

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Diane M. Macurak,	:
Petitioner	:
	:
v.	: No. 1989 C.D. 2014
	: Submitted: April 2, 2015
Unemployment Compensation	:
Board of Review,	:
Respondent	:

BEFORE: HONORABLE DAN PELLEGRINI, President Judge
HONORABLE P. KEVIN BROBSON, Judge
HONORABLE JAMES GARDNER COLINS, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION BY
PRESIDENT JUDGE PELLEGRINI FILED: April 28, 2015

Diane M. Macurak (Claimant) petitions *pro se* for review of the order of the Unemployment Compensation Board of Review (Board) affirming the decision of a Referee finding a non-fraud overpayment of \$3,859.00 in emergency unemployment compensation (EUC) benefits for the claim weeks ending August 10, 2013, through December 28, 2013, and its recovery under Section 4005(b) and (c) of Title IV of the Supplemental Appropriations Act of 2008, Pub. Law 110–252, 122 Stat. 2323, §4005(b), (c), 26 U.S.C. §3304 Note (EUC Act).¹ We affirm.

¹ Section 4005(b) and (c) of the EUC Act provides in pertinent part:

(b) Repayment.—In the case of individuals who have received amounts of [EUC benefits] under this title to which they were not
(Footnote continued on next page...)

Claimant initially applied for regular UC benefits under the Unemployment Compensation Law (Law)² effective May 18, 2008, with a weekly benefit allowance of \$489.00 and a partial benefit credit of \$196.00. After Claimant exhausted her UC benefits, a claim for EUC benefits was created³ on April 19, 2009, with the same weekly benefit allowance and partial benefit credit. The benefit year for this claim expired with the claim week ending May 16, 2009.⁴

(continued...)

entitled, the State shall require such individuals to repay the amounts of such [EUC benefits] to the State agency, except that the State agency may waive such repayment if it determines that—

(1) the payment of such [EUC benefits] was without fault on the part of any such individual; and

(2) such repayment would be contrary to equity and good conscience.

(c) Recovery by State Agency.—

(1) In General.—The State agency may recover the amount to be repaid, or any part thereof, by deductions from any [EUC benefits] payable to such individual under this title or from any unemployment compensation [(UC)] payable to such individual....

² Act of December 5, 1936, Second Ex. Sess., P.L. (1937) 2897, *as amended*, 43 P.S. §§751-914.

³ Section 4001(b) of the EUC Act states that a “[t]he State will make payments of [EUC benefits] to individuals who—(1) have exhausted all rights to regular compensation under the State law or under Federal law with respect to a benefit year... [or] (2) have no rights to regular compensation or extended compensation with respect to a week under such law or any other State unemployment compensation law or to compensation under any other Federal law....”

⁴ Section 4(b) of the Law defines “benefit year” as “the fifty-two consecutive week period beginning with the day as of which such ‘Valid Application for Benefits’ is filed, and thereafter the fifty-two consecutive week period beginning with the day as of which such individual next files a
(Footnote continued on next page...)

Effective August 4, 2013, Claimant became eligible for a new UC benefit year with a weekly benefit allowance of \$252.00 and a partial benefit credit of \$76.00. When Claimant sought UC benefits for the claim week ending August 10, 2013, a UC Service Center employee told her that she was permitted to defer receipt of her regular UC benefits at the lower rate and resume payments at the higher prior EUC rate under the 2009 EUC claim pursuant to Section 4002(g) of the EUC Act⁵ because she had not exhausted those benefits, and the rate on her new UC claim was more than \$100.00 or 25% percent less than the weekly amount due under her 2009 EUC claim. As a result, Claimant received the higher EUC benefits based on her 2009 EUC claim for the claim weeks ending August 10, 2013, through December 28, 2013.

However, in May 2014, the UC Service Center issued a determination that Claimant was not entitled to continue to receive benefits under the 2008 EUC claim pursuant to Section 4002(g) because the claim year underlying those benefits had expired on May 16, 2009, prior to the eligibility expiration date of July 22, 2010,

(continued...)

‘Valid Application for Benefits’ after the termination of his last preceding benefit year.” 43 P.S. §753(b).

⁵ Section 4002(g) of the EUC Act, amended by Section 3(b) of the Federal Unemployment Compensation Extension Act of 2010, Pub. Law 111-205, 124 Stat. 2238, §3(b) (2010 EUC Act), provides that if a claimant is entitled to EUC benefits in a benefit year, but the benefit year expires and the claimant has not exhausted his or her EUC benefits and would qualify for a new benefit year in which the UC benefit amount is at least either \$100.00 or 25% less than the prior EUC benefit amount, then the State may defer payment of the new regular UC benefits until the prior EUC benefits are exhausted. However, Section 3(b) also limits the application of this provision to claimants whose benefit years expired after its enactment on July 22, 2010.

as required by Section 3(b) of the 2010 EUC Act. As a result, the UC Service Center issued a determination that Claimant had received a non-fraud overpayment of \$3,859.00 in the higher EUC benefits from her 2008 EUC claim and she appealed.⁶

Before the Referee, Claimant testified that she is currently employed as a field chart reviewer for Inovalon (Employer), formerly MedAssurant, for whom she reviews charts online for approximately 35 to 40 hours per week at \$18.95 per hour. She stated that she started working for Employer in June 2008, that she was laid off in December 2009, and that she started back to work in October 2010 until the time of her testimony. She testified that she applied for benefits in August 2013 because there was a lack of work and she was not getting 40 hours of work per week. She stated that she contacted Senator Solabay's office who had an individual from the UC Service Center contact Claimant and informed Claimant that she could continue on

⁶ In the determination, the Service Center informed Claimant of the following:

Under Section 4005(b) of the [EUC Act], an overpayment must be repaid unless a waiver of the repayment is requested and granted. A waiver may only be granted if the overpayment was determined to be without "fault" on the part of the individual and requiring repayment would be contrary to "equity and good conscience"....

You are encouraged to request waiver of the overpayment by completing the attached Form UC-1656(EUC), Request for Waiver of Repayment of EUC Overpayment.... There is no deadline for requesting a waiver, but it will be to your advantage to request a waiver as soon as possible. If a waiver is denied, you may appeal or submit a new request if your financial circumstances change.

(Certified Record Item No. 3 at 4) (emphasis in original). Claimant has never requested a waiver of the EUC overpayment.

the 2008 EUC claim through December because the new UC benefit would be more than \$100.00 or 25% less than the EUC rate, and that Claimant would continue at that rate until December. Claimant testified that she was told that if legislators approved an extension beyond that, she would receive an additional 14 weeks. She stated that she did not receive any paperwork to that extent and continued to make bi-weekly filings documenting what she had earned.

Claimant testified that she called at the end of December, the last time to file for benefits into January, and was told that the EUC benefits had stopped because the legislators had not approved an extension and that she was on her UC claim from August 2013. She stated that her benefits were reduced to zero for three weeks even though she would have been eligible for a reduced amount under the other claim. Claimant stated that she started receiving reduced benefits again in January 2014 and continued filing biweekly papers on her claim. She testified that the UC Service Center jumped from 2008 and 2009 into 2013 without looking at 2009, 2010, 2011 or 2012. She stated that she was initially notified that she was eligible for EUC benefits in 2009 and that determination was never appealed, but that she was told that she would receive zero benefits unless she filed a new claim and then went back and picked up several weeks of that EUC claim. She testified that, "It's a mess." (6/9/14 Hearing Transcript at 9).

The Referee affirmed the UC Service Center's determination as modified and the Board affirmed the Referee as modified, explaining:

[Under Section 4002(g)], a state is permitted to defer payment of regular UC benefits until the EUC benefits are exhausted. However, the 2010 [EUC] Act did not make

Section 4002(g) retroactive; rather the [2010 EUC] Act specifically states that it applies only to individuals whose benefit year expired after the enactment of the 2010 [EUC] Act on July 22, 2010.

Here, the claimant's benefit year expired on May 16, 2009, prior to July 22, 2010; therefore, Section 4002(g) does not apply to her and the Department erred in paying her benefits at the 2008 EUC rate. Rather, the claimant is eligible for and has not exhausted her right to regular UC benefits under the 2013 application and the claimant was overpaid the difference between the two rates.

Section 4005(b) of the EUC [Act] covers non-fraud overpayments and their recovery. It provides for the repayment of benefits received by a claimant [sic] that they are not entitled to. The claimant shall be required to repay the amounts of such EUC compensation. Claimants that qualify may file for a waiver of the repayment requirement if the overpayment was made without fault on the part of the claimant, and such repayment would be contrary to equity and good conscience.

Clearly, there was an error by the Department. Therefore, the overpayment was not due to the claimant's fault and a non-fraud overpayment has been established.

(9/30/14 Board Decision at 3).

In this appeal,⁷ Claimant argues that the Board erred in affirming the nonfraud overpayment because she did not receive the full benefit of her unappealed

⁷ This Court's review is limited to determining whether the Board's findings of fact are supported by substantial evidence, whether constitutional rights were violated, or whether errors of law were committed. *Gnipp v. Unemployment Compensation Board of Review*, 82 A.3d 522, 524 n.4 (Pa. Cmwlth. 2013).

2009 EUC claim in 2009, and the UC authorities did not provide adequate and full details regarding her eligibility by only considering what occurred in 2008 and 2009 and then jumping to 2013 and 2014 without considering what occurred in the intervening years.

While Claimant is correct that a claimant may defer receiving UC benefits and continue to receive unused EUC benefits under Section 4002(g) of the EUC Act, the Board properly determined that Claimant is not entitled to receive the unused EUC benefits from her 2009 EUC claim because the UC claim year upon which it was based expired in May 2009 prior to the effective date of the 2010 EUC Act permitting such continued EUC benefit payment.⁸ Additionally, the Board did not err in affirming the recoupment of the nonfraud overpayment under Section 4005 even though it was caused by the actions of the UC authorities because Claimant does

⁸ See *Coughlin v. Unemployment Compensation Board of Review*, (Pa. Cmwlth. No. 1932 C.D. 2010, filed February 11, 2011) slip op. at 7 (“Claimant applied for benefits on January 18, 2009. Her benefit year ended the week of January 16, 2010. January 16, 2010, was before the effective date of the [2010 EUC Act], July 22, 2010. The Board had no authority to countermand the clear language in a federal law and retroactively apply the [2010 EUC Act] to Claimant. While it is unfortunate that Claimant faced such a reduction in benefits, the Board and this Court have no authority to legislate....”) (footnote omitted); *McCarty v. Unemployment Compensation Board of Review*, (Pa. Cmwlth. No. 889 C.D. 2010, filed December 6, 2010) slip op. at 3-4 (“[C]laimants who were employed part-time while they were receiving EUC benefits have been penalized when their benefit year ended, i.e., when their claims were reevaluated, the new claims were calculated using wages paid during their most recent base year, resulting in a much lower benefit. This is what happened to Claimant in the present case. The United States Congress has since recognized the inequity and remedied the same via the 2010 [EUC] Act.... Unfortunately, however, the 2010 [EUC] Act did not make the remedy retroactive. In fact, the Act specifically stated that it would apply only to individuals whose benefit year expired after the enactment of the 2010 [EUC] Act on July 22, 2010. Therefore, the 2010 [EUC] Act is not applicable to Claimant in the present case.”) (citations and footnotes omitted).

not allege that the repayment is “contrary to equity and good conscience” and has never sought a waiver of the repayment.⁹ *See, e.g., Gnipp*, 82 A.3d at 524-26 (holding that this Court could not address a claimant’s claim that he should not have to pay back EUC benefits because the overpayment was based on the suggestion of Department of Labor and Industry representatives and was not his fault where the issue of whether repayment would be inequitable due to financial hardship was not raised before the Referee).¹⁰

Accordingly, the Board’s order is affirmed.

DAN PELLEGRINI, President Judge

⁹ As indicated above, the UC Service Center’s overpayment determination informed Claimant that there is no deadline for requesting a waiver of the repayment by completing and submitting a Form UC-1656(EUC), Request for Waiver of Repayment of EUC Overpayment. (Certified Record Item No. 3 at 4).

¹⁰ *See also Hawk v. Unemployment Compensation Board of Review*, (Pa. Cmwlth. No. 1543 C.D. 2013, filed August 1, 2014) slip op. at 2 (“Claimant’s assertions concern the internal processes of his interstate claim by the unemployment offices of Pennsylvania and New York, which are irrelevant to his eligibility for EUC benefits or the assessment of the non-fault overpayment. Because he received EUC benefits to which he was not entitled, he must repay them pursuant to Section 4005(b) of the EUC Act and Section 804(b)(1) of the [Law, 43 P.S. §874(b)(1)].”) (footnote omitted).

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ORDER

AND NOW, this 28th day of April, 2015, the order of the Unemployment Compensation Board of Review dated September 30, 2014, at No. B-570375, is affirmed.

DAN PELLEGRINI, President Judge