

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

**ENTRY ORDER**

SUPREME COURT DOCKET NO. 2003-306

JANUARY TERM, 2004

	} APPEALED FROM:
	}
Michael Stafford	} Employment Security Board
	}
v.	}
	} DOCKET NO. L-03-03-044-20
Department of Employment	}
and Training	}
	}
	}

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

Claimant Michael Stafford appeals from a decision of the Employment Security Board denying his claim for unemployment compensation under 21 V.S.A. ' 1338(d). We affirm.

The essential facts are undisputed. Claimant lost his \$9.50 per-hour job at Northeast Cooperatives, Inc. on January 8, 2003. He sought unemployment compensation which the Department of Employment and Training (DET) denied. An appeals referee took evidence on claimant= s appeal following the initial denial. The referee found that claimant received wages of \$845.51 during the third calendar quarter of 2002, \$5,374.23 during the fourth quarter of 2002, and \$764.76 during the first calendar quarter of 2003. In addition to his wages from Northeast Cooperatives, the appeals referee found that claimant earned \$308 during the third calendar quarter of 2002 from Price Chopper Operations Company of Vermont. The appeals referee upheld DET= s decision, holding that 21 V.S.A. ' 1338(d)(2) made him financially ineligible for benefits.

Claimant appealed the referee= s decision to the Employment Security Board. The Board held a hearing on May 20, 2003, and issued a final decision on claimant= s request for benefits on May 27, 2003. The Board reasoned that based on claimant= s earnings, he did not meet the eligibility requirements of 21 V.S.A. ' 1338(d)(2). Claimant then appealed to this Court.

Here, claimant argues that ' 1338(d)(2) violates the Common Benefits Clause of the Vermont Constitution. See Vt. Const. ch. I, art. 7. Claimant did not raise this claim at any point in the proceedings below, however. It is well settled that this Court will not consider on appeal constitutional issues that were not raised in the proceedings below. Cleveland v. Dep= t of Employ. Sec., 138 Vt. 208, 211 (1980); Allen v. Vt. Employ. Sec. Bd., 133 Vt. 166, 169 (1975). Consequently, we decline to address the parameters of the Common Benefits Clause as it relates to unemployment compensation qualifications under ' 1338(d)(2).

Claimant also argues that he should receive unemployment compensation as a matter of fairness and to further the general legislative policy underlying unemployment benefits. We disagree. Unemployment compensation laws are remedial in nature and require a liberal construction to achieve their intended purpose. Lane v. Dep= t of Employ. Sec., 134 Vt. 9, 10 (1975). Not every claim for unemployment compensation must be allowed, however. Id. The statutory sections the Legislature enacted to further the general purpose of unemployment compensation govern when and how payments must be made. Id. Unless a claimant demonstrates he qualifies for benefits under the statutory scheme, no compensation is due notwithstanding the benevolent general purpose of the scheme. Id.

In this case, the statute requires claimant to show that he was paid wages of at least \$1,000 in one quarter of his base

period, 21 V.S.A. ' 1338(d)(1), and that he was paid additional wages during that period A which equal or exceed 40 percent of the total wages paid in the highest quarter of his . . . base period.@ 21 V.S.A. ' 1338(d)(2). For this case that means that claimant had to show earnings of at least \$2,149.69 (40% of \$5,374.23) for the remaining calendar quarters of his base period. But claimant= s earnings in those remaining quarters were \$1,918.27, \$231.42 short of the necessary wages to qualify him for benefits. Claimant does not contest the correctness of those calculations, which derive from the Board= s findings and a proper application of ' 1338(d)(2). As such, we find no basis to disturb the Board= s decision denying claimant unemployment compensation. See Bouchard v. Dep= t of Employ. & Training, 174 Vt. 588, 589 (2002) (mem.) (Supreme Court will uphold findings of Employment Security Board if based on credible evidence and will affirm legal conclusions if findings support them).

Affirmed.

BY THE COURT:

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Jeffrey L. Amestoy, Chief Justice

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John A. Dooley, Associate Justice

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Paul L. Reiber, Associate Justice