

1. The claimant provided services to Residential Real Estate Review beginning in October 2010 and ongoing through the present with compensation set at \$50.00 per order.
2. Residential Real Estate Review considers the claimant to be an independent contractor.

Referee's Decision, February 18, 2011, (Decision), Findings of Fact Nos. 1-2 at 1.

The referee determined:

Because the employer [Residential] did not appear and participate in the hearing, the employer has not met its burden of demonstrating that the claimant was an independent contractor. However, the claim week at issue before the Referee is September 25, 2010. Upon the review of the documents of record, it appears that the claimant agreed to render services to Residential Real Estate review [sic] no earlier than October 23, 2010 and perhaps as late as November 6, 2010. Because the Referee can rule only on the claim week at issue, the Referee cannot make a determination regarding the later week that claimant either agreed to or actually did render services to Residential Real Estate Review. Accordingly, the Department will need to ascertain the actual week that the claimant agreed to or did provide services to Residential Real Estate Review and to render its determination with respect to that week.

Decision at 2.

Residential appealed to the Board and also requested that the case be remanded for additional testimony.

The Board affirmed:

Because the employer [Residential] failed to appear at the hearing, the Board cannot and has not considered any

evidence the employer [Residential] attempted to submit with its appeal. Further, as noted by the Referee, the claimant did not begin employment with the employer [Residential] until a month after the week at issue, and he ordered the Department to issue a new determination for subsequent weeks. Therefore, the employer's [Residential] arguments are premature. The employer's [Residential] request that the record be remanded for additional testimony is denied as the employer [Residential] has not advanced any good cause for the granting of a remand hearing.

Board Opinion, May 10, 2011, at 1.

Residential raises the following two issues: 1) "Was the Board's conclusion that Claimant was not an independent contractor mere dicta and, therefore, not binding on any successive claim, rendering the appeal premature?" and 2) "Was the evidence made part of the record at the Referee's Hearing sufficient to establish that Claimant was an employee?" Residential's Brief at 4.³

At the hearing before the referee, Claimant testified that she did not perform the service of providing "broker pricing opinions" for Residential until the end of October 2010, or perhaps the beginning of November. Notes of Testimony, February 14, 2011, (N.T.) at 7-8; Reproduced Record (R.R.) at 46a-47a. Claimant also testified that she was laid off on September 28, 2009, by her prior employer, NRT REOExperts LLC. N.T. at 9; R.R. at 48a.

³ This Court's review in an unemployment compensation case is limited to a determination of whether constitutional rights were violated, errors of law were committed, or findings of fact were not supported by substantial evidence. Lee Hospital v. Unemployment Compensation Board of Review, 637 A.2d 695 (Pa. Cmwlth. 1994).

The referee determined that Claimant was eligible for benefits under Section 402(h) of the Law, 43 P.S. §802(h), because there was nothing in the record to support that she engaged in self-employment for the week ending on September 25, 2010. Because Claimant was not self-employed during that week, which was the only week at issue, Claimant was eligible for Emergency Unemployment Compensation benefits which stemmed from her previous employment. The referee acknowledged that Claimant could have become self-employed at some subsequent date.⁴ Therefore, he directed the Unemployment Compensation Service Center to render a determination as to Claimant's eligibility with respect to the actual week that Claimant first performed services for Residential. The Referee only had authority to rule on the week at issue without the consent of both parties. See 34 Pa.Code §101.87. Because Residential was not present at the hearing, the referee could not obtain its consent to consider other weeks.

With respect to Residential's first question, the Board determined that Claimant was not self-employed for the week ending September 25, 2010. The Board's determination is not binding on any subsequent weeks such that Residential's appeal is premature. With respect to the second question regarding whether evidence in the record at the hearing was sufficient to establish whether Claimant was an employee, this Court need not address this question because the only order before this Court states that Claimant was not ineligible for benefits due

⁴ This Court has established that it is important to determine the point at which self-employment begins. See Logut v. Unemployment Compensation Board of Review, 411 A.2d 881 (Pa. Cmwlth. 1980).

to self-employment for the week ending September 25, 2010, and Claimant performed no services for Residential either as an independent contractor or as an employee during that week.

Accordingly, this Court affirms.

BERNARD L. McGINLEY, Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Residential Real	:	
Estate Review, Inc.,	:	
	:	Petitioner
	:	
v.	:	
	:	
Unemployment Compensation	:	
Board of Review,	:	No. 1034 C.D. 2011
	:	Respondent

ORDER

AND NOW, this 20th day of December, 2011, the order of the Unemployment Compensation Board of Review in the above-captioned matter is affirmed.

BERNARD L. MCGINLEY, Judge