

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Carlena Hayes, :
Petitioner :
 : No. 405 C.D. 2010
v. :
 : Submitted: August 13, 2010
Unemployment Compensation :
Board of Review, :
Respondent :

BEFORE: HONORABLE DAN PELLEGRINI, Judge
HONORABLE PATRICIA A. McCULLOUGH, Judge
HONORABLE JOHNNY J. BUTLER, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE McCULLOUGH

FILED: November 23, 2010

Carlena Hayes (Claimant) petitions pro se for review of the February 16, 2010, order of the Unemployment Compensation Board of Review (Board) affirming the decision of a referee dismissing Claimant's appeal as untimely under section 501(e) of the Unemployment Compensation Law (Law)¹ and denying Claimant's request for a remand hearing. We now affirm.

Claimant worked part-time as a general service worker for the Children's Hospital of Philadelphia (Employer). (Record Item No. 9.) Claimant sustained a back injury at work on September 16, 2009. (Record Item No. 5.) Claimant returned to work on October 20, 2009, but was unable to complete her shift

¹ Act of December 5, 1936, Second Ex. Sess., P.L. (1937) 2897, as amended, 43 P.S. §821(e). Section 501(e) requires appeals to be filed within fifteen calendar days of the date a notice of determination is delivered to a claimant personally or mailed to the claimant's last known address.

due to her back injury.² (Record Item No. 2.) Claimant sought light-duty work with Employer but no such work was available. Id. Claimant thereafter filed a claim for benefits with the Philadelphia Unemployment Compensation Service Center (Service Center).

The Service Center issued a notice of determination on November 6, 2009, concluding that Claimant was ineligible for benefits pursuant to section 402(b) of the Law, 43 P.S. §802(b), as she failed to establish necessitous and compelling reasons for quitting her employment. (Record Item No. 5.) This notice advised Claimant that the last day to file an appeal was November 23, 2009. Id. Claimant did not file an appeal until November 25, 2009. (Record Item No. 6.) A hearing regarding the timeliness of Claimant's appeal was scheduled and held on December 28, 2009. Claimant did not appear at this hearing. Nikia Voss, of Employer's human resources department, testified that Claimant was still employed at the hospital, that she was on a leave of absence and that she was receiving short-term disability benefits. (Record Item No. 9.) The referee issued a decision and order dismissing Claimant's appeal as untimely under section 501(e) of the Law.

Claimant appealed to the Board and requested a remand hearing before the referee, alleging that she was only minutes late for the December 28, 2009, hearing and was precluded by staff at the referee's office from participating in the

² Although not of record, in her brief to this Court, Claimant indicates that she originally returned to light-duty work with Employer on October 2, 2009, that she continued working light-duty until October 19, 2009, and that she attempted to return to her regular duties on October 20, 2009. Additionally, Claimant indicates that she is pursuing a reinstatement of her workers' compensation benefits and was advised by her counsel in the workers' compensation proceedings to apply for unemployment compensation benefits pending those proceedings. (Claimant's Brief at 7.)

hearing.³ (Record Item No. 11.) In a subsequent letter to the Board, Claimant alleged that she had good cause for being late. (Record Item No. 13.) Claimant included a letter from the Southeastern Pennsylvania Transportation Authority dated January 5, 2010, apologizing for bus delays at 12:16 p.m. on December 28, 2009, due to a sick operator. Id. Nevertheless, by decision and order dated February 16, 2010, the Board affirmed the referee's decision and denied Claimant's request for a remand.

Claimant thereafter filed a petition for review with this Court. However, in this petition, Claimant raises a single issue concerning an overpayment of benefits. Moreover, in the argument section of her brief to this Court, Claimant raises an entirely new issue, i.e., she had necessitous and compelling reasons for ceasing her full-duty employment on October 20, 2009. Neither the referee's nor the Board's decisions addressed these issues. Instead, the referee and the Board addressed the timeliness of Claimant's appeal from the Service Center's notice of determination and Claimant's failure to appear at the referee's hearing. Claimant has failed to preserve these issues for appellate review; hence, these issues are waived. Grever v. Unemployment Compensation Board of Review, 989 A.2d 400 (Pa. Cmwlth. 2010) (issues not raised in petition for review are waived); Rapid Pallet v. Unemployment Compensation Board of Review, 707 A.2d 636 (Pa. Cmwlth. 1998) (failure to develop issue in appellate brief results in waiver).

Accordingly, the order of the Board is affirmed.

PATRICIA A. McCULLOUGH, Judge

³ The referee's hearing was scheduled to start at 1:00 p.m. and actually started around 1:10 p.m. (Record Item No. 9.)

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ORDER

AND NOW, this 23rd day of November, 2010, the February 16, 2010, order of the Unemployment Compensation Board of Review is hereby affirmed.

PATRICIA A. McCULLOUGH, Judge