



the Board properly deducted 100 percent of his pro-rated weekly pension benefit from his weekly unemployment benefit rate.

Claimant retired from Ford Electronics/Visteon in January 2006 after approximately thirty-four years of service and began to receive pension benefits. Certified Record (C.R.), Item No. 1, Claim Record; April 3, 2007 Hearing, Notes of Testimony (N.T.), p. 3 - 4. Claimant returned to work for Tyco Healthcare Retail Group and was later discharged. C.R., Item No. 1; N.T., p. 3. In February 2007 he applied for unemployment benefits and was considered eligible under Section 402(e) of the Law, 43 P.S. §802(e). C.R., Item No. 1; N.T., p. 3. Determining that Claimant's pension was deductible under Section 404(d)(2) of the Law, the Altoona UC Service Center reduced Claimant's weekly unemployment benefit rate to \$107 by deducting his pro-rated weekly pension benefit of \$413 from his weekly unemployment benefit rate of \$520. Claimant appealed, and after a hearing the referee made the following findings of fact:

1. Claimant opened his unemployment compensation claim with an application for a benefit date of February 11, 2007. This, in turn, established a base year period, which consisted of the fourth quarter of 2005 and the first, second, and third quarters of 2006.

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(ii) If the pension is entirely contributed to by the employer, then one hundred per centum (100%) of the pro-rated weekly amount of the pension shall be deducted. Except as set forth in clause (4), if the pension is contributed to by the individual, in any amount, then fifty per centum (50%) of the pro-rated weekly amount of the pension shall be deducted.

(iii) No deduction shall be made under this clause by reason of the receipt of a pension if the services performed by the individual during the base period or remuneration received for such services for such employer did not affect the individual's eligibility for, or increase the amount of, such pension, retirement or retired pay, annuity or similar payment.

2. Claimant last worked for Ford Electronics in January, 2006. Ford Electronics is a base year employer.
3. Claimant's employment with the Employer during the base year did affect or increase the amount of the pension since Claimant's pension is based upon years and time of service.
4. Claimant is receiving a monthly pension in the amount of \$1,786.46.
5. Claimant did not contribute to the pension.
6. Claimant's weekly benefit rate was \$520.00. Claimant's adjusted weekly benefit rate, because of the pension deduction, is \$107.00, effective the waiting week ending February 17, 2007.

The referee concluded that the pension benefits were deductible from Claimant's unemployment benefits, and he reasoned as follows:

Here the record indicates that Claimant did not contribute to the pension since no monies were actually deducted from his paycheck in order to contribute to that pension. Therefore the pension deduction is a 100% deduction. Based upon the amount that Claimant is receiving, Claimant is still entitled to benefits but with a revised weekly benefit rate of \$107.00.

Referee's Decision, p. 2. Claimant appealed the referee's decision to the Board, which affirmed after adopting and incorporating the referee's findings of fact and conclusions. The Board denied Claimant's request for reconsideration.<sup>2</sup>

Claimant describes the process that he went through as being unclear, and he contends that the Board denied him a fair hearing because it failed to afford an opportunity for Claimant to clearly present his case. Claimant states that he did

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<sup>2</sup>The Court's review is limited to determining whether constitutional rights were violated, an error of law was committed, a practice or procedure of the Board was not followed or the findings of fact are supported by substantial evidence in the record. *Glenn v. Unemployment Compensation Board of Review*, 928 A.2d 1169 (Pa. Cmwlth. 2007). The Board is the ultimate fact finder and has authority to resolve evidentiary conflicts and to make necessary credibility findings, and its findings are conclusive on appeal if supported by substantial evidence. *Id.*

not have time or the opportunity to respond to a huge amount of documents handed to him two minutes before the hearing, and he submits that most of them contained language that only a lawyer could understand so he could not decide which were relevant. Additionally, there was very little or no instruction given him on the law or the rules surrounding his claim, and he did not know what to expect, how the hearing would proceed, what to ask or why he lost. He asserts also that he did not receive a fair hearing because the other party did not appear at the hearing.

In *McFadden v. Unemployment Compensation Board of Review*, 806 A.2d 955 (Pa. Cmwlth. 2002), the Court noted the essential elements of due process in an administrative proceeding, *i.e.*, notice and an opportunity to be heard. When a claimant is uncounseled "the tribunal before whom the hearing is being held should advise him as to his rights, aid him in examining and cross-examining witnesses, and give him every assistance compatible with the impartial discharge of its official duties." 34 Pa. Code §101.21(a). *See also Brennan v. Unemployment Compensation Board of Review*, 487 A.2d 73 (Pa. Cmwlth. 1985).

The referee is not required to become, nor should he/she become, the claimant's advocate. *McFadden*. Moreover, "[a]ny lay person who chooses to represent himself in a legal proceeding must assume the risk that his lack of expertise and legal training may prove to be his undoing." *Daly v. Unemployment Compensation Board of Review*, 631 A.2d 720, 722 (Pa. Cmwlth. 1993). The Court rejects Claimant's due process arguments inasmuch as the referee advised Claimant of his rights, explained the Service Center's determination and afforded him an opportunity to testify and to present any evidence that he believed would help his claim. Claimant's arguments and assertions are belied by the record.

Next, Claimant contends that he planned to retire one year earlier but that he did not do so because his paperwork was incorrect. Claimant refers to the provision in Section 404(d)(2)(iii), which states that: "No deduction shall be made under this clause by reason of the receipt of a pension if the services performed by the individual during the base period or remuneration received for such services for such employer did not affect the individual's eligibility for, or increase the amount of, such pension, retirement or retired pay, annuity or similar payment." He claims that he would have received the same amount if he retired one year earlier and that Ford Electronics should have been asked how much more money he would have received had he retired sooner.<sup>3</sup>

Citing *Owens v. Unemployment Compensation Board of Review*, 748 A.2d 794 (Pa. Cmwlth. 2000), the Board argues that Claimant has not challenged the Board's findings of fact, thereby rendering them binding upon review by the Court. The Board represents that it properly deducted 100 percent of Claimant's pro-rated weekly pension benefit from his weekly unemployment benefit rate

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<sup>3</sup>Claimant further contends that he would have received \$520 per week for twenty-six weeks instead of \$107 per week if the person who took his application had explained the guidelines to him more clearly and if he had waited to file his application in another quarter. Claimant divulges that he brought his unemployment compensation checks to the hearing and asked whether he could give his money back and start his claim again. Claimant did not present this issue before the referee or the Board, and it therefore is waived. *See Leone v. Unemployment Compensation Board of Review*, 885 A.2d 76 (Pa. Cmwlth. 2005) (holding that claimant waived issue because it was not raised before the referee or the Board).

Claimant states, as well, that he received a buyout package due to a downsizing of the plant, reducing the number of hourly employees from over 2,500 to about 200, and that an offset exemption should be considered. *See PECO Energy Co. v. Unemployment Compensation Board of Review*, 682 A.2d 36, 40 n11 (Pa. Cmwlth. 1996), where the Court recognized an "offset exemption in cases where retirement benefits were paid to an employee separated from employment due to a plant closing before employee reaches retirement age." This issue, likewise, is waived because it was not brought before the referee or the Board. *See Leone*. In any event, Claimant presented no evidence to support the application of an offset exemption.

pursuant to Section 404(d)(2)(ii) of the Law. *See* full text of Section 404(d)(2)(ii) in n1. The Board addresses Claimant's assertion at the hearing that he contributed to the pension via forfeiture of cost-of-living increases by pointing out that such "give-backs" do not constitute "contributions" under Section 404(d)(2) of the Law as the court held in *U.S. Steel Corp. (USX Clairton Works) v. Unemployment Compensation Board of Review*, 579 Pa. 618, 858 A.2d 91 (2004).

Upon its review of the record, the Court concludes that it contains substantial evidence to support the Board's finding that Claimant did not contribute to the pension and that his pension was entirely contributed to by the employer. Further, as the Board found, Claimant's employment with Ford Electronics during the base year did affect his eligibility for or increase the amount of his pension because the pension was based upon his years and time of service. The Court therefore agrees with the Board that the exception in Section 404(d)(2)(iii) does not apply. Because the Board properly deducted 100 percent of the pro-rated weekly amount of Claimant's pension from his weekly unemployment benefit rate, the Court must affirm the order of the Board.

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DORIS A. SMITH-RIBNER, Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Robert L. Stephens,	:	
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Petitioner	:	
	:	
v.	:	No. 1235 C.D. 2007
	:	
Unemployment Compensation Board of	:	
Review,	:	
	:	
Respondent	:	

***ORDER***

AND NOW, this 8th day of February, 2008, the Court affirms the order of the Unemployment Compensation Board of Review.

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DORIS A. SMITH-RIBNER, Judge