IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Scott Muse, :

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Petitioner :

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v. : No. 1965 C.D. 2012

: No. 1977 C.D. 2012

: Submitted: April 26, 2013

FILED: July 30, 2013

Unemployment Compensation

Board of Review,

:

Respondent :

BEFORE: HONORABLE BERNARD L. McGINLEY, Judge

HONORABLE ROBERT SIMPSON, Judge

HONORABLE JAMES GARDNER COLINS, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION BY SENIOR JUDGE COLINS

These consolidated matters involve the appeals, *pro se*, of Scott Muse (Claimant) from two orders of the Unemployment Compensation Board of Review (Board), affirming the decisions of the referee that (i) he is ineligible for unemployment compensation benefits under Sections 401(c), 401, and 4(u) of the Unemployment Compensation Law (Law), 43 P.S. §§ 801(c), 801, and 753 (u), for specified weeks, and establishing a fault overpayment under Section 804(a) of the Law, 43 P.S. § 874(a); and that (ii) he is ineligible for emergency

¹ Act of December 5, 1936, Second Ex. Sess., P.L. (1937) 2897, as amended, 43 P.S. §§ 751-914.

unemployment compensation benefits under Sections 401(c), 401, and 4(u) of the Law, 43 P.S. §§ 801(c), 801, and 753(u) and Section 4001 of the Emergency Unemployment Compensation Act of 2008 (EUC Act),² for specified weeks, and establishing a fraud overpayment under Sections 4005(a), (b), and (c) of the EUC Act.

Following Claimant's separation from employment with Gulf Industries, the filing by Claimant of an application for unemployment compensation, and subsequent receipt by Claimant of benefits totaling \$28,859.00, the Duquesne Unemployment Compensation Service Center (Service Center) received information from Claimant's two other employers, BFI/Allied Waste and Dunbar Armored, setting forth Claimant's unreported earnings.³ The Service Center issued Notices of Determination indicating that Claimant received (i) \$14,534.00 in unemployment compensation benefits, and (ii) \$14,325.00 in emergency unemployment compensation benefits to which he was not entitled, due to his knowing failure to report correct earnings when his bi-weekly claims⁴ were

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² Title IV of the Supplemental Appropriations Act of 2008, P.L. 110-252, 122 Stat. 2323, Section 4001, 26 U.S.C. § 3304 Note.

Testimony elicited from the Service Center representative at the 6/12/2012 referee hearing clarified that at the time Claimant filed his initial application for benefits, in March 2011, he provided wage information from three different employers, for a pay period at least three months prior to the date of application; the Service Center representative testified that a year later, in March 2012, based upon information subsequently provided by BFI/Allied Waste and Dunbar Armored, the Service Center became aware that Claimant had been receiving wages from those two employers and had been filing bi-weekly claims the entire time indicating that he had not worked during those claim periods. (Record Item 1, Claim Record; Record Item 10, Referee's Hearing: Transcript of Testimony at 11-13.)

⁴ Once an initial application for benefits is filed, a claimant must file, via the internet or Pennsylvania TeleclaimsPAT, a claim for each week he or she was unemployed in order to receive benefits. Generally, the claimant will file for two claim weeks at one time. This is called **(Footnote continued on next page...)**

filed. (Record Item 4, Notices of Determination, 5/17/2012 (ineligible w/fault/fraud overpayments).) Claimant appealed, and the referee held a hearing on June 12, 2012, where Claimant appeared, accompanied by an attorney who indicated that she was acting solely as Claimant's representative/advocate; a claims examiner from the Service Center testified by phone, and none of Claimant's three employers appeared. (Record Item 10, Referee's Hearing: Transcript of Testimony (H.T.) at 3.)

On June 13, 2012, the referee issued two decisions/orders. Regarding Appeal No. 12-09-H-5636, the referee made the following findings of facts:

- 1. [Claimant] had three different jobs, one with Gulf Industries, one with BFI/Allied Waste, and one with Dunbar Armored. [Claimant] was separated from his job with Gulf Industries, but remained employed with his other two employers.
- 2. [Claimant]'s weekly benefit amount is \$573.00 and his partial benefit credit is \$230.00, for a total of \$803.00.
- 3. For the weeks ending March 12, 2011 through August 20, 2011, and for the weeks ending September 3, 2011 and September 10, 2011, [Claimant] earned more than the total of his weekly benefit rate plus partial benefit credit.
- 4. For the week ending August 27, 2011, [Claimant] did not earn more than the total of his weekly benefit rate plus partial benefit credit.

⁽continued...)

a bi-weekly claim. Although the employee files for two weeks at one time, he or she must certify her eligibility for each week separately. Pennsylvania Unemployment Compensation Handbook at 6-7.

- 5. [Claimant] reported \$0.00 earnings to the UC (Unemployment Compensation) Service Center for the weeks ending March 12, 2011 through September 10, 2011.
- 6. [Claimant] received a total of \$14,534.00 in benefits for the weeks at issue.

(Record Item 11, Referee's Hearing: Decisions/Orders, 6/13/2012, Appeal No. 12-09-H-5636, Findings of Fact (F.F.) ¶¶ 1-6.)

In a second decision/order, regarding Appeal No. EUC-12-09-H-56645, the referee found that, for the weeks ending September 17, 2011 through March 3, 2012, Claimant (i) earned more than the total of his weekly benefit rate plus his partial benefit credit; (ii) failed to report any earnings; and (iii) received a total of \$14,325.00 in benefits. (Record Item 11, Referee's Hearing: Decision/Orders, 6/13/2012, Appeal No. EUC-12-09-H-5645, F.F. ¶¶3-5.)

Claimant appealed from the referee's decisions/orders, and on September 17, 2012, the Board issued its orders, adopting and incorporating the findings and conclusions of the referee in each of the appeals. (Record Item 14, Board's Orders (ineligible w/fault/fraud overpayments).)

Claimant filed the instant petitions for review appealing the Board's orders to this Court,⁵ and said petitions were consolidated by order dated December 27, 2012.

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⁵ Our scope of review of the Board's decision that Claimant is financially ineligible for benefits is limited to determining whether necessary findings of fact are supported by substantial evidence, whether the adjudication is in accordance with the law and whether constitutional rights were violated. Section 704 of the Administrative Agency Law, 2 Pa. C.S. § 704.

On appeal to this Court, Claimant argues that although he admittedly remained employed at BFI/Allied Waste and Dunbar Armored, he suffered a total wage loss from Gulf Industries, and when he made his bi-weekly claims, he answered all questions truthfully and without fraudulent intent, based upon his belief that the claim presented, and the claim for which he was providing bi-weekly reports, related only to an unemployment claim related to his job loss at Gulf Industries. He argues that he submitted all information requested regarding employment with, and wage information from, the other two employers at the time he filed his initial application in March 2011, and his application was deemed valid by the Service Center at that time; he simply did not believe it was necessary to report it again going forward. (Claimant's Brief at 12.)

At the June 12, 2012 hearing, the Service Center representative testified that Claimant received UC Form 44F, which indicates how much money he is entitled to earn in one week and still be eligible for benefits; received the handbook clearly stating that all earnings from all employers are to be reported with each bi-weekly claim filed; and was asked to answer the question, "did you work or were you absent from work?" each time he filed a bi-weekly claim. (Record Item 10, H.T. at 9.) For the fifty-two weeks for which Claimant reported '\$0.00' earnings to the Service Center, Claimant in fact earned, on average, approximately \$859 each week from BFI/Allied Waste and approximately \$133 each week from Dunbar Armored. (Record Item 3, Claimant Overpayment Information.)

The Service Center representative testified that his agency determined that Claimant intentionally misled the agency by failing to reveal material facts about his other employment. (Record Item 10, H.T. at 10.) Claimant's testimony

at the hearing was brief. He stated only that he had three jobs, was laid off from Gulf Industries, filed for unemployment benefits "for Gulf, being laid off from Gulf," and that "all of the information was given for my other employers." (*Id.*, H.T. at 9.)

Section 401(c) of the Law provides that unemployment compensation shall be payable to an employee who has become unemployed and who "has made a valid application for benefits with respect to the benefit year for which compensation is claimed and has made a claim for compensation in the proper manner and on the form prescribed by the department." 43 P.S. §801(c).

The referee found that Claimant failed to file a valid application for benefits for the weeks at issue because he failed to report his earnings, and the fact that he lost one of his three jobs did not exempt him from reporting his earnings from the other two jobs. This Court has held that a claimant is disqualified from receiving benefits for those weeks in which he or she fails to report earnings and all other pertinent information regarding his or her employment status. *Amspacher v. Unemployment Compensation Board of Review*, 479 A.2d 688, 690-91 (Pa. Cmwlth. 1984). Section 4(u) of the Law defines "unemployed" as follows:

An individual shall be deemed unemployed (I) with respect to any week (i) during which he performs no services for which remuneration is paid or is payable to him and (ii) with respect to which no remuneration is paid or payable to him, or (II) with respect to any week of less than his full-time work if the remuneration paid or payable to him with respect to such week is less than his weekly benefit rate plus his partial benefit credit.

43 P.S. § 753(u). The referee found that regardless of the fact that Claimant lost one of his three jobs, he simply did not meet the definition of "unemployed" for

the weeks at issue, because his earnings were in excess of his weekly benefit rate plus partial benefit credit. Claimant maintains that the fact that he did not report wage information each week from the other two employers is immaterial, since weekly remuneration is only material for purposes of applying the partial benefits credit, and the partial benefits credit should not apply to him.⁶

As an initial matter, we find Claimant's argument that the partial benefits credit does not apply to him because he held three separate jobs instead of one job, to be without merit. The Pennsylvania Unemployment Compensation Handbook clearly states that an applicant may be eligible to receive benefits for weeks in which he or she is "separated from one job but continue[s] to have part-time employment with another employer(s)." Detailed "Biweekly Claims Filing Instructions" are also set forth on the PA Department of Labor & Industry website and state:

Earnings - For each week that you are claiming benefits, you must report all work and gross wages earned during that week, regardless of when they are paid. Earnings can be anything you receive for work you do. Earnings include cash...Military Reserve or National Guard Pay for federal active duty and the two-week training camp, and any other kind of payment you receive in exchange for work or service you perform...You may be disqualified for benefits or prosecuted under the Pennsylvania UC Law if you fail to report all work and earnings, and any hours of work that you missed.

⁶ Claimant interprets the partial benefits credit to apply only to an applicant who has become totally unemployed from one job, who later partially replaces the job lost; he asserts that the partial benefits credit cannot apply to an applicant like himself, who simultaneously holds three jobs instead of one job, and becomes totally unemployed from one of the three jobs held. (Claimant's Brief at 9.)

Partial Benefit Credit - You may earn up to 30 percent of your weekly benefit rate in each claim week before *your earnings* affect your weekly benefit payment. This 30 percent of your weekly benefit rate is your "partial benefit credit." *Any amount that you earn over the partial benefit credit earned in a week* will be deducted from your weekly benefit rate dollar-for-dollar...

(http://www.portal.state.pa.us/portal/server.pt?open=514&objID=921880&mode= 2 (last visited July 29, 2013)) (emphasis added).

We are not persuaded by Claimant's argument that for each week, he answered the question "did you work?" honestly and to the best of his knowledge, and that therefore the Board erred in establishing fault and fraud overpayments. Section 804(a) of the Law provides that "[a]ny person who by reason of his fault has received any sum as compensation under this act to which he was not entitled, shall be liable to repay...a sum equal to the amount so received by him...." 43 P.S. § 874(a). The word "fault" within the meaning of Section 804(a) connotes an act to which blame, censure, impropriety, shortcoming, or culpability attaches. Summers v. Unemployment Compensation Board of Review, 430 A.2d 1046, 1048 (Pa. Cmwlth. 1981). To find fault, the Board must make some findings with regard to Claimant's state of mind. Maiorana v. Unemployment Compensation Board of Review, 453 A.2d 747, 749 (Pa. Cmwlth. 1982). Conduct designed intentionally to mislead is sufficient to establish a fault overpayment. Greenawalt v. Unemployment Compensation Board of Review, 543 A.2d 209, 211 (Pa. Cmwlth. 1988). Where a claimant fails to provide truthful information to the Service Center, Amspacher, 479 A.2d at 692, and withholds pertinent information "which surely would have resulted in a denial of benefits," Carter v. Unemployment Compensation Board of Review, 442 A.2d 1245, 1248 (Pa. Cmwlth. 1982), the imposition of a fault overpayment is appropriate. Section 4005 of the EUC Act provides that an overpayment of EUC benefits shall be classified

as fraud where an individual "knowingly has failed ... to disclose a material fact, and as a result of such ... nondisclosure such individual has received an amount of emergency unemployment compensation under this title to which such individual was not entitled." 26 U.S.C. § 3304.

In her decision/order regarding Claimant's emergency unemployment compensation benefits, the referee specifically noted that whether a claimant files a claim over the telephone or files a claim on the internet, the system will ask whether a claimant was working for the weeks at issue, and only if a claimant states that he or she is not [working] will the system record '\$0.00' in earnings. (Record Item 11, Referee's Hearing: Decision/Orders, 6/13/2012, Appeal No. EUC-12-09-H-5645, Reasoning.) The referee stated that "[C]laimant received information from the [S]ervice [C]enter indicating his obligation to report earnings" and "when (Claimant) filed his claims and the system asked him whether he was working, he reported that he was not" and "[C]laimant also failed to report his earnings for numerous prior weeks in the companion case..." (Id.) We note that despite the fact that Claimant clearly understood his obligation to disclose employment and wage information from all three employers when he made the initial application for unemployment compensation precipitated by his job loss at Gulf Industries, he argued to the Board and before this Court that each time he filed a bi-weekly claim subsequent to the initial application, he interpreted the question, "did you work?" to actually mean "did you work at Gulf Industries?"

In adopting and incorporating the findings and conclusions of the referee, the Board clearly considered Claimant's state of mind and determined that he knowingly failed to report his earnings each and every time he filed a bi-weekly claim. It is well settled that the Board is the ultimate fact-finding body empowered

to resolve conflicts in evidence and determine credibility of witnesses, *Metropolitan Edison Co. v. Unemployment Compensation Board of Review*, 606 A.2d 955, 957 (Pa. Cmwlth. 1992). Moreover, the evidence supports the conclusion that Claimant was aware from his initial application for benefits that information about all employers was requested and was important to the Service Center. It was also obviously material to his receiving ongoing unemployment and emergency unemployment benefits. The Board did not err when it denied regular and extended unemployment compensation benefits to Claimant, and imposed fault and fraud overpayments.

For the foregoing reasons, we affirm the Board's denial of benefits and imposition of fault and fraud overpayments.

JAMES GARDNER COLINS, Senior Judge

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ORDER

AND NOW, this 30th day of July, 2013, the orders of the Unemployment Compensation Board of Review in the above-captioned matters are hereby AFFIRMED.

JAMES GARDNER COLINS, Senior Judge