

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Victoria J. Jones, :
 :
 Petitioner :
 :
 v. : No. 543 C.D. 2010
 :
 : Submitted: August 20, 2010
 Unemployment Compensation Board :
 of Review, :
 :
 Respondent :

BEFORE: HONORABLE DAN PELLEGRINI, Judge
 HONORABLE PATRICIA A. McCULLOUGH, Judge
 HONORABLE JOHNNY J. BUTLER, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
 BY JUDGE McCULLOUGH

FILED: December 6, 2010

Victoria J. Jones (Claimant) petitions pro se for review of the February 16, 2010, order of the Unemployment Compensation Board of Review (Board) affirming and adopting a referee's determination that Claimant is financially ineligible for benefits pursuant to section 404 of the Unemployment Compensation Law (Law).¹ We affirm.

¹ Act of December 5, 1936, Second Ex. Sess., P.L. (1937) 2897, as amended, 43 P.S. §804. In relevant part, section 404 provides that an employee with fewer than sixteen credit weeks during her base year is ineligible for compensation. The term "base year" means the first four of the last five completed calendar quarters immediately preceding the date the claimant's application is filed. Section 4 of the Law, 43 P.S. §753. A "credit week" means any calendar week in an individual's base year in which she received at least fifty dollars remuneration. Id.

The relevant facts are not in dispute. Claimant worked as a project manager for IBM Corporation at an annual salary of \$76,350. (N.T. 10/15/09 at 3.) Claimant resigned from her position,² and her last day of employment was September 7, 2007. Claimant applied for unemployment benefits on August 30, 2009, thereby establishing a base year period from April 1, 2008, to March 31, 2009. Because Claimant had no wages during her base year period, the local job center determined that she was financially ineligible for benefits. (Findings of Fact Nos. 1-3.) Claimant appealed, and, following a hearing, the referee affirmed the job center's determination. Claimant then filed an appeal to the Board, which affirmed and adopted the referee's decision.

On appeal to this Court,³ Claimant maintains that if information about her eligibility for benefits had been more readily available, she would have applied for benefits in a timely manner and would not have been deemed financially ineligible under section 404 of the Law. Claimant contends that the closing of local unemployment offices has impaired the ability of employees to obtain the information necessary to determine whether and when to file a claim for benefits. Claimant also asserts that not all individuals have internet access, that her Harrisburg area telephone directory has no listing for an unemployment office, that there is no unemployment office in her area, and that local newspapers have reported incomplete

² Because the only issue before the referee was Claimant's financial eligibility, the referee did not take evidence concerning whether Claimant was ineligible for benefits under section 402(b) of the Law, 43 P.S. §802(b), because she voluntarily left her employment. (N.T. 10/15/09 at 6-7.)

³ Our scope of review is limited to determining whether constitutional rights were violated, whether the adjudication is in accordance with law or whether necessary findings of fact are supported by substantial evidence. Section 704 of the Administrative Agency Law, 2 Pa. C.S. §704.

and incorrect information concerning eligibility standards. Specifically, Claimant complains that, after she voluntarily resigned from her employment, she was unable to obtain critical information from an unemployment representative, either in person or by telephone, while newspaper articles reported, incompletely, that persons who voluntarily quit their jobs are not entitled to benefits. According to Claimant, she first learned that she may be eligible for compensation when she visited a Pennsylvania CareerLink office in August 2009.

Based on these assertions, Claimant asks this Court to require compensation authorities to distribute written literature in public places such as libraries and Pennsylvania CareerLink offices. Claimant also asks that she be permitted to use an alternate base year, consisting of the last four quarters that she worked, to determine her financial eligibility for benefits.

With respect to Claimant's first request, this Court is not authorized to promulgate regulations in response to Claimant's contentions. Edwards v. Unemployment Compensation Board of Review, 426 A.2d 237 (Pa. Cmwlth. 1981). The claimant in Edwards was injured in an automobile accident in October 1977, and, as a result, was unable to resume her employment until January 1979. The claimant was discharged upon her return to work, and her application for benefits was denied because the wages the claimant earned during her base year were insufficient to qualify her for benefits. On appeal, we concluded that the regulation at issue, found at 34 Pa. Code §65.41, constituted a reasonable attempt to limit the circumstances under which predateding will be allowed,⁴ and we rejected the claimant's argument that

⁴ The regulation at 34 Pa. Code §65.41 allows an application to be deemed constructively filed when the Board finds that the claimant was prevented or persuaded, through no fault of his own, from filing the application for the following reasons:
(Footnote continued on next page...)

the absence of a provision allowing predating of an application where the claimant has been incapacitated due to illness or injury violated section 3 of the Law, 43 P.S. §752. We note that additional circumstances for predating an application, including the inability of a local employment office to currently handle all claims, the sickness or death of an immediate member of the claimant's family, and illness or injury which incapacitates the claimant, are set forth in 34 Pa. Code §65.33, which was not at issue in Edwards.

Unfortunately, Claimant's contentions are not circumstances for which these regulations afford relief. Although we recognize that the closing of local offices and the lack of written information available elsewhere may have contributed to Claimant's delay in applying for benefits, neither the Law nor applicable regulations permit the use of an alternate base year, allow the predating of an

(continued...)

- (1) The inaccessibility of the local public employment office in isolated areas, or the infrequency of the periodic itinerant service established for the area in which the claimant is filing an application shall permit not more than 2 weeks of predating.
- (2) The closing of an office due to a holiday or by official pronouncement may permit not more than 2 weeks of predating.
- (3) The inability of an office to take the claimant's application on the day on which he reported for the purpose, or the postponement of application taken by the office for administrative reasons may permit not more than 6 weeks of predating.
- (4) Erroneous advice by his employer that he would be recalled to work within 1 week may permit not more than 2 weeks of predating.
- (5) The refusal of the office to accept the application as a result of an error or mistake shall permit not more than 52 weeks of predating.

application or otherwise provide for a waiver of the statutory eligibility requirements under these circumstances.

Accordingly, we affirm.

PATRICIA A. McCULLOUGH, Judge

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	:	
Respondent	:	

ORDER

AND NOW, this 6th day of December, 2010, the order of the Unemployment Compensation Board of review, dated February 16, 2010, is hereby affirmed.

PATRICIA A. McCULLOUGH, Judge