IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Talibah Safiyah Abdul Haqq, Petitioner	:	
v.	:	
Unemployment Compensation Board of Review, Respondent	:	No. 1276 C.D. 2010
	:	Submitted: December 30, 2010

BEFORE: HONORABLE BONNIE BRIGANCE LEADBETTER, President Judge
HONORABLE DAN PELLEGRINI, Judge
HONORABLE ROCHELLE S. FRIEDMAN, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE PELLEGRINI Filed: January 26, 2011

Talibah Safiyah Abdul Haqq (Claimant) petitions for review of the order of the Unemployment Compensation Board of Review (Board) affirming the decision of the Unemployment Compensation Referee (Referee) finding Claimant eligible for benefits with a weekly benefit rate of $110 because the seasonal bonus and training remuneration she received constitute wages under Section 4 of the Unemployment Compensation Law[1] (Law). Finding no error in the Board's decision, we affirm.

Claimant was employed as a seasonal tax preparer with Jackson Hewitt (Employer) from November, 2008, until approximately April 16, 2009. When the

[1] Act of December 5, 1936, Second Ex. Sess., P.L. (1937) 2897, *as amended*, 43 P.S. §753. Subsection (x) provides that the term wages "means all remuneration . . . paid by an employer to an individual with respect to his employment." 43 P.S. §753(x).

regular tax season was over and Claimant's employment ended, she filed an unemployment compensation claim. The Philadelphia Unemployment Compensation Service Center (Service Center) determined that Claimant was financially eligible for benefits based upon the wages she was paid during her base year. The Service Center included Claimant's bonus and training pay in her total wages in making this determination, and calculated Claimant's weekly benefit rate to be $110. Claimant appealed this determination arguing that the Service Center improperly included as wages a bonus she received, which she claimed was, in fact, profit sharing and did not qualify as wages. She also argued the Service Center improperly included in her wages money she received for hours spent in training because the training was not the usual and customary work she performed for Employer. According to Claimant, once the bonus and training pay were removed from the calculations, her total base-year wages were insufficient to determine financial eligibility and she should instead receive benefits based upon a prior unemployment claim.

Before the Referee, Claimant testified[2] that she was typically paid an hourly wage plus commission on sales she personally made to her clients for insurance on their tax refunds. According to Claimant, these are the only payments which should be considered wages for the purpose of calculating her unemployment eligibility and benefits. Claimant asserted that the training she engaged in was not in the course of her normal employment and not at the normal location from which she worked for Employer. She was simply sitting in a classroom, rather than performing her normal work activities such as preparing tax returns or providing customer service. Claimant also testified that the bonus she received from Employer was actually part of Employer's profit sharing scheme, not regular wages. Claimant

[2] Employer was not present at the hearing.

stated that she did not know how Employer calculated the profit sharing, but she insisted that it was not directly correlated to the work she performed. However, she supplied a letter to the Service Center and Referee from Employer which outlined how her bonus was calculated. According to this letter, Claimant had $38,939.25 in paid returns. Given this volume of paid returns and Claimant's bonus percentage of 2.5%, Employer calculated that Claimant earned a bonus of $973.48.

The Referee agreed with the Service Center's determination that Claimant's training wages and bonus should count toward her total base year wages.[3] The Referee stated there was "no palatable excuse" for considering the remuneration Claimant received for the hours Employer spent training her as anything other than wages. Also, the season end bonus Claimant received was clearly contingent upon the volume of returns she performed. Because the bonus was contingent upon the labor Claimant performed for Employer, it was properly considered as wages. The Referee applied Claimant's entire bonus to her wages for the second quarter of 2009 when she actually received the seasonal bonus, and found that she earned the following wages during her base year: $0 for the third quarter of 2008; $697 for the fourth quarter of 2008; $2,704 for the first quarter of 2009; and $1,848 for the second quarter of 2009. Based upon these wages, the Referee affirmed the Service Center's determination that Claimant was financially eligible for benefits with a weekly benefit rate of $110. Claimant appealed to the Board, which affirmed the Referee's decision. This appeal followed.[4]

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[3] The Referee also found that Claimant filed a timely appeal. Because Employer did not appeal this finding, the issue is not before the Court and will not be addressed further.

[4] Our scope of review of the Board's decision is limited to determining whether an error of law was committed, constitutional rights have been violated, and whether the necessary findings of

(Footnote continued on next page…)

On appeal, Claimant raises the same arguments she did before the Referee as outlined above, and claims that the Board erred in finding that the bonus and training remuneration she received from Employer constituted wages under the Law. According to Claimant, these payments were gratuities and were not based upon the actual work she performed as a tax preparer. We disagree.

The Law provides that the term wages "means all remuneration . . . paid by an employer to an individual with respect to his employment." 43 P.S. §753(x). While the Law does not define the term "remuneration," our courts utilize the standard judicial definition of "payment for services performed." *Beistle Co. v. Unemployment Compensation Board of Review*, 457 A.2d 1029, 1030-31 (Pa. Cmwlth. 1983) (quoting *Hock v. Unemployment Compensation Board of Review*, 413 A.2d 444, 446-67 (Pa. Cmwlth. 1980)). It is clear that both the training wages and bonus Claimant received were part of her payment for services rendered to Employer.

Claimant was required by Employer to attend the training for which she received payment, and this training was conducted in the normal course of Employer's business. Claimant's argument that merely sitting in a classroom for training does not fall within the normal course of her employment is unavailing as almost all employers require their employees to attend training in order to learn to perform their duties. The fact that the training took place at a different location does not affect our analysis. The letter Claimant received from Employer outlining how

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(continued…)

fact are supported by substantial evidence. *Thomas Edison State College v. Unemployment Compensation Board of Review*, 980 A.2d 736, 741 n.3 (Pa. Cmwlth. 2009).

her bonus was calculated clearly shows that the bonus was contingent upon the volume of work she performed and the value of the paid returns she prepared. The letter states that she earned a bonus of 2.5% on $38,939.25, Claimant's total volume of paid returns, which resulted in a bonus of exactly $973.48. Regardless of whether we label this payment as a bonus or profit sharing, it still constitutes payment for services Claimant performed for Employer and constitutes wages. *See Carpenter Technology Corp. v. Workers' Compensation Appeal Board*[5]*(Santoro)*, 751 A.2d 710 (Pa. Cmwlth. 2000). Because Claimant's bonus was directly correlated to her work of preparing tax returns for Employer, it was paid "with respect to [her] employment" and, therefore, falls under the definition of wages as provided by the Law.

Because the Board properly calculated Claimant's total base-year wages, we affirm.

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DAN PELLEGRINI, JUDGE

[5] Claimant also argues that the Board erred in attributing the entire seasonal bonus to her wages for the second quarter of 2009, when the bonus does not necessarily reflect payment for work that was performed during that quarter. However, Claimant, did not raise this issue below and, therefore, it is waived. *Watkins v. Unemployment Compensation Board of Review*, 751 A.2d 1224 (Pa. Cmwlth. 2000).

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Unemployment Compensation	:	
Board of Review,	:	
Respondent	:	No. 1276 C.D. 2010

O R D E R

AND NOW, this 26th day of January, 2011, the order of the Unemployment Compensation Board of Review, dated May 25, 2010, is affirmed.

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DAN PELLEGRINI, JUDGE