

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

YuYu Li,	:	
	:	
Petitioner	:	
	:	
v.	:	No. 620 C.D. 2012
	:	Submitted: September 14, 2012
Unemployment Compensation	:	
Board of Review,	:	
	:	
Respondent	:	

BEFORE: HONORABLE BERNARD L. McGINLEY, Judge
HONORABLE ROBERT SIMPSON, Judge
HONORABLE PATRICIA A. McCULLOUGH, Judge

OPINION NOT REPORTED

**MEMORANDUM OPINION
BY JUDGE SIMPSON**

FILED: November 13, 2012

YuYu Li (Claimant), representing herself, petitions for review from an order of the Unemployment Compensation Board of Review (Board) that denied her claim for benefits under Section 404 of the Unemployment Compensation Law (Law)¹ finding she lacked qualifying wages. Claimant’s main contention is that the Board erred in determining the base year for calculating her entitlement to benefits. Upon review, we vacate and remand.

In October 2010, Claimant’s employment with Giant Eagle (Employer) ended. Thereafter, in October 2011, still unemployed, Claimant applied for benefits. Based on her application date, the local unemployment compensation service center (Service Center) applied the base year of July 1, 2010

¹ Act of December 5, 1936, Second Ex. Sess., P.L. (1937) 2897, as amended, 43 P.S. §804.

to June 30, 2011. Examining her earnings during that time, the Service Center determined: Claimant earned \$737 during the third quarter of 2010, and \$0 during the fourth quarter of 2010 and the first and second quarters of 2011. Based on these quarterly earnings, the Service Center determined Claimant was not financially eligible for benefits and denied her claim.

At that time, Claimant called the Service Center to address what she believed was a miscalculation, but she could not get through. Thereafter, both Claimant and the Service Center attempted to return the other's phone calls. Apparently unsuccessful in communicating with the Service Center, Claimant appealed, and a hearing ensued before a referee.

At the hearing, Claimant, represented by counsel, testified on her own behalf. Employer did not attend the hearing.

Specifically, Claimant testified she first attempted to apply for benefits over the internet shortly after her employment with Employer ended in October 2010. According to Claimant, the Service Center never processed this application. Claimant further testified she again attempted to apply for benefits in March 2011 over the telephone. This attempt was also unsuccessful. Before Claimant provided her full testimony, the referee interjected that he could not consider the accuracy of the Service Center's determination of the base year on the grounds that the Service Center failed to process her prior applications or that the Service Center should have backdated her current application.

Ultimately, Claimant testified she completed an application in October 2011. Therefore, the Service Center computed her base year as of October 2011 instead of October 2010 when, according to Claimant, she first attempted to apply. Claimant's attorney represented Claimant is financially eligible for benefits if her base year is calculated from her earliest application date.

From the claim record before him, the referee determined Claimant was not financially eligible for benefits. Thereafter, the referee thoroughly described to Claimant's attorney how he believed Claimant could rectify her problem. Specifically, the referee explained the process by which a claimant may seek to backdate an application and directed her to submit a new application.

In his decision, the referee provided the following commentary:

The [r]eferee notes that [C]laimant's reason for appealing was not to dispute the wages at issue for the application for benefits effective October 16, 2011, but rather because [C]laimant felt that she had been thwarted in her attempt to file an application for benefits on October 22, 2010, and again on March 17, 2011. The [r]eferee does not have the issue of whether [C]laimant should be granted backdating on her application for benefits for claims filed at an earlier time. It appears from the testimony at hearing that [C]laimant may have established contact with the Service Center with this intention but been unsuccessful for some reason yet to be determined. The Service Center may wish to investigate whether any other issues of [l]aw are implicated in this matter.

Ref. Dec., 12/22/11, at 2.

Thereafter, proceeding without counsel, Claimant appealed. Before the Board, Claimant asserted the referee erred in not considering her earlier applications for benefits in determining her financial eligibility. The Board adopted the referee's decision and affirmed. Claimant petitions for review.²

Claimant asserts the Board erred in ignoring her multiple prior attempts to apply for benefits when determining she was financially ineligible. Specifically, Claimant states she previously applied for benefits four separate times, once in October 2010 and January 2011, and twice in March 2011, yet the Board did not consider these applications. As a result, the Service Center used an incorrect base year and quarterly earnings to determine her financial eligibility.³

Pursuant to its regulations, the Department of Labor and Industry (Department), in the form of a local service center, makes an initial determination to grant or deny benefits based on a claimant's application and the interview forms submitted by the claimant and employer. Dorn v. Unemployment Comp Bd. of Review, 866 A.2d 497 (Pa. Cmwlth. 2005). This process is non-adversarial and does not include a hearing. Id. A claimant may take an appeal of a service center determination within 15 days. Id. Once an appeal is taken, the service center loses

² Our review is limited to determining whether the necessary findings of fact were supported by substantial evidence, whether errors of law were committed, or whether constitutional rights were violated. Oliver v. Unemployment Comp. Bd. of Review, 5 A.3d 432 (Pa. Cmwlth. 2010) (en banc).

³ In her reply brief, Claimant raises several additional issues. Claimant raises these issues for the first time in her reply brief; thus, they were not preserved and are waived. See Reading Nursing Ctr. v. Unemployment Comp. Bd. of Review, 663 A.2d 270 (Pa. Cmwlth. 1995).

jurisdiction to revise its determination. Garza v. Unemployment Comp. Bd. of Review, 669 A.2d 445 (Pa. Cmwlth. 1995).

The Department's regulations also delineate a referee's scope of review when considering an appeal from a service center's determination. 34 Pa. Code §101.87. Specifically, the regulations state, in pertinent part:

When an appeal is taken from a decision of [a service center], the [service center] shall be deemed to have ruled upon all matters and questions pertaining to the claim. In hearing the appeal the [referee] shall consider the issues expressly ruled upon in the decision from which the appeal was filed. However, any issue in the case may, with the approval of the parties, be heard, if the speedy administration of justice, without prejudice to any party, will be substantially served thereby.

Id. (emphasis added).

Pursuant to Section 404 of the Law, benefits are calculated from a claimant's "base year." 43 P.S. §804. The Law defines "base year" as "the first four of the last five completed calendar quarters immediately preceding the first day of the individual's benefit year," which begins the day a valid application is filed. Section 4(a) of the Law, 43 P.S. §753(a).

The Department shall constructively deem an application for benefits to be filed earlier than the date it was actually filed in certain scenarios. 34 Pa. Code §65.43a. Specifically, Section 65.43a of the Department's regulations states:

(a) ... the claimant shall file a claim for compensation not later than the last day of the second week after the employer paid wages for that week

* * *

(c) The Department will deem an application for benefits to be filed prior to the week in which it actually is filed if the claimant did not file the application earlier for a reason listed in subsection (e). The Department will deem the application to be filed during the week that precedes the week of actual filing by the number of weeks indicated in subsection (e).

(d) If a claimant fails to file a claim for compensation within the time allowed ... for a reason listed in subsection (e), the time for filing the claim is extended for the number of weeks indicated in subsection (e).

(e) For purposes of subsections (c) and (d) the number of weeks is determined as follows:

Reason	Number of weeks
The Department suspends accepting filings or is unable to handle all filings, due to an excessive volume of telephone calls or other reasons.	6
The claimant attempts to file by telephone, Internet or fax transmission in accordance with § 65.41 (relating to filing methods), the method used to attempt to file is unavailable or malfunctions, and the attempt to file occurs on the last day that the claimant could timely file by the method used	2

A UC Office fails to accept a filing as a result of error or mistake by the Department. 52

Sickness or death of a member of the claimant's immediate family or an act of God. 2

Other, if the claimant makes all reasonable and good faith efforts to file timely but is unable to do so through no fault of the claimant. 2

* * *

(h) If two or more of the reasons ... prevented a claimant from filing a claim for compensation within the time ... the longest extension applies. If adherence to the longest extension would be inequitable to the claimant, the sum of the applicable extensions applies.

(i) ... the Department may not extend the time for filing a claim for compensation more than 52 weeks and may not deem an application for benefits to be filed in a week included in a previous benefit year.

34 Pa. Code §65.43a (emphasis added).⁴

Here, the one issue Claimant raised before the referee was whether the Service Center applied the correct base year to her application when determining

⁴ Section 65.43a of the Department's regulations was adopted February 11, 2011, and applied to all claims filed on or after February 12, 2011. The prior applicable regulations also permitted for the backdating of an application for up to 52 weeks upon a determination that the service center erred in refusing to accept an application. Russell v. Unemployment Comp. Bd. of Review, 812 A.2d 780 (Pa. Cmwlth. 2002) (citing 34 Pa. Code §65.41).

her benefit year began in October 2011. Reproduced Record (R.R.) at 5a. Specifically, she argued the filing date of her application should be the day she first attempted to apply for benefits in October 2010. The referee reasoned that the Service Center's determination of an application's filing date and base year was beyond his review. R.R. 5a, 14a-18a. In short, the referee informed Claimant his decision would only address the issue of whether the Service Center's financial eligibility determination was correct based on the dates it used, and that he would also include language to alert the Service Center that Claimant may be entitled to a backdated application.

We conclude the referee erred in declining to address the merits of Claimant's appeal. See, e.g., Russell v. Unemployment Comp. Bd. of Review, 812 A.2d 780 (Pa. Cmwlth. 2002) (a referee has jurisdiction to consider whether a service centered properly denied backdating an application). Here, Claimant appealed the Service Center's determination of her effective filing date. See R.R. at 5a. Essentially, she asked the referee to backdate her application because of the Service Center's failure to process her prior applications. The referee may afford such relief pursuant to 34 Pa. Code §65.43a for up to 52 weeks if the failure to accept a filing resulted from an error or a mistake by the Department. This is especially true where, as here, there is no objection to consideration of the issue by the referee, and consideration of the issue substantially serves the speedy administration of justice.

While the referee permitted Claimant to partially explain the basis of her contentions, it appears the referee interrupted her testimony after determining

he could not grant the requested relief. R.R. at 16a-17a. Furthermore, the referee expressly declined to render findings regarding the accuracy of Claimant's base year. Ref. Dec., at 2. Therefore, as the referee misconstrued the scope of his review and declined to consider an issue properly before him, a remand is necessary. See Dorn (remand is proper where referee fails to address a raised issue that clearly impacts a claimant's financial eligibility); Stana v. Unemployment Comp. Bd. of Review, 791 A.2d 1269 (Pa. Cmwlth. 2002) (a remand is required where the referee does not make findings regarding a claimant's reasons for an improperly timed filing).

Accordingly, we remand for a hearing and determination of whether Claimant is entitled to an earlier filing date, and, if so, for further proceedings based on the resulting base year.

ROBERT SIMPSON, Judge

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ORDER

AND NOW, this 13th day of November, 2012, the order of the Unemployment Compensation Board of Review is **VACATED** and **REMANDED** for proceedings consistent with the forgoing opinion.

Jurisdiction is relinquished.

ROBERT SIMPSON, Judge