

Commonwealth of Kentucky
Court of Appeals

NO. 2009-CA-000218-MR

KENTUCKY UNEMPLOYMENT
INSURANCE COMMISSION

APPELLANT

v. APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE KIMBERLY N. BUNNELL, JUDGE
ACTION NO. 08-CI-00898

DAVID G. HAMILTON

APPELLEE

OPINION
AFFIRMING

** ** *

BEFORE: CLAYTON, DIXON, AND THOMPSON, JUDGES.

THOMPSON, JUDGE: The Kentucky Unemployment Insurance Commission appeals an order of the Fayette Circuit Court reversing the amount of David G. Hamilton's unemployment award. For the reasons stated below, we affirm but on different grounds than the trial court.

On April 1, 2005, Hamilton, an employee of Pepsi, sustained a work-related injury. As a result of his injury, he received workers' compensation from approximately April 2, 2005, until April 14, 2007. After his termination from Pepsi, Hamilton filed an application for unemployment benefits on May 11, 2007, and was eventually awarded \$149 per week in benefits.

Hamilton appealed the amount of his weekly award to a referee of the Division of Unemployment Insurance. He contended that the Commission should have used his wages prior to his injury in the calculation of his "extended base period." After conducting a hearing, the referee rejected Hamilton's argument and upheld his \$149 weekly unemployment benefit award.

After Hamilton's appeal to the Commission was rejected on the merits, he brought an appeal to the Fayette Circuit Court. Reversing the Commission, the trial court wrote the following:

In this case, the Commission based the Plaintiff's unemployment benefits award upon disability benefits awarded through workers' compensation. These benefits are an exception to the definition of "wages," and therefore may not be utilized in the calculation of Plaintiff's unemployment benefits.

This appeal followed.

The Commission argues that the trial court, *sua sponte*, incorrectly found that the Commission calculated Hamilton's weekly unemployment award by factoring in his workers' compensation payments, received during his extended base period, as "wages." The Commission argues that it calculated only the wages

paid to Hamilton by Pepsi during his extended base period and excluded any consideration of his workers' compensation payments received during the same period.

Judicial review of a decision of an administrative agency is centered on the question of arbitrariness due to our constitution's prohibition against arbitrary administrative actions. *Com. Transp. Cabinet Dept. of Vehicle Regulation v. Cornell*, 796 S.W.2d 591, 594 (Ky.App. 1990). Our analysis begins with determining whether an agency's decision is based on substantial evidence. *Kentucky Retirement Systems v. Heavrin*, 172 S.W.3d 808, 814 (Ky.App. 2005).

"Substantial evidence is defined as 'evidence of substance and relative consequence having the fitness to induce conviction in the minds of reasonable [persons].'" *Kentucky Unemployment Insurance Commission v. Landmark Community Newspapers of Kentucky, Inc.*, 91 S.W.3d 575, 579 (Ky. 2002). If the Commission's findings were supported by substantial evidence, our review is limited to determining whether it applied the correct rule of law. *Burch v. Taylor Drug Store, Inc.*, 965 S.W.2d 830, 834 (Ky.App. 1998).

Resulting from his work-related injury, Hamilton received workers' compensation payments from the second quarter of 2005 until the second quarter of 2007. Additionally, Hamilton, through Pepsi, was paid past due vacation and accumulated sick pay during the first, second, and fourth quarters of 2005, and the fourth quarter of 2006.¹ According to the Commission and unrefuted by Hamilton,

¹ Both parties agree that the trial court mistakenly wrote that Hamilton received wages during the first three quarters of 2005 and the fourth quarter of 2006.

Hamilton's weekly unemployment benefit award was based on his income from these same quarters as reported by Pepsi and excluded any workers' compensation payments which he received.

While recognizing that great weight must be assigned to the factual findings of a trial court, if these factual findings are contrary to the only fair and reasonable conclusion which can be drawn from the evidence, an appellate court is bound to reverse the trial court's findings of fact. *Crest Coal Co., Inc. v. Bailey*, 602 S.W.2d 425, 426-27 (Ky. 1980). Based on the parties' congruity on the issue and the evidence in the record, the trial court's findings of fact were erroneous. The Commission excluded workers' compensation payments when they established Hamilton's weekly unemployment award.

The Commission next argues that the trial court erred by requiring it to base Hamilton's weekly unemployment award on quarters in which he worked his regular, full-time schedule rather than to utilize the four quarters immediately preceding his base period where he received lower income, mainly from his past due vacation and sick pay. We disagree.

Kentucky's Unemployment Compensation Law provides monetary benefits to unemployed workers who meet particular criteria prescribed by statute. KRS 341.350. After a claimant files for unemployment benefits and his eligibility has been established, his weekly benefit award is determined by analyzing his base-period wages. KRS 341.380. A claimant's base period constitutes "the first four (4) of the last five (5) completed calendar quarters immediately preceding the

first day” of an employee’s benefit year. KRS 341.090(1). An employee’s benefit year is generally the fifty-two (52) week period starting on the first day of the week in which the employee first files for benefits. KRS 341.090(3).

If an employee’s base-period wages are insufficient due to a work-related injury and he is eligible to receive workers’ compensation, an “extended base period will be substituted for the current base period on a quarter-by-quarter basis as needed to establish a valid claim or to increase the benefit rate of a claim” *Id.* Under KRS 341.090(2), in pertinent part, an extended base period means the following:

[T]he four (4) quarters prior to the claimant's base period. These four (4) quarters may be substituted for base-period quarters on a quarter-for-quarter basis in order to establish a valid claim or increase the benefit rate of a valid claim regardless of whether the wages have been used to establish a prior claim, except wages transferred to or from another state under a combined wage agreement will be excluded if used in a prior claim.

Hamilton applied for unemployment benefits in May 2007, resulting in his base period being the four quarters of 2006. KRS 341.090(1). However, Hamilton did not earn sufficient wages during any of these quarters to qualify for unemployment benefits except for the fourth quarter of 2006. Because his wage insufficiencies were due to a work-related injury, the Commission utilized KRS 341.090(3) to provide him with an extended base period, which permits a quarter-by-quarter substitution as needed for any insufficient quarter of his base period.

From reading KRS 341.090(2), the Commission believed that it was required to limit its substitution of any “extended base period” quarter to the four quarters immediately preceding Hamilton’s base period. The Commission designated Hamilton’s extended base period as the first, second, and fourth quarters of 2005, and the fourth quarter of 2006. However, Hamilton believed that the Commission could go beyond the four quarters immediately preceding his base period if the result would increase his weekly benefit. Thus, Hamilton argued that his weekly benefit award should be based on the regular, full-time wages he received prior to his injury, not the reduced amount he received in 2005 from his past due vacation and sick pay. From our reading of KRS 341.090(2), we agree.

The cardinal rule of statutory construction is to ascertain the intention of the legislature and give it effect. *MPM Financial Group, Inc. v. Morton*, 289 S.W.3d 193, 197 (Ky. 2009). We must do this by according the literal meaning of a statute’s terms unless such an approach would lead to an absurd or wholly unreasonable result. *Richardson v. Rees*, 283 S.W.3d 257, 263 (Ky.App. 2009). The interpretation and application of statutes is a matter of law and reviewed *de novo*. *Hill v. Thompson*, 297 S.W.3d 892, 895 (Ky.App. 2009).

KRS 341.090(2) provides that the extended base period may be substituted on a quarter-for-quarter basis for insufficient base period quarters for the purpose of increasing a valid claim. This statutory language and the legislative scheme of KRS Chapter 341 demonstrate a clear intent that a claimant’s extended base period constitute the claimant’s wages when he worked his regular work

schedule. The Commission's calculation of Hamilton's award exclusively on his accumulated vacation and sick pay was an arbitrary manner in calculating unemployment when considering that the legislature's intent to help former workers' compensation recipients. KRS 341.090(3).

Wage supplements including vacation pay, holiday pay, paid sick leave, reimbursement of expenses, severance pay, pension plan contributions, 401K matching contributions are called fringe benefits. Just as if this employee had withdrawn money from his pension plan or from his 401K, the money would have been taxable upon the date of payment. However, the delayed tax of this income does not negate the fact that the income was earned when the money was deposited into the pension plan, 401K plan, vacation accrual benefits plan and sick days accrued benefits plan. They are earned usually per days of service worked by an employee and are owed by the employer to the employee based upon policies which widely differ between employers' compensation policies.

The amounts owed to the employee are totally arbitrary in that some employees under some compensation packages are owed tens of thousands of dollars for past due benefits while other employees will be owed a minimum amount or no payment for these benefits. These payments are not earned at the time they are paid but accumulate during the worker's actual work. The Commission's use of fringe benefits to calculate wages is clearly an arbitrary designation of wages when in fact the employee did not report to work and earned no wages whatsoever during the time of his work-related disability.

Under the Commission's interpretation, former employees are punished for suffering work-related injuries by using their reduced income periods to calculate unemployment awards. Rather, the legislature intended that workers' compensation recipients be awarded an unemployment award based on their regular, pre-injury wages. KRS 341.090(3). Additionally, all statutes must be liberally construed to effectuate the intent of the legislature. *Vance v. Kentucky Unemployment Ins. Com'n*, 814 S.W.2d 284, 286 (Ky.App. 1991). Here, the legislature enacted these statutes to protect employees who become unemployed through no fault of their own. *Id.* When *Vance* is read in conjunction with *Kentucky Associated General Contractors Self-Insurance Fund v. Tri State Crane Rental, Inc.*, 240 S.W.3d 644, 650 (Ky.App. 2007), which provides that Kentucky's Workers' Compensation Act must be construed to protect the interests of injured workers, it is exceedingly clear that the legislature did not intend to penalize injured employees as the Commission seeks to do.

Therefore, the trial court properly ruled that Hamilton's extended base period constitutes the first four quarters where Hamilton earned regular wages before his income was reduced due to his work-related injury.

Based on the foregoing reasons, the Fayette Circuit Court's order reversing the Unemployment Insurance Commission's decision is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE:

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