

Note: In the case title, an asterisk () indicates an appellant and a double asterisk (**) indicates a cross-appellant. Decisions of a three-justice panel are not to be considered as precedent before any tribunal.*

ENTRY ORDER

SUPREME COURT DOCKET NO. 2019-187

NOVEMBER TERM, 2019

Cherylyn Ramos* v. Department of Labor	}	APPEALED FROM:
	}	
	}	Employment Security Board
	}	
	}	DOCKET NO. 01-19-127-06

In the above-entitled cause, the Clerk will enter:

Claimant appeals from the Employment Security Board’s decision denying her request to backdate her initial claim for unemployment compensation benefits.* We affirm.

In her December 13, 2018 initial claim for unemployment compensation, claimant requested that the claim be backdated to the week ending February 17, 2018. Claimant had not physically worked for her former employer since January 10, 2018, when she suffered a stroke. Her employer continued to pay her through February 9, 2018. The claims adjudicator denied the request, and claimant appealed to the administrative law judge (ALJ). At the hearing before the ALJ, claimant explained that she did not file for unemployment benefits earlier because: (1) while she was hospitalized from January 10 to mid-March of 2018 after her stroke, a social worker at the hospital told her that doing so might interfere with her making a claim for disability benefits; and (2) her employer led her to believe that she would be able to return to her job and gave her no notice that she could not return to her job until she received a November 28, 2018 letter informing her that her position had been eliminated. Following the hearing, the ALJ ruled that he lacked the legal authority to change the effective date of her claim.

Claimant appealed to the Board. At the April 16, 2019 hearing before the Board, claimant stated that she stopped receiving paychecks from her employer in mid-February 2018, even though, despite her efforts to find out what was happening, no one at her company ever told her she had been terminated. She stated that she did not know what her job status was until she received a November 28, 2018 letter informing her that her position at the company no longer existed. She stated that she could have returned to work as early as May 2018. Following the hearing, the Board denied claimant’s request to backdate her claim, stating that the controlling statute and rule did not provide the Board with authority to grant the relief she requested.

On appeal, claimant reiterates that she did not file for unemployment benefits earlier because her employer never told her that she had been terminated until she received an email on November 28, 2018. Claimant quotes the email as stating that claimant’s position had not been terminated at the time claimant and the company’s general manager spoke months earlier, but that

* The nature of claimant’s separation from her employer, and its implications for claimant’s eligibility for unemployment benefits, was adjudicated separately and is not part of this appeal.

the project claimant had been working on encountered unexpected delays, resulting in the elimination of her position at that time.

“Our review of decisions by the Employment Security Board is highly deferential.” 863 To Go, Inc. v. Dep’t of Labor, 2014 VT 61, ¶ 8, 196 Vt. 551. “We will uphold the Board’s factual findings unless clearly erroneous, and its conclusions if reasonably supported by the findings.” Id. “We will also generally defer to [the Board’s] interpretations of statutes it is charged with administering.” Blue v. Dep’t of Labor, 2011 VT 84, ¶ 6, 190 Vt. 228. “Decisions within the Board’s expertise are presumed to be correct unless there is a clear showing to the contrary.” 863 To Go, Inc., 2014 VT 61, ¶ 8.

In concluding that it lacked authority to grant the relief claimant requested, the Board relied on the following statute and rule. Pursuant to 21 V.S.A. § 1346(a), claims for unemployment compensation benefits “shall be made in accordance with such regulations as the Board may prescribe.” Under Rule 10 of the Board rules, “[t]he effective date established for a new, additional, or re-opened claim for benefits will be the Sunday immediately preceding the date the claim is filed.” Rules of the Vermont Employment Security Board, Rule 10A, Code of Vt. Rules 24 005 001, <http://www.lexisnexis.com/hottopics/codeofvtrules>; see also id. Rule 2J (defining “new claim” as “an application for the establishment of a benefit year, a determination of eligibility for benefits and a determination of a weekly benefit amount”). “An individual’s first week of total or partial unemployment . . . shall begin on the first day of the week in which the individual files a new, additional, or re-opened claim for benefits.” Id. Rule 10B. Moreover, “to establish eligibility for benefits for weeks of total or partial unemployment, during a continuous period of total or partial unemployment, the claimant, shall, except for good cause, file a continued claim for benefits within six days of the week ending date being filed.” Id. Rule 10D. This latter rule allows backdating a weekly continued claim for benefits upon a showing of good cause, but only for a two-week period. See id. Rule 10D.1 (providing that, upon finding of good cause for claimant’s failure to file weekly benefit claim, commissioner “may accept a continued claim for benefits . . . effective as of the time specified, if such continued claim for benefits is filed at the first available opportunity but within thirteen days of the last day of the week being filed”).

Notwithstanding the remedial nature of Vermont’s unemployment law, as the Board concluded, these laws do not authorize the backdating of a claim prior to the establishment of a new claim. Accordingly, we affirm the Board’s decision.

Affirmed.

BY THE COURT:

Paul L. Reiber, Chief Justice

Beth Robinson, Associate Justice

Karen R. Carroll, Associate Justice