

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Ramiro Rodriguez,	:	
Petitioner	:	
	:	
v.	:	No. 819 C.D. 2010
	:	SUBMITTED: December 17, 2010
Unemployment Compensation	:	
Board of Review,	:	
Respondent	:	

**BEFORE: HONORABLE BONNIE BRIGANCE LEADBETTER, President Judge
HONORABLE DAN PELLEGRINI, Judge
HONORABLE ROCHELLE S. FRIEDMAN, Senior Judge**

OPINION NOT REPORTED

**MEMORANDUM OPINION BY
PRESIDENT JUDGE LEADBETTER**

FILED: February 16, 2011

Claimant Ramiro Rodriguez petitions for review of the April 5, 2010 order of the Unemployment Compensation Board of Review (Board) that affirmed the decision of the referee to assess a fault overpayment of unemployment compensation benefits under Section 804(a) of the Unemployment Compensation Law (Law)¹ and to dismiss as untimely Claimant’s petition for appeal from the Erie UC Service Center’s determinations under Section 402(h) of the Law (ineligibility

¹ Act of December 5, 1936, Second Ex. Sess., P.L. (1937) 2897, *as amended*, 43 P.S. § 874(a).

due to self-employment) and 801(b) of the Law (penalty weeks determination), 43 P.S. §§ 802(h) and 871(b), respectively. For the reasons that follow, we affirm.

The pertinent facts are as follows. Claimant owns and operates Ramiro Rodriguez Trucking, Inc. and is president of the corporation. When filing his initial claim for unemployment benefits, Claimant gave Ramiro Rodriguez Trucking, Inc. as his most recent employer and indicated that he was not engaged in self-employment. The referee found that although Claimant is self-employed, “he understood that he was an employee as he contributed unemployment compensation tax from his wages.” Referee’s Finding of Fact No. 7.

At the time of his claim for benefits, Claimant was not driving and had cut his own hours. He understood that he could work part-time, so he reported his earnings when he filed his bi-weekly claims for benefits. Claimant received unemployment benefits for weeks ending December 27, 2008 through July 4, 2009 at his weekly benefit rate of \$450, with a partial benefit credit of \$180.

When the service center discovered in November 2009 that Claimant could be self-employed, it mailed a questionnaire to him to complete and return. It would have sent a questionnaire to him at the outset if he had answered “yes” to the self-employment question. Ultimately, the service center issued a determination concluding that Claimant was self-employed and, therefore, ineligible for benefits. In addition, it issued fault overpayment and penalty weeks determinations. Claimant, however, filed a timely appeal from only the Section 804(a) fault overpayment determination.² On appeal, the referee again assessed a fault overpayment and dismissed as untimely Claimant’s petition for appeal from the service center’s determinations under Section 402(h) (self-employment) and

² During certain time periods, Claimant acted *pro se*.

Section 801(b) (penalties). The Board affirmed the referee's decision³ and Claimant's timely petition for review to this Court followed.

Claimant through his counsel now argues that the Board erred in determining that a fault overpayment had been established and was recoupable under Section 804(a) of the Law, challenging both the factual and legal bases for that decision. In his *pro se* petition for review, however, Claimant stated only the following as to why he believed the Board was in error: "I was an employee. Not self employed. See attached letter from my accountant." Petition for Review at 1. Pennsylvania Rule of Appellate Procedure 1513(d) provides that "[t]he statement of objections [in the petition for review] will be deemed to include every subsidiary question fairly comprised therein." However, issues not contained in the Petition for Review cannot be raised on appeal. *McCall v. Unemployment Comp. Bd. of Review*, 717 A.2d 623 (Pa. Cmwlth. 1998). The arguments presented here are not subsidiary questions that are fairly comprised within the issue of whether Claimant is self-employed, the only issue he included in his petition for review.

Accordingly, we affirm.

BONNIE BRIGANCE LEADBETTER,
President Judge

³ The Board adopted and incorporated the referee's findings and conclusions in their entirety. Credibility and evidentiary weight are determined by the Board, and its findings of fact are conclusive on appeal when the record, in its entirety, contains substantial evidence to support those findings. *Guthrie v. Unemployment Comp. Bd. of Review*, 738 A.2d 518 (Pa. Cmwlth. 1999).

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ORDER

AND NOW, this 16th day of February 2011, the order of the Unemployment Compensation Board of Review is hereby AFFIRMED.

BONNIE BRIGANCE LEADBETTER,
President Judge