

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Donna Marie Laghjichi, :
Petitioner :
v. :
Unemployment Compensation :
Board of Review, : No. 2141 C.D. 2010
Respondent : Submitted: February 25, 2011

BEFORE: HONORABLE BERNARD L. McGINLEY, Judge
HONORABLE P. KEVIN BROBSON, Judge
HONORABLE ROCHELLE S. FRIEDMAN, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE McGINLEY

FILED: April 4, 2011

Donna Marie Laghjichi (Claimant), *pro se*, challenges the order of the Unemployment Compensation Board of Review (Board) that reversed the decision of the referee and concluded that Claimant was ineligible for benefits under Sections 402(a), 404(d)(1), 401, and 4(u) of the Unemployment Compensation Law.¹

In a notice from the Allentown Unemployment Compensation Service Center mailed December 3, 2009, Claimant was informed that unemployment compensation benefits she was receiving might be temporarily or permanently terminated because she “[r]efused to accept possible employment, [b]een unavailable for suitable work in the past or present” or “[o]ther: possible

¹ Act of December 5, 1936, Second Ex. Sess., P.L. (1937) 2897, *as amended*, 43 P.S. §§802(a), 804(d)(1), 801, and 753(u).

overpayment.” Advance Notice, Allentown UC Service Center, December 3, 2009, at 1.

The Allentown UC Service Center determined that Claimant was eligible for benefits under Section 402(a) of the Law, 43 P.S. §802(a), because even though she refused a job with Home Instead Senior Care (Employer), Employer failed to notify the Department of Labor and Industry within seven working days of the offer as required under Section 402(a) of the Law, 43 P.S. §802(a).

Employer appealed. The referee conducted a hearing on March 1, 2010. Joan Hardy (Hardy), staffing coordinator for Employer, testified that Claimant was “limited to the work that she can accept from us due to her other job so she’s strictly fill-ins only.” Notes of Testimony, March 1, 2010, (N.T.) at 3. With respect to the week of August 29, 2009, Hardy testified that she was “sure there was work offered” to Claimant but did not know any specifics. N.T. at 3-4. Upon questioning by the referee, Hardy admitted that she did not know whether Claimant turned down an offer of work for the week of August 29, 2009. N.T. at 4. Claimant testified that she performed “caregiver, companion work” for Employer’s clients but that she worked for other staffing agencies which generally paid more so she would accept an offer with the other staffing agency if available. N.T. at 7.

On March 23, 2010, the referee affirmed the Service Center’s determination and allowed the claim credit for the week of August 29, 2009. The

referee determined “There was no evidence in the record that substantiates that the claimant was offered work and failed to accept employment from Home Instead Senior Care.” Referee’s Decision, March 23, 2010, at 2.

Employer appealed to the Board which remanded to the referee as its hearing officer: “the purpose of this hearing is to put the parties on notice that the Board also considers Sections 401 and 4(u) of the Law, concerning whether or not the claimant was ‘unemployed’ under the Law, to be at issue.” Board Order, May 7, 2010, at 1.

The referee conducted the remand hearing on June 2, 2010. Hardy testified that Claimant refused a long-term assignment during the week of August 29, 2009. Notes of Testimony, June 2, 2010 (N.T. 6/2/2010) at 3. Hardy testified that she contacted Claimant on August 23, 2009, to inform her that she had ongoing work available for twenty hours per week at a residence in Langhorne. N.T. 6/2/2010 at 4. According to Hardy, Claimant informed her that she was not interested because she had another job and didn’t want anything permanent. N.T. 6/2/2010 at 5. Employer offered Claimant \$10.50 per hour. N.T. 6/2/2010 at 6.

Claimant testified that she did not turn down any work but she did have another part-time job. N.T. 6/2/2010 at 7. She had a third part-time job but was laid off from that job and filed for unemployment compensation benefits. N.T. 6/2/2010 at 8. Claimant denied turning down steady work with set hours with Employer in August 2009. N.T. 6/2/2010 at 10.

The Board concluded that Claimant was ineligible for benefits under Sections 402(a), 404(d)(1), 401, and 4(u) of the Law. The Board made the following findings of fact:

1. For purposes of this appeal, the claimant filed a claim for unemployment compensation effective August 23, 2009.
2. The week at issue in this appeal is week ending August 29, 2009.
3. The employer provides caregivers to senior citizens who are clients.
.....
5. The claimant also performs work for another employer.
6. The claimant has limited her employment with the employer to a fill in position because she wanted to be available for more work with her other employer.
7. The other employer paid a higher rate than the employer.
8. The employer has much more work available to the claimant (up to 40 hours per week) if she were willing to accept it.
9. During week ending August 29, 2009, the employer had a 20 hour per week assignment that paid \$10.50 per hour.
10. The assignment was long-term, of indefinite duration.
11. The claimant refused the assignment.
12. The claimant's weekly benefit rate is \$110.00 and her partial benefit credit is \$44.00. The sum of the two figures is \$154.00.

Board Opinion, September 9, 2010, (Opinion), Finding of Fact Nos. 1-3 and 5-12 at 1-2.

The Board concluded:

Section 402(a) of the Law provides that a claimant shall be ineligible for compensation for any week in which her unemployment is due to failure, without good cause, either to apply for suitable work at such time and in such manner as the department may prescribe, or to accept suitable work when offered to her by the employment office or by an employer. The good cause contemplated is based upon good faith.

Based upon the above findings, which are supported by the employer's credible testimony, the Board concludes that the claimant refused suitable work without good cause. Therefore, the claimant is ineligible for benefits under Section 402(a) of the Law.

. . . .

Based upon the above findings, the Board concludes that the claimant did not meet the definition of 'unemployed.' The claimant refused work consisting of 20 hours per week paid at a rate of \$10.50 per hour. Therefore, the claimant's potential earnings exceeded \$154.00 [Claimant's weekly benefit rate plus partial benefit credit]. . . . Accordingly, the claimant is ineligible for benefits under Sections 401 and 4(u) of the Law as well. (Citation omitted).

Opinion at 2-3.

Claimant essentially disputes that the Board's conclusion that she refused suitable work which consisted of twenty hours per week at a rate of \$10.50 per hour and that this refusal made her ineligible to receive unemployment

compensation benefits.² Claimant contends that Employer failed to establish that it offered an ongoing job of twenty hours per week and that Claimant turned it down. In contrast, Claimant testified that she did not turn down steady ongoing work.

Although she was not very specific, Hardy testified that she offered Claimant an ongoing twenty hour per week job at \$10.50 per hour which Claimant declined. Claimant testified that she was not offered the job and did not turn down any work. The Board found Hardy credible. In unemployment compensation proceedings, the Board is the ultimate fact-finding body empowered to resolve conflicts in evidence, to determine the credibility of witnesses, and to determine the weight to be accorded evidence. Unemployment Compensation Board of Review v. Wright, 347 A.2d 328 (Pa. Cmwlth. 1975). Findings of fact are conclusive upon review provided that the record, taken as a whole, provides substantial evidence to support the findings. Taylor v. Unemployment Compensation Board of Review, 474 Pa. 351, 378 A.2d 829 (1977). Essentially, Claimant asks this Court to reweigh the evidence in its favor. This Court is not permitted to do so.

Claimant makes no other argument. While the Board concedes it erred when it denied benefits under Section 402(a) of the Law, it asserts that the denial under Sections 401, 4(u)(ii) and 404(d)(1) of the Law was proper.³

² This Court's review in an unemployment compensation case is limited to a determination of whether constitutional rights were violated, errors of law were committed, or findings of fact were not supported by substantial evidence. Lee Hospital v. Unemployment Compensation Board of Review, 637 A.2d 695 (Pa. Cmwlth. 1994).

³ Under Section 401 of the Law, a claimant must be unemployed in order to receive benefits. Section 4(u) of the Law, 43 P.S. §753(u), defines "unemployed" as follows: "An **(Footnote continued on next page...)**"

Claimant does not challenge the Board's legal reasoning regarding her ineligibility under the definition of "unemployed" because she did not accept employment for which she would have earned in excess of her weekly benefit rate plus her partial benefit credit.

Accordingly, this Court must affirm.

BERNARD L. McGINLEY, Judge

(continued...)

individual shall be deemed unemployed (1) with respect to any week (i) during which he performs no services for which remuneration is paid or payable to him and (ii) with respect to which no remuneration is paid or payable to him, or (II) with respect to any week of less than his full-time work if the remuneration paid or payable to him with respect to such week is less than his weekly benefit rate plus his partial benefit credit."

Section 404(d)(1) of the Law, 43 P.S. §804(d)(1), provides as follows: Notwithstanding any other provisions of this section each eligible employe who is unemployed with respect to any week ending subsequent to July 1, 1980 shall be paid, with respect to such week, compensation in an amount equal to his weekly benefit rate less the total of (i) the remuneration, if any, paid or payable to him with respect to such week for services performed which is in excess of his partial benefit credit and (ii) vacation pay, if any, which is in excess of his partial benefit credit, except when paid to an employe who is permanently or indefinitely separated from his employment.

The Board found that Claimant's weekly benefit rate was \$110.00 and her partial benefit credit was \$44.00 for a total of \$154.00.

