

**IN THE COMMONWEALTH COURT OF PENNSYLVANIA**

Lawrence Shuty,	:	
	:	
Petitioner	:	
	:	
v.	:	No. 609 C.D. 2012
	:	SUBMITTED: August 10, 2012
Unemployment Compensation	:	
Board of Review,	:	
	:	
Respondent	:	

**BEFORE: HONORABLE BONNIE BRIGANCE LEADBETTER, Judge**  
**HONORABLE RENÉE COHN JUBELIRER, Judge**  
**HONORABLE ANNE E. COVEY, Judge**

**OPINION NOT REPORTED**

**MEMORANDUM OPINION BY  
JUDGE LEADBETTER**

**FILED: October 3, 2012**

Lawrence Shuty petitions *pro se* for review of the order of the Unemployment Compensation Board of Review (Board) that denied his request to have his application for benefits backdated. After review, we affirm.

According to the referee’s findings, which the Board adopted, Shuty filed an application for benefits effective October 2, 2011, seeking benefits for claim weeks ending September 17 and 24, 2011, as well as October 1, 2011.<sup>1</sup> Shuty sought to backdate his application because he had initially filed his claim in New

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<sup>1</sup> According to the Claimant Questionnaire, which was apparently completed by telephone on October 21, 2011, Shuty indicated that he “file[d] or attempt[ed] to file” his application on October 11, 2011. *See* Original Record (O.R.), Item 2.

York and benefits were denied. The Department of Labor and Industry denied Shuty's request to backdate the application and a hearing before a referee followed.

Shuty appeared before the referee *pro se* and testified, in pertinent part, that while he was previously employed in Pennsylvania, his last employment was in New York. According to Shuty, he was terminated from his employment in New York on September 9, 2011, and he applied for benefits in New York immediately thereafter on either September 11th, 12th or 13th. In connection therewith, he offered a document he received from the New York Department of Labor, entitled "Unemployment Insurance Monetary Benefit Determination." *See* Original Record (O.R.) Item 4 (document 5); Transcript of Testimony at 6. Notably, the New York benefit determination denied benefits based in part on a lack of sufficient wages. That form also set forth a claim effective date of October 3, 2011. In response to questioning by the referee, Shuty testified that he applied for benefits before October 3. Shuty further stated that he "claimed" the first week of his unemployment. Shuty also explained that it took several weeks for the New York authorities to deny his claim and then he was advised to apply for benefits in Pennsylvania.

While the referee's reasoning is somewhat inconsistent, he essentially concluded that Shuty failed to demonstrate that he had filed his claim in New York prior to October 3 and denied the request to backdate the application for benefits in Pennsylvania.<sup>2</sup> On appeal, the Board affirmed. In doing so, it added that: "[It]

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<sup>2</sup> Specifically, the referee opined:

The claimant provide [sic] credible firsthand testimony and a copy of the New York State Department of Labor Unemployment Insurance Monetary Benefit Determination demonstrating that a New York Claim had been filed with the appropriate effective dates. However, there was testimony but no evidence to meet the

**(Footnote continued on next page...)**

specifically finds incredible the claimant’s allegation that he filed a claim for benefits in New York State prior to October 3, 2011.” Board’s opinion/order (mailed March 7, 2012). This appeal followed.

Although Shuty does not raise any legal arguments, we note generally that an application for benefits “is effective on the first day of the calendar week in which the application is filed or deemed filed in accordance with § 65.43a (relating to extended filing), whichever is earlier.” 34 Pa. Code § 65.42. A claimant’s application will be deemed to be filed prior to the actual filing date if one of the circumstances set forth in Section 65.43a(e) occurs. *Id.* at § 65.43a(c). Those reasons include, *inter alia*, the claimant’s method of filing malfunctions, the UC office fails to accept a filing through error or mistake, the claimant suffers a sickness or death in the family, or, “if the claimant makes all reasonable and good faith efforts to file timely but is unable to do so through no fault of [his own].” *Id.* at § 65.43a(e). *See also Menalis v. Unemployment Comp. Bd. of Review*, 712 A.2d 804, 805 (Pa. Cmwlth. 1998) (noting generally that claimant who files late is ineligible for benefits unless misled by unemployment compensation officials).

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**(continued...)**

burden of demonstrating that an earlier claim had been filed. Therefore, it is the view of the Referee that the claim was appropriately filed in Pennsylvania with the dates supported by the Monetary Benefits Determination issued the claimant by the State of New York. There was no evidence presented to demonstrate that backdating is appropriate.

Referee’s decision/order at 2. The referee also cited Section 401(b) of the Unemployment Compensation Law, Act of December 5, 1936, Second Ex. Sess., P.L. (1937) 2897, *as amended*, 43 P.S. § 801(b) (providing that compensation shall be payable to any employe who is unemployed and has, among other things, registered for work and continues to report to an employment office as required by applicable regulations), and 34 Pa. Code § 65.43a (providing for extended filing or backdating). We note that the recent amendments to Section 401(b) by the Act of June 17, 2011, P.L. 16, are not applicable here.

Here, focusing on the effective date noted on the New York determination, the referee and Board presumably were considering whether Shuty demonstrated that he made a reasonable and good faith effort to file his application before October 3.

Viewing Shuty's appeal papers very liberally, he appears to challenge the finding that he did not file a claim for benefits in New York before October 3, 2011.<sup>3</sup> He also appears to suggest that his delay in filing a claim in Pennsylvania was due to his lack of familiarity with the relevant rules and regulations. Neither of these contentions commands a reversal. First, it is well settled that as fact-finder, credibility determinations are the Board's province and it may accept or reject the testimony of any witness in whole or in part. *See generally Zinicola v. Commonwealth, Unemployment Comp. Bd. of Review*, 407 A.2d 474, 475 (Pa. Cmwlth. 1979). The Board rejected Shuty's testimony that he filed a claim in New York shortly after he was terminated on September 9 and we are bound by that credibility determination. Consequently, there is no evidence of record to support Shuty's assertion that he filed a claim in New York before October 3.

Second, Shuty's confusion regarding where and how to file his claim is not a recognized reason for extending a claim under Section 65.43a(e), 34 Pa. Code § 65.43a(e). Therefore, the Board did not err in denying his request to backdate his claim.<sup>4</sup>

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<sup>3</sup> Our review does not extend to whether the Board capriciously disregarded evidence as that issue was clearly not raised. *See generally LaStella, Ph.D. v. Bur. of Prof'l & Occupational Affairs*, 954 A.2d 769, 775 n.7 (Pa. Cmwlth. 2008) (holding issue of capricious disregard of evidence waived where not raised in statement of questions involved).

<sup>4</sup> We do not consider Shuty's assertions regarding his wife's illness during the summer of 2011 because they were not raised before the referee or Board.

Based upon the foregoing, the Board's order is affirmed.

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**BONNIE BRIGANCE LEADBETTER,**  
Judge

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	:	
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**ORDER**

AND NOW, this 3rd day of October, 2012, the order of the Unemployment Compensation Board of Review is hereby affirmed.

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**BONNIE BRIGANCE LEADBETTER,**  
Judge