

Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.

ENTRY ORDER

SUPREME COURT DOCKET NO. 2003-418

JUNE TERM, 2004

	}	APPEALED FROM:
	}	
Gene Hicks	}	Employment Security Board
	}	
v.	}	
	}	DOCKET No. 1-09-02-147-20
Department of Employment and	}	
Training	}	
	}	
	}	

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

Claimant appeals the Vermont Employment Security Board's determination that he is not entitled to temporary extended unemployment compensation benefits. We affirm.

Apparently, claimant was simultaneously working two part-time jobs, one in Vermont and one in New York, when, in January 2001, he was laid off by both employers. Shortly after he was laid off work, he first applied for and received regular unemployment compensation benefits from Vermont. He exhausted those benefits in August 2001. Next, he applied for and received regular unemployment compensation benefits from New York, which he exhausted in March 2002. He then applied for and received extended benefits from New York under the Temporary Extended Unemployment Compensation Act of 2002. See Title II, Pub. L. 107-147, 116 Stat. 26 (2002). He exhausted those benefits in June 2002. Finally, on June 28, 2002, he filed a claim for extended benefits from Vermont. The Department of Employment and Training denied the claim, and the claims adjudicator upheld the denial. Claimant sought review by the appeals referee. The day before the scheduled hearing before the referee, claimant's attorney sought a continuance. The continuance was denied, but the referee informed the attorney that he could file a written argument within two days of the hearing. No argument was filed, however, and the referee issued a November 20, 2002 decision upholding the claims adjudicator's denial of benefits.

Claimant appealed to the Board, which remanded the matter to the appeals referee for the purpose of taking testimony and evidence regarding (1) whether claimant had received wages for covered employment outside of Vermont between January 1, 2001 and June 28, 2002; and (2) if so, whether those wages were previously used to establish a benefit year for the claimant in another state. The Board also invited claimant's counsel to provide a written argument identifying the applicable benefit year for which claimant was asserting an entitlement to benefits. The remand hearing was held on April 15, 2003, but, at the beginning of the hearing, claimant's attorney withdrew without objection from claimant. During the hearing, claimant requested that the appeals referee subpoena employees from the Vermont and New York unemployment offices, apparently so that those employees could testify about previous discussions they had with him. The referee denied the request, and the matter was returned to the Board after testimony and evidence was taken pursuant to the Board's earlier order.

In the order being appealed, the Board first denied claimant's request that the matter be remanded again for the purpose of subpoenaing the employees of the Vermont and New York unemployment offices. The Board concluded that a remand was inappropriate to introduce the testimony of those employees concerning their interpretation of the relevant law. The Board noted that it had reviewed claimant's twenty-nine-page argument regarding his claimed entitlement to

benefits, and that claimant had had a full and fair opportunity to present his case. Turning to the merits, the Board concluded that claimant was not entitled to extended benefits from Vermont because at the time he exhausted his regular Vermont benefits, he still had benefits available in New York, and thus he was unable to satisfy one of the criteria of the applicable federal law.

In a one-paragraph brief, appellant argues that (1) he remained eligible for extended benefits in Vermont after he exhausted his regular and extended New York benefits; (2) he was told by workers= compensation personnel in Vermont and New York that it would not matter if he filed his state claims separately or together; and (3) he was never allowed to have his A day in court@ because the appeals referee denied his motion to continue the hearing that was held in November 2002 without his participation. Regarding appellant= s first argument, the Board concluded that his claim for extended benefits did not satisfy Section 202(b)(2) of the Temporary Extended Unemployment Compensation Act of 2002 because at the time he exhausted his regular Vermont benefits, he still had regular and extended benefits available in New York, and extended benefits are available only with respect to a claimant= s most recent benefit year. We conclude that appellant has failed to demonstrate that the Board erred in interpreting the relevant federal law. See Bouchard v. Dep= t of Employment & Training, 174 Vt. 588, 589 (2002) (mem.) (A Absent a clear showing to the contrary, any decisions within [the] expertise [of the Employment Security Board] are presumed to be correct, valid, and reasonable.@). Moreover, even if we concluded that appellant had met the second criterion of Section 202(b), we agree with the appeals referee that his claim did not satisfy the fourth criterion of that section, which requires that an initial claim for regular compensation be filed after March 15, 2001. Appellant= s claim for regular compensation was filed in January 2001; his June 2002 claim was for extended benefits, not regular benefits. Cf. Pope v. Florida Unemployment Appeals Comm= n, 854 So. 2d 662, 663 (Fla. Dist. Ct. App. 2003) (because claim for regular benefits was not filed after March 15, 2001, A Section 202(b)(4) would have precluded any claim for extended benefits@). As for appellant= s second and third arguments, he neither acknowledges that the Board remanded his case back to the appeals referee for another hearing nor challenges the Board= s conclusion that he had a full and fair opportunity to present his case.

Affirmed.

BY THE COURT:

Jeffrey L. Amestoy, Chief Justice

John A. Dooley, Associate Justice

Paul L. Reiber, Associate Justice