

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Christine S. McCarty,	:	
	:	
Petitioner	:	
	:	
v.	:	
	:	
Unemployment Compensation	:	
Board of Review,	:	No. 889 C.D. 2010
	:	
Respondent	:	Submitted: October 22, 2010

BEFORE: HONORABLE RENÉE COHN JUBELIRER, Judge
HONORABLE MARY HANNAH LEAVITT, Judge
HONORABLE JOHNNY J. BUTLER, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION BY
JUDGE BUTLER

FILED: December 6, 2010

Christine S. McCarty (Claimant) petitions, pro se, for review of the March 11, 2010 order of the Unemployment Compensation Board of Review (UCBR) affirming the Referee’s decision finding Claimant financially eligible for regular unemployment compensation (UC) benefits, and in so doing, making her financially ineligible for emergency UC (EUC) benefits. The issue before this Court is whether the UCBR correctly determined that Claimant was eligible for regular UC benefits, thereby rendering her ineligible for EUC benefits. For the following reasons, we affirm the order of the UCBR.

Claimant began receiving benefits in May of 2008 after she was laid off from previous employment. In May of 2008, she pursued and was granted UC benefits in the amount of \$539.00 per week. When she was no longer eligible for UC

benefits, she pursued and was granted EUC benefits. While she was receiving UC and then EUC benefits, Claimant worked part-time for a certified public accountant.

On October 4, 2009, when Claimant called the UC Service Center to ask a question concerning potential temporary employment, the UC Service Center opened a new claim in Claimant's name. The UC Service Center determined that Claimant was eligible for regular UC benefits based on wages she was paid during her most recent base year, rather than the base year of her original claim. During Claimant's most recent base year period, July 1, 2008 to June 30, 2009, she was paid high quarter wages totalling \$880.00 and total base year wages of only \$1,699.00; thus, a minimum quarterly amount of \$800.00 was used to calculate her financial eligibility. As a result, her benefits under the new claim amounted to only \$38.00 per week. Claimant appealed, and a hearing was held before a Referee at which only the Claimant appeared and testified. The Referee issued a decision affirming the UC Service Center. Claimant appealed to the UCBR, which issued an order affirming the Referee. Claimant appealed to this Court.¹

Claimant argues on appeal that had she known that her EUC benefits would be dismissed, she would have worked with her part-time employer to make sure she was paid in a manner that would not have affected her EUC benefits. Moreover, Claimant contends that the UCBR should have considered her financial eligibility for benefits pursuant to the Unemployment Compensation Extension Act of 2010 (2010 Act),² which was passed to correct situations in which claimants were penalized for working part-time. We disagree.

¹ "Because Claimant had the burden of proof and was the only party to present evidence, this Court's review is limited to a determination of whether the Board capriciously disregarded competent evidence, there has been a constitutional violation, or an error of law." *McKenna v. Unemployment Comp. Bd. of Review*, 981 A.2d 415, 417 n.4 (Pa. Cmwlth. 2009).

² P.L. 111-205, 124 Stat. 2236 (2010).

Sections 401 and 404 of the Unemployment Compensation Law (Law)³ provide for the payment of UC benefits to qualified claimants, and for the calculation of those UC benefits. Section 403-A(a) of the Law⁴ sets forth the requirements for eligibility for EUC, which provide that “an individual shall not be eligible for extended benefits unless, in the base year with respect to which the individual exhausted all rights to regular benefits under the State law, the individual had wages equal to at least one and one-half (1 1/2) times the individual’s highest quarterly wage.” 43 P.S. § 813(i). However, according to the Pennsylvania Department of Labor and Industry’s (L & I) website, “[i]f you remain totally or partially unemployed when your benefit year ends, you may file a new application for regular UC. If you do not qualify for regular UC, you may be eligible for EUC.”⁵ The website also informs UC benefit recipients that “[i]f a claimant re-qualifies for regular UC while receiving EUC, the claimant no longer qualifies for EUC. He or she must claim regular UC even if the regular UC weekly benefit amount is lower than the EUC weekly amount.”⁶ As a result, claimants who were employed part-time while they were receiving EUC benefits have been penalized when their benefit year ended, i.e., when their claims were reevaluated, the new claims were calculated using wages paid during their most recent base year, resulting in a much lower benefit. This is what happened to Claimant in the present case.

The United States Congress has since recognized the inequity and remedied the same via the 2010 Act, which provides that if a claimant qualified for

³ Act of December 5, 1936, Second Ex. Sess., P.L. (1937) 2897, *as amended*, 43 P.S. §§ 801, 804.

⁴ 43 P.S. § 813(a), added by Section 2 of the Act of February 9, 1971, P.L. 1.

⁵ See <http://www.portal.state.pa.us/portal/server.pt?open=514&objID=552066&mode=2>, EUC Frequently Asked Questions (last visited Nov. 3, 2010).

⁶ See <http://www.portal.state.pa.us/portal/server.pt?open=514&objID=552066&mode=2>, EUC Frequently Asked Questions (last visited Nov. 3, 2010).

new regular benefits but the new benefits would be either \$100.00 or 25% less than the EUC benefits he/she was currently receiving, a state was permitted to defer payment of regular UC benefits until the EUC benefits were exhausted. P.L. 111-205, 124 Stat. 2236 (2010). Unfortunately, however, the 2010 Act did not make the remedy retroactive. In fact, the Act specifically stated that it would apply only to individuals whose benefit year expired after the enactment of the 2010 Act on July 22, 2010.⁷ *Id.* Therefore, the 2010 Act is not applicable to Claimant in the present case.

In the alternative, Claimant argues that the UC Service Center's calculations were not correct because money she earned on December 28, 2008 should have been applied to the fourth quarter of 2008, not the first quarter of 2009. However, the record reflects that the wages Claimant earned on December 28, 2008 were paid during the first quarter of 2009. The law is clear that wages earned during one quarter but paid during the next quarter are properly calculated in the latter quarter if they were paid when due. 34 Pa. Code § 61.3(a); *see also McKenna; Wooley v. Unemployment Comp. Bd. of Review*, 454 A.2d 224 (Pa. Cmwlth. 1983). Therefore, Claimant's argument on this point is without merit.

In light of the foregoing, it is clear that the UCBR did not err in determining that Claimant was eligible for regular UC benefits, thereby making her

⁷ The 2010 Act provides:

EFFECTIVE DATE.--The amendment made by this section shall apply to individuals whose benefit years, as described in section 4002(g)(1)(B) the Supplemental Appropriations Act, 2008 (Public Law 110-252; 26 U.S.C. 3304 note), as amended by this section, expire after the date of enactment of this Act.

124 Stat. 2236, 2238.

ineligible for EUC benefits, nor did it err by not applying the 2010 Act to this claim.
We, therefore, affirm the order of the UCBR.

JOHNNY J. BUTLER, Judge

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ORDER

AND NOW, this 6th day of December, 2010, the March 11, 2010 order of the Unemployment Compensation Board of Review is affirmed.

JOHNNY J. BUTLER, Judge