

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Ivanka Nikolova,	:	
	:	
Petitioner	:	
	:	
v.	:	No. 2638 C.D. 2010
	:	
Unemployment Compensation	:	Submitted: April 21, 2011
Board of Review,	:	
	:	
Respondent	:	

BEFORE: HONORABLE DAN PELLEGRINI, Judge
HONORABLE ROBERT SIMPSON, Judge
HONORABLE JOHNNY J. BUTLER, Judge

OPINION NOT REPORTED

**MEMORANDUM OPINION
BY JUDGE SIMPSON**

FILED: July 1, 2011

Ivanka Nikolova (Claimant), representing herself, petitions for review of an order of the Unemployment Compensation Board of Review (Board) that denied her benefits under Section 404 of the Unemployment Compensation Law (Law) for not having earned enough annual income to qualify for benefits.¹ Discerning no error, we affirm.

Claimant worked part-time for the non-profit organization Mt. Lebanon Extended Day Program (Employer) and for the University of Pittsburgh. The circumstances of her separation from employment is not clear, but it is not

¹ Act of December 5, 1936, Second Ex. Sess., P.L. (1937) 2897, as amended, 43 P.S. §804.

relevant. Rather, the case hinges on whether Claimant earned a sufficient annual income to qualify for benefits.

Claimant filed for unemployment compensation benefits. Her application was initially denied. Claimant appealed. After hearing, the referee affirmed the denial of benefits. The referee made the following findings of fact:

1. The claimant made an application for benefits dated January 31, 2010 establishing a base year period from October 1, 2008 to September 30, 2008.
2. During her base year, the claimant was paid high quarter wages of \$7,251.00 and total base year wages of \$11,428.00
3. Individuals paid high quarter wages of \$7,251.00 are eligible for \$292.00 in weekly benefits if their total base year wage amount is at least \$11,600.
4. The claimant's total base year wages are \$172.00 less than this amount.
5. Section 404 of the law provides a step down calculation in cases where total base year wages do not support a prescribed weekly benefit amount.
6. Using this step down procedure would provide the claimant a weekly benefit rate of \$289.00 with total base year wages of \$11,480.00.
7. The claimant is short this amount by \$52.00.

Ref. Dec., Findings of Fact 1-7; Bd. Op. at 1. The referee explained that Claimant was ineligible for benefits because "she was not paid qualifying wage amounts during her base year period." Ref. Dec. at 2. Claimant appealed to the Board. The

Board fully adopted the findings and conclusions of the referee and affirmed the referee's denial of benefits. Claimant appeals on her own behalf.²

Unfortunately, no issue is preserved review. Claimant did not address in her appellate brief any of the issues raised in her petition for review. Claimant's failure to develop any of these issues in her brief results in their waiver. See Rapid Pallet v. Unemployment Comp. Bd. of Review, 707 A.2d 636 (Pa. Cmwlth. 1998). Similarly, the issues raised in her brief are waived because they were neither raised in her petition for review nor can be fairly comprised from the issues she raised in her petition for review.³ See Jimoh v. Unemployment Comp. Bd. of Review, 902 A.2d 608 (Pa. Cmwlth. 2006). Accordingly, we are compelled to deny her appeal and affirm the Board's order denying benefits.

Moreover, no error is discernable on the merits. The referee and Board correctly held that Claimant did not earn sufficient annual income to qualify for unemployment compensation benefits.

² Our review is limited to determining whether necessary findings of fact were supported by substantial evidence, whether errors of law were committed, or whether constitutional rights were violated. Ductmate Indus., Inc. v. Unemployment Comp. Bd. of Review, 949 A.2d 338 (Pa. Cmwlth. 2008).

³ Claimant identifies two issues in her statement of questions involved. First, the Referee and Board erred by failing to include "missing wages that would have made up [the] difference." Claimant's Br. at 6. Second, "why can't I collect the Federally funded EUC benefits? This question was not even brought to the table during the hearing." Claimant's Br. at 6. As noted by Claimant, she did not raise this second issue before the referee, which itself is another basis for waiver. Schaal v. Unemployment Comp. Bd. of Review, 870 A.2d 952, 953-54 (Pa. Cmwlth. 2005) ("A claimant waives review of an issue by failing to raise it before the referee when he had the opportunity to do so.")

Section 401(a) of the Law, 43 P.S. §801(a) requires a claimant to have met certain financial eligibility requirements as a qualification for receiving unemployment benefits. These financial eligibility requirements are contained in a table in Section 404 of the Law, 43 P.S. §804. Our Supreme Court described the manner in which this table functions:

To determine financial eligibility under this Table, a claimant first determines her ‘highest quarterly wages’ (Part A) earned during the base year which, in turn, determines the corresponding rate and total amount of compensation provided in Parts B and D of the Table. However, in order to be eligible for those benefits, the claimant must have earned, in her base year, the amount set forth in Part C, ‘Qualifying Wages.’

Martin v. Unemployment Comp. Bd. of Review, 502 Pa. 282, 288, 466 A.2d 107, 110 (1983). The Supreme Court explained that “The ‘qualifying wage’ column when applied in conjunction with the highest quarterly wage column is designed to ensure that a certain percentage of a claimant's wages will have been earned outside of her highest quarter, so as to demonstrate that a claimant has been genuinely attached to the labor force.” Id. This section further provides that the figures in the table may be “extended or contracted” by Department regulation. Section 404(e)(2) of the Law, 43 P.S. §804(e)(2). The Department issued such regulations at Appendix A to Chapter 65 of title 34 of the Pennsylvania Code. These regulations are applicable here.

In this case, Claimant’s highest quarterly wage was \$7,251.00. The relevant provisions of Appendix A provide (with emphasis added):

Part A Highest Quarterly Wage	Part B Rate of Compensation	Part C Qualifying Wage	Part D Amount of Compensation	Part E
		* * * *		
7138-7162	288	11440	7488	4608
7163-7187	289	11480	7514	4624
7188-7212	290	11520	7540	4640
7213-7237	291	11560	7566	4656
7238-7262	292	11600	7592	4672

Applying Appendix A, Claimant needed to earn \$11,600 during the prior year to qualify for benefits. Her annual earnings of \$11,428.00 fell short of this requirement. Accordingly, she was not eligible for benefits.

The Law provides a “‘step-down’ provision [that] allows a claimant who has insufficient qualifying wages at the applicable weekly benefit rate to ‘step-down’ [three] lower rates and, if the claimant has earned the amount of qualifying wages designated for the lowest of those [three] rates, to become eligible at that lowest rate.” Martin, 502 Pa. at 286 n.4, 466 A.2d at 109 n.4; Section 404(a)(3) of the Law, 43 P.S. §804(a)(3). Here, even applying the “step-down” provision, Claimant earned less than the \$11,480 requirement.

Claimant testified she was entitled to an additional \$52 for accrued but unpaid time off. Referee’s Hearing of 7/9/10, Notes of Testimony (N.T.), at 3-4.⁴ This amount, if proven, would have exactly qualified Claimant for benefits under the “step-down” provision. However, Claimant offered no documentary

⁴ The Wage Investigation System Documents at 4, Record Item 5, indicate Claimant was seeking \$69.40.

evidence to substantiate her testimony. Conversely, Employer offered into evidence Employer's employee handbook, which provided that unused annual leave time was forfeited. N.T. at 5, Employer Exhibit 1. Employer also introduced into evidence an acknowledgement signed by Claimant that she read and understood the terms of the handbook. Id. Thus, Claimant did not establish an entitlement to this additional money.

In sum, we deny Claimant's appeal because Claimant failed to preserve any issue for review. Additionally, even under merits review Claimant is not entitled to relief. Accordingly, we affirm.

ROBERT SIMPSON, Judge

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Board of Review,	:	
	:	
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ORDER

AND NOW, this 1st day of July, 2011, the order of the Unemployment Compensation Board of Review is **AFFIRMED**.

ROBERT SIMPSON, Judge