IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Mitchell Gilbert, Petitioner	:	
v.	:	No. 1063 C.D. 2025
Unemployment Compensation Board of Review, Respondent	:	Submitted: September 14, 2026

BEFORE: HONORABLE PATRICIA A. McCULLOUGH, Judge
HONORABLE STACY WALLACE, Judge
HONORABLE STELLA M. TSAI, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE McCULLOUGH FILED: November 17, 2026

Mitchell Gilbert (Claimant), *pro se*, petitions for review of the July 21, 2025 adjudication of the Unemployment Compensation (UC) Board of Review (Board) denying his request to backdate his application for UC benefits and claims weeks pursuant to Section 401(c) of the UC Law (Law)[1] and Section 65.43a of the Department of Labor and Industry's (Department) regulations.[2] After review, we affirm.

[1] Act of December 5, 1936, Second Ex. Sess., P.L. (1937) 2897, *as amended*, 43 P.S. § 801(c) (relating to qualifications required to secure UC benefits).

[2] 34 Pa. Code § 65.43a allows for "extended filing," which is also known as "backdating," of an untimely filing of a weekly claim under one or more of the circumstances provided in 34 Pa. Code § 65.43a(e). Claim weeks may be backdated by the number of weeks indicated in Section 65.43a(e) if the claimant's untimely filing of the claims is due to one or more of the enumerated reasons in Section 65.43a(e). Relevant here, if "[t]he 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

(Footnote continued on next page…)

Claimant worked as a machine operator for Uniform Tubes, Inc. His last day of work was December 15, 2023. On April 12, 2024, Claimant electronically applied for UC benefits. (Certified Record (C.R.) Item Nos. 1-2.)

The instant case involves claims for compensation for weeks ending July 27, 2024, through March 8, 2025. Pursuant to 34 Pa. Code § 65.43,[3] Claimant was required to file his weekly claims "no later than the last day of the second week after the end of the week claimed." Therefore, for the weeks at issue, Claimant was required to file these claims for compensation no later than August 10, 2024, through March 22, 2025, respectively, since those would be the last days of the second weeks after the end of the weeks claimed. It is undisputed that Claimant did not file his claims for compensation for these weeks by the applicable deadlines. On April 14, 2025, Claimant requested backdating for those weeks pursuant to 34 Pa. Code § 65.43a.

On April 28, 2025, the Department's Office of Unemployment Compensation Benefits issued a Disqualifying Determination denying Claimant's request for backdating. (C.R. Item No. 3.) On April 28, 2025, Claimant appealed the Department's Determination. (C.R. Item No. 4.)

On June 9, 2025, a Referee held a hearing at which Claimant participated and provided testimony. (C.R. Item No. 12.) Claimant's employer did not appear at the hearing. The Referee questioned Claimant regarding his request for backdating. He asked whether Claimant was able before July 27, 2024, to file for his weekly claims. Claimant refused to answer the Referee's questions. Rather, Claimant stated that he

---

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," then his application and claims weeks may be backdated by two weeks. Section 65.43a(e).

[3] 34 Pa. Code § 65.43 (Claims for compensation--when to file) provides: "A claimant shall file a claim for compensation for a week no later than the last day of the second week after the end of the week claimed."

was exercising his privilege against self-incrimination under the 5th Amendment to the United States Constitution.[4] The Referee explained to Claimant that this was not a criminal proceeding, and therefore, the 5th Amendment rights did not apply. Nevertheless, Claimant continued to refuse to answer the Referee's question. Claimant also refused to answer how he was filing his claims when he was seeking his weekly claims, whether over the phone or online. *Id.* When asked whether there was anything he wanted to add, Claimant testified:

> I understand that my claim was denied under Section 401(c) for not filing on time, but I had good cause for the delay. I attempted to file my claims on time. I called once every week to file weekly claims since 7/27/2024, but kept getting the busy signal when calling the [D]epartment's phone. It was an error from the [D]epartment. I was actively trying to comply with the filing requirements. I did everything I could in good faith to follow the UC system. I filed properly. I had no way to correct it myself. And because I had good cause for filing late, I'm asking that the claims be backdated, and that I be found eligible for benefits under [the] Law.

Id.

In an attempt to elicit testimony concerning Claimant's efforts, the Referee asked Claimant if he had tried to file his claims online. Claimant again refused to answer, asserting his Fifth Amendment privilege. *Id.* Claimant also refused to answer whether he read the UC Handbook. *Id.* Finally, Claimant refused to answer when the

[4] U.S. Const. amend. V; *see also* Pa. Const. art. I, § 9. Generally, the privilege against self-incrimination protects an individual from being called as a witness against himself or herself in both criminal and civil proceedings, formal or informal, where the answers to questions might incriminate the individual in future criminal proceedings. *See Caloric Corp. v. Unemployment Compensation Board of Review*, 452 A.2d 907, 909 (Pa. Cmwlth. 1982).

Referee asked him what was going on between July 2024 and March 2025 that caused him not to file his claims. *Id.*

On June 10, 2025, the Referee affirmed the Department's Determination and denied Claimant's request for backdating because there was "insufficient evidence to grant [C]laimant's request." (C.R. Item No. 13.)

Claimant appealed the Referee's decision to the Board. (C.R. Item No. 14.) On July 2, 2025, Claimant submitted an email to supplement his appeal offering to provide additional information and legal authority. (C.R. Item No. 17.) On July 21, 2025, the Board issued an order affirming the Referee's decision and denying Claimant's request to backdate claim weeks July 27, 2024, through March 8, 2025. (C.R. Item No. 19.) The Board noted that Claimant's appeal "attempts to supplement the record with additional testimony not presented to the Referee, which the Board cannot consider as it is extra-record evidence." *Id.* Claimant now appeals.[5]

A claimant has the burden of proof to establish that his application satisfies the requirements for backdating a claim for benefits. *Egreczky v. Unemployment Compensation Board of Review*, 183 A.3d 1102 (Pa. Cmwlth. 2017).

It is well settled that as fact-finder, credibility determinations are the Board's province and it may accept or reject the testimony of any witness in whole or in part. *Rivera v. Unemployment Compensation Board of Review*, 310 A.3d 348, 352 n.4 (Pa. Cmwlth. 2024). The Board's findings are conclusive on appeal so long as the record, when viewed in its entirety, contains substantial evidence to support the findings. *Western and Southern Life Insurance Company v. Unemployment*

[5] Our review is limited to determining whether constitutional rights were violated, whether an error of law was committed, or whether necessary factual findings are supported by substantial evidence. Section 704 of the Administrative Law, 2 Pa.C.S. § 704; *Devine v. Unemployment Compensation Board of Review*, 101 A.3d 1235, 1237 n.2 (Pa. Cmwlth. 2014).

Compensation Board of Review, 913 A.2d 331, 335 (Pa. Cmwlth. 2006). This Court is bound to examine the testimony in the light most favorable to the party in whose favor the Board has found, giving that party the benefit of all inferences that can logically and reasonably be drawn from the testimony to determine if substantial evidence exists for the Board's findings. *United States Banknote Co. v. Unemployment Compensation Board of Review*, 575 A.2d 673, 674 (Pa. Cmwlth. 1990). Moreover, even if there is contrary evidence of record, the Board's findings of fact are binding upon the Court where supported by substantial evidence. *Borough of Coaldale v. Unemployment Compensation Board of Review*, 745 A.2d 728, 731 (Pa. Cmwlth. 2000).

Relevant here, Section 65.43a(e) of the Department's regulations allows a claimant to backdate a claim by two weeks where he attempts to file by telephone, Internet or fax transmission in accordance with § 65.41 (relating to filing methods), but the method used to attempt to file is unavailable or malfunctions. 34 Pa. Code § 65.43a(e). Section 65.41(b) of the Department's regulations, in turn, specifies that a claim for compensation shall be filed by one of the following methods:

> (1) Telephoning a UC Office and providing the information required by the Department representative.
>
> (2) Telephoning the Department's telephone claim system and providing all information required by the system.
>
> (3) Completing the Department's [i]nternet claim and electronically transmitting it to the Department.

34 Pa. Code § 65.41(b).

Moreover, a claim may be backdated if the claimant demonstrates that he made all reasonable and good faith efforts to file timely but is unable to do so through no fault of his own. *Id.*

Invoking these two reasons, Claimant argues that the Board erred in denying his backdating request because he testified that he attempted to file claims every week from July 27, 2024, through March 8, 2025, by telephoning the Department but he could not get through due to busy signals. He claims this testimony established technical difficulties that he had no way to correct himself. He argues that his testimony was unrebutted and the Referee's rejection of this uncontested evidence was error. He now concedes that his invocation of the Fifth Amendment privilege at the hearing was mistaken and wishes to recant it. He asks this Court to reverse the Board's decision and remand for another hearing so that he can fully answer any questions in reference to his claim.

Despite Claimant's contention, it is clear that the Board can reject even uncontradicted evidence if it deems such evidence to be incredible. *Blackwell v. Unemployment Compensation Board of Review*, 555 A.2d 279, 281 (Pa. Cmwlth. 1989); *Herbert v. Unemployment Compensation Board of Review*, 554 A.2d 616, 618 (Pa. Cmwlth. 1989) (holding that "even though [the c]laimant's evidence on the issue of good cause was unrebutted, the Board was not obligated to accept it"); *Strichko v. Unemployment Compensation Board of Review*, 375, 547 A.2d 496, 497 (Pa. Cmwlth. 1988) ("The Board may disregard even uncontradicted testimony[.]"). Claimant's testimony that he "did everything [he] could in good faith to follow the UC system,"[6] even if unrebutted, did not require the Board to conclude that Claimant made all reasonable and good faith efforts to timely file his application and claims after he encountered the busy signals. When the Referee prodded Claimant for a more thorough explanation of his attempts to contact the Department by other means, such as using the internet option, Claimant refused to respond. This was at his own peril for the Board

[6] C.R. Item No. 12.

found that, because Claimant refused to answer his questions, there was insufficient evidence to conclude that Claimant made all reasonable and good faith efforts to file timely but was unable to do so through no fault of his own.[7] 34 Pa. Code § 65.43a(e). *See Shappee v. Unemployment Compensation Board of Review* (Pa. Cmwlth., No. 760 C.D. 2024, filed June 17, 2025)[8] (noting that it was within the Board's purview to find the claimant's testimony with regard to the number of attempts to file that he made and what occurred when he attempted to file to be not completely credible); *Valle v. Unemployment Compensation Board of Review* (Pa. Cmwlth., No. 701 C.D. 2012, filed December 20, 2012) (holding that the claimant's confusion over whether she needed to continue filing biweekly claims did not excuse her failure to timely file claims or communicate with the Department for five months).

Recently, in *Kotuba v. Unemployment Compensation Board of Review* (Pa. Cmwlth., No. 1140 C.D. 2024, filed January 22, 2026), we affirmed the Board's conclusion that the claimant did not establish an entitlement to backdating claims based upon technical difficulties where there was no evidence that he availed himself of numerous means of filing weekly claims, but instead simply stopped putting forth any effort. As in *Kotuba*, Claimant offered no testimony that, after he encountered repeated busy signals, he attempted to file his claims electronically. When he was asked about these other methods, Claimant refused to answer the Referee. We conclude the Board did not err in determining Claimant did not establish an entitlement to backdating claims based upon technical difficulties. Claimant may have experienced technical

[7] This Court has stated, "[a]ny lay person who chooses to represent himself in a legal proceeding must assume the risk that his lack of expertise and legal training may prove to be his undoing." *Daly v. Unemployment Compensation Board of Review*, 631 A.2d 720, 722 (Pa. Cmwlth. 1993).

[8] Pursuant to this Court's Internal Operating Procedures, an unreported opinion of the Court filed after January 15, 2008, may be cited for its persuasive value. 210 Pa. Code § 69.414(a).

difficulty in reaching the Department by telephone, but we cannot conclude on this record that he made all reasonable and good faith efforts to timely file his application but was unable to do so through no fault of his own. Consequently, we agree with the Board that Claimant failed to prove that he met the requirements for backdating an application for benefits as set forth in Section 65.43a of the Department's regulations.

We next address Claimant's request that we remand for another hearing so that he can answer the Referee's questions that he previously refused to answer. We deny the request.

"Ordinarily, remand is necessary if the agency did not afford a fair hearing or made invalid or inadequate findings of fact, in order that further administrative action could be taken necessary to fulfill the administrative process." *Shoemaker v. Unemployment Compensation Board of Review*, 588 A.2d 100, 102 (Pa. Cmwlth. 1991); *Gordon v. Unemployment Compensation Board of Review*, 403 A.2d 235 (Pa. Cmwlth. 1979). This Court has consistently held that a remand hearing generally is granted to allow a party the opportunity to present evidence not offered at the original hearing because it was not then available. *Fisher v. Unemployment Compensation Board of Review*, 696 A.2d 895 (Pa. Cmwlth. 1997).

Here, Claimant had a fair hearing before the Referee and was not denied the opportunity to present evidence. The Referee questioned Claimant several times regarding the cause of his failure to file timely claims. He repeatedly asked Claimant whether he wanted to add anything else, and Claimant had the opportunity to do so. Claimant disregarded the Referee's explanation that the Fifth Amendment did not apply to the hearing. Claimant knew the answers to the Referee's questions but elected not to answer. To order a remand in these circumstances would allow Claimant a proverbial second bite at the apple which this Court does not allow. *Emery Worldwide*

v. Unemployment Compensation Board of Review, 540 A.2d 988, 990 (Pa. Cmwlth. 1988) (denying a remand request where the employer could have obtained the witness's testimony at the first hearing by subpoena). Thus, despite Claimant's belated willingness to answer the Referee's questions, we will not order a remand to correct a record Claimant had every opportunity to make below.

Based upon the foregoing, the Board's order is affirmed.

PATRICIA A. McCULLOUGH, Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Mitchell Gilbert, Petitioner	:	
v.	:	No. 1063 C.D. 2025
Unemployment Compensation Board of Review, Respondent	:	

ORDER

AND NOW, this 17th day of November, 2026, the July 21, 2025 order of the Unemployment Compensation Board of Review is AFFIRMED.

PATRICIA A. McCULLOUGH, Judge