

separation from employment had previously been adjudicated by a Referee in a final decision and the matter could not be relitigated. Finding no error, we affirm.

Claimant was employed by Forest Warren Human Services (Employer) as a caseworker from October 22, 2006, through September 5, 2008. On September 8, 2008, Claimant began a leave of absence under the Family and Medical Leave Act (FMLA), 29 U.S.C. §§2601-2654. Employer approved the FMLA leave to October 22, 2008, and informed Claimant that if she was not able to return to work after that date, she needed to request additional leave supported by medical documentation. Claimant did not return to work or request additional FMLA leave prior to October 22, 2008.²

Claimant applied for unemployment compensation benefits, and the Erie UC Service Center granted the application. Employer appealed. The Referee found Claimant to be available for work, as required by Section 401(d)(1) of the Law,³ and, as such, eligible for benefits. However, the Referee concluded that Claimant was ineligible for benefits under Section 402(b) of the Law⁴ because she

(continued . . .)

43 P.S. §829.

² Claimant did request additional FMLA leave on October 31, 2008, but it was not supported by a note from her doctor. Employer gave her until November 14, 2008, to submit the medical documentation, but she did not. By November 20, 2008, having never received the medical documentation, Employer placed her on unapproved leave.

³ That section states that a claimant is eligible for benefits if she is “able to work and available for suitable work.” 43 P.S. §801(d)(1).

⁴ Section 402(b) of the Law provides in relevant part:

An employe shall be ineligible for compensation for any week –

(b) In which his unemployment is due to voluntarily leaving work without cause of a necessitous and compelling nature....

43 P.S. §802(b).

had voluntarily terminated her employment without a necessitous and compelling reason and did not make a reasonable effort to preserve her employment.

The Referee's decision was issued on December 12, 2008, which gave Claimant until December 29, 2008, to appeal. She appealed on January 14, 2009, asserting that because the Referee had found Claimant eligible for benefits under Section 401(d)(1) of the Law, she did not appeal earlier. She had not understood that the Referee's finding that she was ineligible for benefits under Section 402(b) was dispositive of her application. The Board dismissed her appeal on April 2, 2009, as untimely; it concluded that Claimant's late appeal was not caused by fraud, a breakdown in the system or by non-negligent conduct on Claimant's part.⁵ Claimant filed a petition for review with this Court which was stricken by order dated June 25, 2009, for failure to preserve any issue that could properly be brought before the Court.

In the meantime, Claimant filed a second application for benefits with an effective date of September 7, 2008. On April 17, 2009, the UC Service Center denied benefits under Section 509 of the Law because Claimant's application had already been adjudicated in the Referee's December 12, 2008, decision.

Claimant appealed, and a hearing was held before the Referee at which Claimant appeared and gave testimony. Claimant described her separation from employment in the fall of 2008. Claimant did not work anywhere after leaving Employer; her testimony dealt with the same separation from employment

⁵ A late appeal will not be permitted except in very limited circumstances, such as where there has been a breakdown in the administrative process or where an administrative body acts "negligently, improperly or in a misleading way." *Carson Helicopters, Inc. v. Unemployment Compensation Board of Review*, 960 A.2d 524, 527 (Pa. Cmwlth. 2008) (quoting *Union Electric Corporation v. Board of Property Assessment, Appeals & Review of Allegheny County*, 560 Pa. 481, 487, 746 A.2d 581, 584 (2000)).

that was the subject of the Referee's December 2008 decision. She explained that her appeal was late because she did not understand that she needed to appeal.

The Referee determined that Claimant was ineligible for benefits. The Referee found that the prior decision on her separation from employment was final and could not be relitigated. Claimant appealed to the Board, and it affirmed. Claimant now petitions this Court for review.⁶

On appeal, Claimant essentially raises two issues.⁷ First, she argues that the Referee, in the December 12, 2008, decision, erred in concluding that she quit her job in the fall of 2008 when she was actually terminated by Employer. Second, she argues that the Board should not have dismissed her late appeal when the Referee's December 12, 2008, decision confused, misled and gave Claimant a false sense of security that she was eligible for benefits and was not required to appeal.

Section 509 of the Law states that any fact or matter in issue in a final decision of a referee, the Board or the Court is "conclusive for all purposes...and shall not be subject to collateral attack." 43 P.S. §829.⁸ This Court has construed Section 509 to mean that a claimant who has been denied benefits may not reapply because "[t]he original determination is res judicata with respect to [claimant's] subsequent claims postulated on the same facts." *Chandler v. Unemployment Compensation Board of Review*, 580 A.2d 457, 459 (Pa. Cmwlth. 1990) (quoting

⁶ Our scope of review is limited to determining whether constitutional rights have been violated, errors of law were committed, or whether findings of fact are supported by substantial evidence. *Sheets v. Unemployment Compensation Board of Review*, 708 A.2d 884, 885 n.3 (Pa. Cmwlth. 1998).

⁷ We have consolidated and rearranged Claimant's issues for organizational purposes.

⁸ See footnote 1, *supra*, for the full text of the section.

Unemployment Compensation Board of Review v. Ferraro, 348 A.2d 753, 755 (Pa. Cmwlth. 1975)).

Claimant has not raised any issues that have not already been decided. She is simply trying to relitigate the issues decided in the Referee's December 12, 2008, decision. Because Claimant did not timely appeal that decision, it is final and binding. Her late appeal was dismissed by the Board in its April 2, 2009, decision, which is also final. This Court dismissed Claimant's appeal of the April 2, 2009, decision. Although Claimant is unhappy with the decisions she received, Section 509 of the Law prohibits collateral challenges to the final decision of a Referee or the Board.

For these reasons, we affirm the Board's adjudication.

MARY HANNAH LEAVITT, Judge

