

Claimant worked for Carlisle Carrier Corporation (Employer) as a truck driver from December 20, 2007, through her last day of work on July 24, 2009. At that time, Claimant ended her employment because she was moving back to Maine in order to attend to personal responsibilities. Claimant filed for unemployment compensation benefits claiming she attempted to work with Employer regarding her schedule and delivery routes so she could be home in Maine on the weekends or at least once a month, but Employer refused to accommodate her requests. According to Claimant, the decision to terminate her employment was mutual and she did not voluntarily quit. The Department of Labor and Industry (Department) issued a Notice of Determination on August 14, 2009, finding Claimant ineligible for benefits under Section 402(b) of the Law² because she did not demonstrate that she had a necessitous and compelling reason for leaving her job. The Notice specifically stated that the last day to timely appeal the determination was August 31, 2009. However,

(continued...)

section five hundred and one (a), (c) and (d), within fifteen calendar days after such notice was delivered to him personally, or was mailed to his last known post office address, and applies for a hearing, such determination of the department, with respect to the particular facts set forth in such notice, shall be final and compensation shall be paid or denied in accordance therewith.

² 43 P.S. §802(b). That section provides, in pertinent part:

An employe shall be ineligible for compensation for any week—

...

(b) In which his unemployment is due to voluntarily leaving work without cause of a necessitous and compelling nature. . . .

the Department indicated it did not receive Claimant's faxed petition for appeal until September 15, 2009, and Claimant requested a hearing.

A telephonic hearing³ was held before the Referee on October 22, 2009, solely on the issue of whether Claimant filed a timely appeal from the Notice of Determination. Claimant testified that she sent notice of her intent to appeal to the Department before the September 15, 2009 deadline. According to Claimant, her original appeal must have been lost because when she contacted the Department approximately two weeks later a representative indicated that the appeal had not been received. The Department's representative allegedly told her to fax a written request for an appeal to the office immediately. Claimant testified that she faxed a handwritten letter indicating that she wished to appeal the Notice of Determination on September 13, 2009, but it was not received by the Department until September 15, 2009.

The Referee found Claimant ineligible for benefits under Section 501(e) because her appeal was not timely filed. She found that the Notice of Determination was mailed to Claimant's last known post office address on August 14, 2009, and was not returned by the post office as undeliverable. The Referee did not find Claimant's testimony credible and specifically found that Claimant did not file her appeal before the August 31, 2009 deadline, but waited until September 15, 2009. Claimant was not misinformed or misled regarding the right or need to appeal; therefore, her petition for appeal was dismissed because it was not timely filed. Claimant appealed

³ Employer did not participate in this hearing.

to the Board, which affirmed the Referee's decision stating that Claimant failed to offer sufficient credible testimony or evidence substantiating her claim that she timely filed her appeal. This appeal followed.⁴

Claimant's petition for review appears to allege that she timely filed her appeal of the Department's Notice of Determination and that the Board erred in finding otherwise. However, Claimant does not address this issue in her brief on appeal. Instead, her brief focuses on whether she had a necessitous and compelling reason for voluntarily quitting her job, an issue that was not reached by the Board because of its determination that Claimant failed to timely file her appeal. We have repeatedly held that when a claimant appeals an issue but fails to address that issue in his or her brief, the issue is waived. *See Jimoh v. Unemployment Compensation Board of Review*, 902 A.2d 608, 611 (Pa. Cmwlth. 2006); *McDonough v. Unemployment Compensation Board of Review*, 670 A.2d 749, 750 (Pa. Cmwlth. 1996) (citing *Tyler v. Unemployment Compensation Board of Review*, 591 A.2d 1164 (Pa. Cmwlth. 1991)). Because Claimant failed to address the issue of whether she timely filed her appeal in her brief, the issue is waived.⁵ Furthermore, the issue

⁴ This Court's scope of review is limited to determining whether there was a constitutional violation or error of law, whether any practice or procedure of the Board was not followed, and whether the necessary findings of fact are supported by substantial evidence. *Procito v. Unemployment Compensation Board of Review*, 945 A.2d 261, 262 n.1 (Pa. Cmwlth. 2008).

⁵ Even if we were to address the merits of the petition for review, we would still affirm the Board's decision. Claimant basically challenges the credibility rulings made by the Referee, insisting that she did indeed file her appeal before the deadline. However, the Board did not find her credible and specifically stated that Claimant failed to offer credible testimony or evidence to substantiate her claim. Because the Board is the ultimate fact finder in unemployment compensation proceedings, empowered to resolve all conflicts in the evidence and determine the credibility of witnesses, we would not disturb its finding on appeal. *See Maher v. Unemployment Compensation Board of Review*, 983 A.2d 1264, 1268 n.3 (Pa. Cmwlth. 2009), *appeal denied*, 996 (Footnote continued on next page...)

argued in Claimant's brief on appeal was not raised in her petition for review and was not properly before the Board; therefore, it will not be considered.

Based on the foregoing, Claimant has failed to properly preserve any issues for this Court's consideration. Accordingly, the decision of the Board is affirmed.

DAN PELLEGRINI, JUDGE

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A.2d 493 (2010); *Brannigan v. Unemployment Compensation Board of Review*, 887 A.2d 841 (Pa. Cmwlth. 2005).

