

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Kevin K. Bleacher,	:	
Petitioner	:	
	:	
v.	:	No. 2455 C.D. 2009
	:	
Unemployment Compensation	:	Submitted: June 18, 2010
Board of Review,	:	
	:	
Respondent	:	

BEFORE: HONORABLE DAN PELLEGRINI, Judge
HONORABLE ROBERT SIMPSON, Judge
HONORABLE ROCHELLE S. FRIEDMAN, Senior Judge

OPINION NOT REPORTED

**MEMORANDUM OPINION
BY JUDGE SIMPSON**

FILED: August 19, 2010

In this appeal, Kevin K. Bleacher (Claimant), representing himself, asks whether the Unemployment Compensation Board of Review (Board) erred in denying him unemployment benefits. The Board denied benefits under Section 402(e) of the Unemployment Compensation Law¹ (Law) (relating to willful misconduct) on the ground Claimant knowingly falsified an employment application. Claimant does not challenge the Board’s findings or determinations on the merits. Rather, he argues Kelly Services’ (Employer) failure to appeal a UC service center’s initial determination regarding his financial eligibility for benefits rendered untimely Employer’s subsequent appeal of the UC service center’s separate, substantive eligibility determination. Discerning no merit in this assertion, we affirm.

¹ Act of December 5, 1936, Second Ex. Sess., P.L. (1937) 2897, as amended, 43 P.S. §802(e).

Because Claimant limits his appeal to the issue of the timeliness of Employer's appeal of an initial service center determination, a detailed discussion of the facts regarding Claimant's separation from employment is unnecessary.

By way of brief background, Claimant worked for Employer, a staffing agency, from March 2008 until January 2009. Employer assigned Claimant to Y&S Candies as a driver. Employer discharged Claimant after an investigation revealed Claimant falsified his employment application.

Claimant subsequently applied for unemployment benefits. Apparently, the local UC service center issued a notice of financial determination that found Claimant financially eligible for unemployment benefits.²

In addition, a UC service center subsequently issued a notice of determination in which it stated Claimant was substantively eligible for unemployment benefits. Employer appealed. A hearing ensued before a referee.

At hearing, Claimant asserted Employer's appeal from the UC service center to the referee was untimely because Employer did not appeal the initial notice of financial determination.

Ultimately, the referee issued a decision in which he first noted there was no issue regarding the timeliness of Employer's appeal because "the Notice of Financial Determination, even if issued to the employer, is a notice of financial

² As explained in greater detail below, the Notice of Financial Determination, appended to Claimant's brief, is not included within the certified record.

eligibility without regard to the merits of a separation. Only after a claimant is financially eligible is the employer sent paperwork related to separation.” Thus, the referee stated there was no issue regarding the timeliness of Employer’s appeal from the determination regarding Claimant’s separation on the merits. As to the merits, the referee determined Claimant committed willful misconduct by knowingly falsifying his employment application. Claimant appealed to the Board.

Adopting and incorporating the referee’s findings and conclusions, the Board affirmed the denial of benefits. Claimant appealed to this Court.

On appeal,³ Claimant argues Employer’s failure to appeal the initial notice of financial determination renders untimely Employer’s appeal of the subsequent notice of determination, which addressed the merits of Claimant’s separation from employment.

The Board responds this Court should quash Claimant’s petition for review and brief because Claimant raises no issues regarding the Board’s order affirming the referee and denying benefits under Section 402(e) of the Law.

The Board argues Claimant’s sole contention is that Employer’s “failure” to appeal the financial determination here renders untimely Employer’s appeal of the merits determination. However, the Board contends, Employer had

³ “Our review is limited to determining whether the findings of fact are supported by substantial evidence and whether there was a violation of the constitution or agency procedure of law.” Caterpillar, Inc. v. Unemployment Comp. Bd. of Review, 550 Pa. 115, 123, 703 A.2d 452, 456 n.5 (1997).

no reason to argue Claimant had insufficient wages in his base year based upon his high quarter. The Board further asserts Claimant does not challenge the Board's decision on the merits; thus, Claimant waived his right to argue the Board erred in denying benefits under Section 402(e) of the Law. As a result, the Board argues we should dismiss Claimant's appeal.

Rejecting Claimant's assertion that Employer's failure to appeal the service center's initial financial eligibility determination rendered untimely Employer's appeal of the subsequent merits determination, the referee, whose decision was adopted by the Board, explained:

As a preliminary matter, it may be noted that at the hearing, the claimant raised the issue as to whether the employer's appeal is timely because the employer did not appeal the Notice of Financial Determination. The Referee explained to the claimant on the record that the Notice of Financial Determination, even if issued to the employer, is a notice of financial eligibility without regard to the merits of a separation. Only after a claimant is found financially eligible is the employer sent the paperwork related to separation. Accordingly, there is no issue here of the timeliness of the employer's appeal from the separation on the merits.

Referee's Op. at 2. Upon review, we discern no error in the referee's explanation.

First and foremost, the notice of financial determination, which Claimant argues Employer failed to properly appeal, is not contained in the certified record. We may not consider the incomplete copy of the notice of financial determination appended to Claimant's brief. See Pa. Tpk. Comm'n v. Unemployment Comp. Bd. of Review, 991 A.2d 971 (Pa. Cmwlth. 2009) (this Court may not consider evidence that is not part of the certified record on appeal).

Because the document upon which Claimant bases his sole argument is not part of the certified record, appellate review of this issue is significantly hindered.

In any event, Employer's failure to appeal the initial notice of financial determination, does not bar Employer's timely appeal of the separate, subsequently issued notice of determination, which found Claimant eligible for benefits based on his separation from Employer. See Certified Record (C.R.), Item #7. As explained more fully below, Claimant's argument confuses the initial notice of financial determination with the separately issued notice of determination.

By way of background, after a claimant applies for unemployment benefits, a notice of financial Determination, Form UC-44F, is generated by the local service center. The notice of financial determination indicates whether a claimant received sufficient wages to be eligible for benefits and establishes the benefit rate and maximum amount of compensation payable to a claimant. See Section 501(a) of the Law, 43 P.S. §821(a). As its title indicates, the notice of financial determination is limited to a determination of a claimant's financial eligibility only. Either the claimant or the employer may dispute this financial determination by filing an appeal. See 34 Pa. Code §65.117. A determination of financial eligibility is the first step in determining overall eligibility for unemployment benefits.

In addition to a financial determination, the local service center determines whether the substantive circumstances surrounding a claimant's separation from employment render him eligible for benefits. This determination

process begins with the mailing to the employer of a copy of the part of the claimant's application, entitled "Employer's Notice of Application Request for Separation and Wage Information." C.R., Item #2. The employer is required to complete this form and return it to the service center. If the claimant and the employer are in dispute as to the reasons for or circumstances surrounding the separation from employment, the service center claims examiner attempts to gather further information. See, e.g., Dorn v. Unemployment Comp. Bd. of Review, 866 A.2d 497 (Pa. Cmwlth. 2004).

The UC claims examiner subsequently issues a notice of determination, UC Form-44, which addresses a claimant's eligibility for benefits based on his separation from employment. See Dep't of Cmty. & Econ. Dev. v. Unemployment Comp. Bd. of Review, 847 A.2d 229 (Pa. Cmwlth. 2004). An appeal from an adverse UC service center determination must be filed within 15 days of the date the determination was mailed. See Section 501(e) of the Law, 43 P.S. §821(e).

Here, a service center claims examiner issued a notice of determination that found Claimant eligible for benefits under Section 402(e) of the Law. The notice of determination indicated the "final day to timely appeal this determination is July 06, 2009. C.R., Item #7. Employer timely appealed the notice of determination on June 26, 2009, asserting it discharged Claimant based on his falsification of an employment application. C.R., Item #8. Employer's appeal did not raise any issue concerning Claimant's financial eligibility. Id. A hearing before a referee ensued on the primary issue of whether Claimant committed disqualifying misconduct. C.R., Item #10. Ultimately, the referee and,

on further appeal the Board, determined Claimant was not eligible for benefits under Section 402(e) of the Law because he committed willful misconduct.

In short, Employer timely appealed the service center's initial notice of determination that Claimant was substantively, as opposed to financially, eligible for benefits. Employer's alleged failure to appeal the service center's financial eligibility determination does not preclude its timely appeal of the service center's subsequent, substantive eligibility determination. Thus, Claimant's argument fails.⁴

Further, Claimant disputes neither the Board's findings nor its determination that he committed willful misconduct and is, therefore, ineligible for benefits under Section 402(e) of the Law. As such, these issues are waived. See Tyler v. Unemployment Comp. Bd. of Review, 591 A.2d 1164 (Pa. Cmwlth. 1991) (a claimant's failure to address an issue in his brief results in waiver).

Based on the foregoing, we affirm.

ROBERT SIMPSON, Judge

⁴ In his brief, Claimant refers to 34 Pa. Code §63.36 in support of his argument that Employer's appeal was untimely. That regulation governs the timing of appeals for "relief from charges." An employer "seeking relief from charges is requesting a tax exemption" under Section 302 of the Law, 43 P.S. §782. First Nat'l Bank of Bath v. Unemployment Comp. Bd. of Review, 619 A.2d 801, 803 (Pa. Cmwlth. 1992). Here, there is no indication Employer sought a relief from charges; as such, this regulatory provision is inapplicable here.

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Board of Review,	:	
	:	
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ORDER

AND NOW, this 19th day of August, 2010, the order of the Unemployment Compensation Board of Review is **AFFIRMED**.

ROBERT SIMPSON, Judge