

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Ihor Helo,	:	
	:	
Petitioner	:	
	:	
v.	:	No. 2339 C.D. 2012
	:	
Unemployment Compensation	:	Submitted: June 28, 2013
Board of Review,	:	
	:	
Respondent	:	

BEFORE: HONORABLE RENÉE COHN JUBELIRER, Judge
HONORABLE P. KEVIN BROBSON, Judge
HONORABLE ANNE E. COVEY, Judge

OPINION NOT REPORTED

**MEMORANDUM OPINION
BY JUDGE COHN JUBELIRER**

FILED: August 19, 2013

Ihor Helo (Claimant), pro se, petitions for review of the Order of the Unemployment Compensation Board of Review (Board), which affirmed the decision of an Unemployment Compensation Referee (Referee) denying Claimant's request to backdate his unemployment compensation (UC) claim for benefits to include compensable weeks ending May 12, 2012 through June 9, 2012. The Board concluded that Claimant's reason for delaying his UC claims, his desire to obtain an adjustment to his child support obligation before beginning to claim UC benefits, did not fall into one of the recognized exceptions for delay found in Section 65.43a(e) of the Board's regulations, 34 Pa. Code § 65.43a(e). On appeal,

Claimant argues that the Board erred in not backdating his UC claims because he was misinformed by UC authorities when they did not specifically advise him of the applicability of Section 65.43a(e) and did not definitively inform him that his reason for the delay was not valid. Discerning no error, we affirm.

The Referee made the following findings of fact.

1. The claimant applied for benefits on April 22, 2012 based on his separation from Janney Montgomery Scott LLC [(Employer)] and established a weekly benefit rate of \$573.00 with a partial benefit credit of \$230.00.
2. The claimant decided not to file for benefits because he did not wish for the UC Service Center to withhold child support.
3. On May 20, 2012, the claimant spoke to a UC Service Center representative who informed him that if he did not file he may not be permitted to backdate claims for benefits later.
4. The claimant requested backdating; it was denied, and the claimant appealed.

(Findings of Fact (FOF) ¶¶ 1-4.) The Referee stated that, pursuant to Section 401(c) of the Unemployment Compensation Law¹ (Law), compensation is payable to a claimant who makes a valid application and valid claim for UC benefits under the UC regulations, including Section 65.43a(e), which sets forth the specific reasons that a claim for UC benefits may be backdated. After listing the various

¹ Act of December 5, 1936, Second Ex. Sess., P.L. (1937) 2897, as amended, 43 P.S. § 801(c). Section 401(c) provides that UC benefits are available to a claimant who “[h]as 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.” Id.

reasons in Section 65.43a(e), the Referee concluded that Claimant's desire not "to pay child support until he could obtain a new order for a smaller amount of support" did not qualify as a reason to backdate his claim. (Referee Decision at 2.) The Referee rejected Claimant's argument, that the UC Service Center should have told him he would not be eligible, as being irrelevant because he admitted that the UC Service Center representative informed him that he may not be eligible to backdate a claim. Therefore, the Referee determined that Claimant assumed the risk that he may not be able to file his claim later and denied Claimant's request to backdate his claim to include compensable weeks ending May 12, 2012 through June 9, 2012. (Referee Decision at 2.) Claimant appealed to the Board, which concluded that the Referee's decision was proper under the Law. Therefore, the Board adopted and incorporated the Referee's findings and conclusions as its own and affirmed the Referee's decision. (Board Order.) Claimant now petitions this Court for review.²

On appeal, Claimant argues that the UC Service Center representative misinformed him regarding his ability to backdate his UC benefits claim. Specifically, Claimant asserts that he told the representative why he wanted to delay filing for benefits and, although informed that his "reason may be or may-not-be [sic] considered a valid reason . . . to delay [his] filings," the representative did not expressly refer him to or give him a copy of Section 65.43a(e) and he did

² "The Court's review is limited to determining whether constitutional rights were violated, whether an error of law was committed, whether a practice or procedure of the Board was not followed or whether the findings of fact are supported by substantial evidence in the record." Western and Southern Life Insurance Co. v. Unemployment Compensation Board of Review, 913 A.2d 331, 334 n.2 (Pa. Cmwlth. 2006).

not have access to that information. (Claimant's Br. at 7.) Therefore, according to Claimant, his reason for delaying his filing continued to be valid.³

Claimant bears the burden of establishing his financial eligibility for UC benefits. Pagliei v. Unemployment Compensation Board of Review, 37 A.3d 24, 26 (Pa. Cmwlth. 2012). Section 401(c) of the Law provides that UC benefits are available to a claimant who "[h]as 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). Section 65.42 of the Board's regulations states that "[a]n 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 [Section] 65.43a (relating to extended filing), whichever is earlier." 34 Pa. Code § 65.42. "It is well-settled that the general rule in cases involving late filing for unemployment compensation benefits is that a claimant who files late is ineligible." Menalis v. Unemployment Compensation Board of Review, 712 A.2d 804, 805 (Pa. Cmwlth. 1998).

³ Claimant further asserts that, for a period of time, he was unable to reach the UC Service Center by phone, which he "understand[s] . . . [is] considered [a] normal condition[] to UC," or online because he was waiting for a replacement PIN number. (Claimant's Br. at 7.) The Board points out, however, that Claimant did not raise either of these issues before the Referee and, therefore, they are not preserved for appellate review. A review of Claimant's appeal from the Notice of Determination and the Referee's hearing transcript confirms that Claimant did not cite either of these reasons for the delay in his filing for UC benefits. In fact, at the hearing, both Claimant and the Referee referred to the reasons stated in Section 65.43a(e) and Claimant testified that "th[ey] were none of the conditions" for his delay. (Hr'g Tr. at 2-3, R. Item 7.) Therefore, the additional reasons Claimant cites in his brief are not preserved for this Court's review. Schaal v. Unemployment Compensation Board of Review, 870 A.2d 952, 954-55 (Pa. Cmwlth. 2005) (holding that "[a] claimant waives review of an issue by failing to raise it before the referee when he had an opportunity to do so").

The Department of Labor and Industry (Department) has specified the reasons it will accept as suitable for a claimant's delay in filing a claim for UC benefits in Section 65.43a(e). Section 65.43a of the Board's regulations provides, in relevant part:

(d) If a claimant fails to file a claim for compensation within the time allowed in subsection (a) or (b) or § 65.43 (relating to claims for compensation—when to file), 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	2

and good faith efforts to file timely but is unable to do so through no fault of the claimant.

34 Pa. Code § 65.43a(d), (e). Thus, Section 65.43a(e) offers some relief in situations where a claimant files an untimely claim for UC benefits.

The Board, in adopting the Referee's rationale, concluded that Claimant's asserted reason for not filing his claims for UC benefits, to ensure that his wife only got the proper portion of his UC benefits by obtaining a modification to his child support obligation, did not fall into one of the reasons expressly approved for backdating a claim. This reason clearly does not fall into the first four reasons. Regarding the fifth reason, we conclude that Claimant's desire to delay his UC claims in order to not "overpay" his child support is not a delay "through no fault of the claimant," 34 Pa. Code § 65.43a(e), particularly where Claimant admitted he would receive a credit toward future child support payments if he overpaid, (Hr'g Tr. at 4, R. Item 7). Therefore, we discern no error in the Board's determination.

However, this Court has also recognized that a claimant may be eligible if he is *misled* by UC officials into filing an untimely UC claim. Menalis, 712 A.2d at 805. It is on this basis that Claimant asserts that he should be entitled to backdate his claims for UC benefits for six weeks. Claimant testified that he told the UC Service Center representative his reason for wanting to delay filing a claim and received the "status quo answer [that] . . . you may not be eligible . . . for backdating it later" and acknowledged that he was told that "we're not here to advise this or that." (Hr'g Tr. at 2-3.) Nevertheless, Claimant testified that he believed his request to backdate his claims should be granted because the

representative should have told him about Section 65.43a(e) when he first called and his desire to make sure that his wife only got the proper portion of his UC benefits was a valid reason for delaying his application. (Hr’g Tr. at 2-3, 5.)

Claimant’s admission that the UC Service Center’s representative told him that he may not be eligible for backdating, and that they were not permitted to give legal advice, contradicts his assertion that the representative misinformed him into believing that there was no risk in delaying his claim. Claimant argues that the UC Service Center representative had a duty to inform him of the legal consequences of his actions and, essentially, render an eligibility determination over the telephone. However, “[t]o impose a duty on the [UC] authorities in each local office to sit down with each and every applicant . . . and fully explain all the possibilities under the law would render its administration burdensome, cumbersome and utterly impossible to implement.” Hughes v. Unemployment Compensation Board of Review, 186 A.2d 453, 454 (Pa. Super. 1962). As for Claimant’s contention that he had no way of knowing about Section 65.43a(e), “ignorance of the law is no excuse,” Hetman v. State Civil Service Commission (Berks County Children and Youth), 714 A.2d 532, 538 (Pa. Cmwlth. 1998), the regulations are available through the Department’s website, and Claimant was aware that there was the possibility that his reason was *not* valid.

Accordingly, we affirm the Board’s Order.

RENÉE COHN JUBELIRER, Judge

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ORDER

NOW, August 19, 2013, the Order of the Unemployment Compensation Board of Review in the above-captioned matter is hereby **AFFIRMED**.

RENÉE COHN JUBELIRER, Judge