

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

James J. Fasy,	:	
	:	
Petitioner	:	
	:	
v.	:	No. 1442 C.D. 2009
	:	Submitted: December 31, 2009
Unemployment Compensation	:	
Board of Review,	:	
	:	
Respondent	:	

BEFORE: HONORABLE BERNARD L. MCGINLEY, Judge
HONORABLE JOHNNY J. BUTLER, Judge
HONORABLE JIM FLAHERTY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY SENIOR JUDGE FLAHERTY

FILED: March 5, 2010

James J. Fasy (Claimant) petitions, *pro se*, for review of the order of the Unemployment Compensation Board of Review (Board), which affirmed the referee’s decision that disqualified Claimant as financially ineligible for benefits under Section 404(a)(3) of the Pennsylvania Unemployment Compensation Law (Law).¹ We dismiss Claimant’s petition for review before this court.

¹ Act of December 5, 1936, Second Ex. Sess., P.L. (1937) 2897, as amended, 43 P.S. §804(a)(3), which states in pertinent part as follows:

§804. Rate and amount of compensation

Compensation shall be paid to each eligible employe in accordance with the following provisions of this section....

The facts as found by the referee and adopted by the Board are as follows:

1. The claimant filed an application for Unemployment Compensation benefits effective April 5, 2009, thereby establishing a base year period from January 1, 2008 to December 31, 2008.
2. On April 20, 2009, the Bureau of U.C. Benefits and Allowances issued a Notice of Financial Determination which ruled that the claimant was paid the following wages in employment during his above base year period.

(a)(1) The employe's weekly benefit rate shall be computed as (1) the amount appearing in Part B of the Table Specified for the Determination of Rate and Amount of Benefits on the line on which in Part A there appears his "highest quarterly wage," or (2) fifty percentum (50%) of his full-time weekly wage, whichever is greater.

(2) If the base year wages of an employe whose weekly benefit rate has been determined under clause (2) of paragraph (1) of this subsection are insufficient to qualify him under subsection (c) of this section, his weekly benefit rate shall be redetermined under clause (1) of paragraph (1) of this subsection.

(3) If the base year wages of an employe whose weekly benefit rate has been determined under clause (1) of paragraph (1) of this subsection, or redetermined under paragraph (2) of this subsection, as the case may be, are insufficient to qualify him under subsection (c) of this section but are sufficient to qualify him for any one of the next three lower weekly benefit rates, his weekly benefit rate shall be redetermined at the highest of such next lower rates.

Emp/Acct#	1 st Quarter 2008	2 nd Quarter 2008	3 rd Quarter 2008	4 th Quarter 2008
TF Marine/ 23-80103	\$0	\$6,310.00	\$1,272.00	\$0
Genuardi's/ 86-14222	\$87.00	\$0	\$0	\$0
Combined W/ 89-00136	\$0	\$0	\$0	\$13,846.00.

3. The claimant was not paid any other wages in employment during his above base year period.

4. The claimant has high quarter wages of \$13,846.00 in the 4th quarter of 2008, and total base year wages of \$21,515.00.

Referee's decision, May 22, 2009, Findings of Fact Nos. 1-4, at 1-2. The referee determined that Claimant was financially ineligible for benefits pursuant to Section 404(a)(3) of the Law, because, based upon the Table set forth in Section 404(e) of the Law, Claimant's total base year wages were less than the amount required to receive such benefits. Claimant appealed to the Board, which affirmed based upon the Referee's decision. Claimant now petitions this court for review.²

Claimant contends that the Board violated his constitutional right to equal protection under the law where Claimant was denied any benefits despite earning \$21,515.00 in the base year period where a qualifying wage of that amount would have provided a benefit of \$539.00 per week to any other Pennsylvania resident who had earned a slightly lower highest quarterly wage.

² Our review in this matter is limited to determining whether constitutional rights were violated, errors of law committed, and whether essential findings of fact are supported by substantial evidence. Brady v. Unemployment Compensation Board of Review, 544 A.2d 1085, 1086 (Pa. Cmwlth. 1988).

The Board contends that the Claimant failed to preserve this issue in his petition for review before this court and, thus, it is waived and his appeal should be dismissed. Tyler v. Unemployment Compensation Board of Review, 591 A.2d 1164 (Pa. Cmwlth. 1991).

Claimant states the following in his petition for review before this court:

Because they will not take into consideration my situation and the arrears I fall into monthly. I have been a tax pay[e]r in good standings (sic) my entire life. I'm 51 yrs of age with two small children to raise and care for. I was forced to close my own company in 2006 after 9-11 caught up to my industry. I look for gainful employment daily. I have never been unemployed this long. I care for my 84 yr. old step dad at present and I have had zero income now (sic) 8 months. Please reconsider your decision as my health now is being [a]ffected. I hope your reply will be positive. I really need relief soon.

Petition for Review, July 24, 2009, at 1. Where a claimant fails to preserve an issue in his petition for review but addresses the issue in his brief, the issue is waived. Tyler. Because Claimant did not preserve the constitutional issue that he raises in his brief in his petition for review before this court, the issue is waived. As Claimant's sole issue before this court has been waived, we must dismiss Claimant's petition for review.³

³ Further, Claimant fails to cite to any pertinent legal authority in his brief before this court that would support his position, as required by Pa. R.A.P. 2119. An issue is waived if the petitioner fails to cite to relevant authority in his/her brief. American Rock Mechanics, Inc. v. Workers Compensation Appeal Board, 881 A.2d 54 (Pa. Cmwlth.), petition for allowance of appeal denied, 586 Pa. 741, 891 A.2d 734 (2005).

However, even if we had not dismissed Claimant's appeal, we would have determined that Claimant's constitutional right to equal protection was not violated by his failure to meet the financial eligibility requirements for unemployment compensation benefits.

In the present controversy, the referee determined that Claimant's testimony that he did not have any wages during his base year period, other than the wages reported on his notice of financial determination, was credible. Thus, Claimant had high quarter wages of \$13,846.00 in the 4th quarter of 2008, and total base year wages of \$21,515.00.

Section 401(a) of the Law provides that compensation shall be payable to any employee who is or becomes unemployed and who has, within the base year, been paid wages for employment as required by Section 404(c) of the Law.

Section 404(c) of the Law sets forth that a claimant's financial eligibility will be determined in accordance with the table set forth in Section 404(e) of the Law. Section 404(e) of the Law provides that a claimant whose highest quarter base year wages amount to \$13,846.00 can qualify for benefits at a weekly rate of \$556.00 provided his total base year wages amount to at least \$22,160.00.

In the present controversy, Claimant's total base year wages amounted to \$21,515.00, an amount which falls short of the qualifying \$22,160.00. Therefore, Claimant must be ruled financially ineligible for benefits under Section 404(e) of the Law.

However, Section 404(a)(3) of the Law provides the following:

If the base year wages of an employe whose weekly benefit rate has been determined under clause (1) of paragraph (1) of this subsection, or redetermined under paragraph (2) of this subsection, as the case may be, are insufficient to qualify him under subsection (c) of this section but are sufficient to qualify him for any one of the next three lower weekly benefit rates, his weekly benefit rate shall be redetermined at the highest of such next lower rates.

The third lowest weekly benefit rate requires total base year wages of \$22,040.00. As stated previously, Claimant's total base year wages amounted to \$21,515.00, which is less than the third lowest weekly benefit rate required. Therefore, Claimant is financially ineligible for benefits under Section 404(a)(3) of the Law and the Board and referee did not err in so determining.

In Martin v. Unemployment Compensation Board of Review, 502 Pa. 282, 466 A.2d 107 (1983), the Supreme Court determined that the statutory scheme used to determine the level of monetary earnings qualifying a worker for unemployment compensation benefits under Section 404(a) of the Law, did not violate the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. Thus, the Board, in the present controversy, did not violate Claimant's constitutional rights.

However, as stated previously, we must dismiss Claimant's petition for review, as no arguments have been preserved for review before this court.

JIM FLAHERTY, Senior Judge

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Board of Review,	:	
	:	
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ORDER

AND NOW, this 5th day of March, 2010, James J. Fasy's, *pro se*, petition for review of the order of the Unemployment Compensation Board of Review in the above-captioned matter is dismissed.

JIM FLAHERTY, Senior Judge