

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Julie Valle, :  
 : No. 701 C.D. 2012  
 Petitioner : Submitted: November 16, 2012  
 v. :  
 :  
 Unemployment Compensation :  
 Board of Review, :  
 :  
 Respondent :

BEFORE: HONORABLE BONNIE BRIGANCE LEADBETTER, Judge  
HONORABLE P. KEVIN BROBSON, Judge  
HONORABLE ROCHELLE S. FRIEDMAN, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION  
BY SENIOR JUDGE FRIEDMAN FILED: December 20, 2012

Julie Valle (Claimant) petitions for review of the March 15, 2012, order of the Unemployment Compensation Board of Review (UCBR), which affirmed the decision of a referee to deny Claimant's request to backdate her unemployment claim under section 401(b) of the Unemployment Compensation Law (Law).<sup>1</sup> We affirm.

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<sup>1</sup> Act of December 5, 1936, Second Ex. Sess., P.L. (1937) 2897, *as amended*, 43 P.S. §801(b). Section 401(b) of the Law requires an employee to continue to report to an employment office in accordance with the UCBR's regulations.

The UCBR, incorporating the referee's findings of fact and conclusions of law in their entirety, found as follows.<sup>2</sup> Claimant filed an application for unemployment compensation (UC) benefits via the internet effective March 13, 2011. (UCBR's Findings of Fact, No. 1.) On March 15, 2011, Claimant received a financial determination indicating that she was financially ineligible for UC benefits. (UCBR's Findings of Fact, No. 2.) Claimant did not file an appeal or contact the UC authorities until August 19, 2011, when she filed an additional claim via the internet. (UCBR's Findings of Fact, Nos. 3-4.) In October 2011, Claimant sought to reopen her application for UC benefits effective March 13, 2011, and requested backdating for waiting week ending March 19, 2011, and compensable weeks ending March 26, 2011, through August 13, 2011. (UCBR's Findings of Fact, No. 5.)

The referee determined that Claimant's failure to file bi-weekly claims did not fall within any of the exceptions enumerated under 34 Pa. Code §65.43a<sup>3</sup> and, therefore, denied her request for backdating. The UCBR affirmed the referee's decision. Claimant's petition for review to this court followed.<sup>4</sup>

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<sup>2</sup> The UCBR's findings of fact are conclusive on appeal so long as the record, taken as a whole, contains substantial evidence to support those findings. *Nolan v. Unemployment Compensation Board of Review*, 797 A.2d 1042, 1045 n.4 (Pa. Cmwlth. 2002).

<sup>3</sup> The regulation 34 Pa. Code §65.43a(e) lists the following exceptions: 1) the UC office suspends accepting filings or is unable to handle all filings, due to an excessive volume, 2) the claimant attempts to file by phone or fax, the method used to attempt to file is unavailable or malfunctions, and the attempt to file occurs on the last day that claimant could timely file; 3) the UC office fails to accept a filing through error or mistake; 4) the claimant suffers a sickness or death in the family; and 5) the claimant makes all reasonable and good faith efforts to file timely but is unable to do so through no fault of her own.

<sup>4</sup> Our scope of review is limited to determining whether constitutional rights were violated, whether an error of law was committed or whether the necessary findings of fact are supported by substantial evidence. Section 704 of the Administrative Agency Law, 2 Pa. C.S. §704.

Claimant argues that she should be allowed to backdate her claim because her employer misled her into thinking that further filings would be frivolous. We disagree.

The regulation at 34 Pa. Code §65.43a(e) enumerates the reasons for which a claim may be backdated. The regulation includes: “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.” 34 Pa. Code. §65.43a(e). However, misrepresentation by a claimant’s employer does not impact the responsibility of a claimant to comply with reporting requirements. *Mitcheltree v. Unemployment Compensation Board of Review*, 635 A.2d 701, 704 (Pa. Cmwlth. 1993).

In this case, Claimant had a responsibility to file bi-weekly claims but she did not contact the unemployment compensation authorities from March 15, 2011, until August 19, 2011. Although Claimant believed that further filing would be frivolous, a belief based partially on her employer’s misrepresentations, the Claimant’s responsibility to file additional claims remained. Because Claimant’s failure to file bi-weekly claims does not fall within any of the exceptions contained in 34 Pa. Code §65.43a, she cannot backdate her claims.

We sympathize with the hardships that Claimant has faced since losing her job and with her confusion over the filing process. However, Claimant bore the responsibility of frequently communicating with the unemployment authorities. This responsibility is not frivolous or unnecessary; rather, it ensures “that contact between the claimant and the job center is constant and regular . . . so as to enable the unemployed to secure employment promptly if a satisfactory job becomes available.”

*Menalis v. Unemployment Compensation Board of Review*, 712 A.2d 804, 805 (Pa. Cmwlth. 1998).

Accordingly, we affirm.

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ROCHELLE S. FRIEDMAN, Senior Judge

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ORDER

AND NOW, this 20<sup>th</sup> day of December, 2012, the order of the Unemployment Compensation Board of Review, dated March 15, 2012, is hereby affirmed.

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ROCHELLE S. FRIEDMAN, Senior Judge