 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: April 21, 2011

Richard Creasy (Claimant), appearing *pro se*, petitions for review from an order of the Unemployment Compensation Board of Review (Board) affirming the decision of the Referee denying him unemployment compensation benefits pursuant to Section 402(h) of the Unemployment Compensation Law (Law)<sup>1</sup> because Claimant failed to prove that his participation in self-employment

---

<sup>1</sup> Act of December 5, 1936, Second Ex. Sess., P.L. (1937) 2897, *as amended*, 43 P.S. §802(h). That section provides that “an employee shall be ineligible for compensation for any week in which he is engaged in self-employment. Provided, however, That an employe who is able and available for full-time work shall be deemed not engaged in self-employment by reason of continued participation without substantial change during a period of unemployment in any activity including farming operations undertaken while customarily employed by any employer **(Footnote continued on next page...)**”

did not substantially change during his period of unemployment. For the reasons that follow, we affirm the Board.

Claimant was employed by Pfizer/Wyeth Pharmaceuticals (Employer) as a full-time director of learning and development from October 15, 1978, through his last day of work on February 22, 2010. Claimant applied for unemployment compensation benefits with the Erie UC Service Center alleging that he had a side business as a clinical psychology therapist. He provided the UC Service Center with a 1099 tax return indicating that he earned \$3,251 from his side business, the Peacemaker Center.

By notice dated April 19, 2010, the UC Service Center denied him benefits pursuant to Section 402(h) of the Law finding that he worked in regular employment while engaged in his self-employment; that the earnings from his regular employment exceeded the net profit from his self-employment; and that there was insufficient information provided to determine if he substantially increased his involvement in the self-employment following the loss of his regular employment. Because there was insufficient information to show whether Claimant increased his involvement in his self-employment following the loss of his regular employment with Employer, the UC Service Center determined that

---

**(continued...)**

in full time work whether or not such work is in 'employment' as defined in this act and continued subsequent to separation from such work when such activity is not engaged in as the primary source of livelihood."

Claimant had not met his burden of proof and his business as a therapist did not qualify as a sideline business.<sup>2</sup> After receiving the denial notice from the UC Service Center, he sent the UC Service Center a letter dated April 23, 2010, indicating that he only worked as a part-time therapist while working full-time for Employer, and stated that he had not substantially increased his involvement in his self-employment following the loss of his regular employment.

Claimant appealed that decision, and a hearing was scheduled before a Referee for May 21, 2010, to determine whether Claimant was engaged in self-employment. Claimant requested a continuance and another hearing was scheduled for June 1, 2010. On June 1, 2010, neither Claimant nor Employer appeared at the hearing. Based on the documents submitted from the UC Service Center, the Referee issued a decision denying benefits and finding that Claimant was self-employed as a clinical psychology therapist while he worked full-time for Employer. However, because Claimant did not appear at the hearing to offer testimony on behalf of his appeal, the Referee based her decision on the documents submitted by the UC Service Center and affirmed its decision.

---

<sup>2</sup> There was also an issue regarding whether Claimant voluntarily terminated his employment. Claimant filed for benefits with the UC Service Center which were denied under 402(b) of the Law, 43 P.S. §802(b). Claimant filed an appeal with the Referee which was denied based on Claimant's failure to appear at the consolidated hearing with this case and affirmed by the Board. Claimant appealed to this Court and requested that case, at No. 2117 C.D. 2010, be consolidated with this matter. By order dated March 23, 2011, we dismissed that matter.

Claimant then appealed to the Board requesting a remand on the basis that he did not receive notice of the rescheduled hearing. The Board first noted that notice was mailed to Claimant at his last known correct post office address and that it was not returned by the postal authorities as undeliverable. Therefore, receipt was presumed and Claimant's assertion to the contrary was rejected and his request for a remand denied. The Board then affirmed the Referee's decision denying benefits explaining that Claimant was engaged in self-employment while working full-time. In order to be entitled to benefits under Section 402(h) of the Law, Claimant was required to prove that his participation in self-employment did not substantially change during his period of unemployment; however, he failed to appear at the hearing and failed to prove that with competent, credible evidence. Claimant filed a request for reconsideration which was denied, and this appeal followed.<sup>3</sup>

Claimant contends that he should be granted unemployment compensation benefits beginning with the waiting week ending February 27, 2010, "because no significant changes took place between February and June." He claims that because he was involuntarily terminated in February and he began receiving benefits after June, he is entitled to unemployment compensation benefits in between those two periods of time. He also argues that the Board erred by finding that he did not fall within the sideline business exception of Section 402(h),

---

<sup>3</sup> 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 findings of fact were supported by substantial evidence. *Frazier v. Unemployment Compensation Board of Review*, 833 A.2d 1181 (Pa. Cmwlth. 2003).

even though he produced evidence to the contrary prior to June 2010 via his letter from Employer dated February 26, 2010, stating that he was involuntarily terminated. We need not address either of these issues because Claimant failed to appear at the hearing to present any evidence. Therefore, he did not meet his burden of proof.

Accordingly, the order of the Board is affirmed.

---

DAN PELLEGRINI, JUDGE

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Richard Creasy, :  
                    Petitioner :  
                                  : :  
                                  : :  
                    v. : :  
                                  : :  
                                  : :  
Unemployment Compensation Board :  
of Review, :  
                    Respondent : No. 2116 C.D. 2010

**ORDER**

AND NOW, this 21<sup>st</sup> day of April, 2011, the order of the Unemployment Compensation Board of Review, dated August 19, 2010, at No. B-504772, is affirmed.

---

DAN PELLEGRINI, JUDGE