

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Thurston Mills, :  
Petitioner :  
v. : No. 2596 C.D. 2010  
Unemployment Compensation : Submitted: April 15, 2011  
Board of Review, :  
Respondent :

BEFORE: HONORABLE BERNARD L. MCGINLEY, Judge  
HONORABLE MARY HANNAH LEAVITT, Judge  
HONORABLE JAMES R. KELLEY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION  
BY JUDGE LEAVITT

FILED: July 15, 2011

Thurston Mills (Claimant) petitions this Court, *pro se*, for review of an adjudication of the Unemployment Compensation Board of Review (Board) holding that the weekly compensation benefit owed to Claimant should be offset by an amount equal to half of his weekly pension. In doing so, the Board affirmed the Referee's determination to permit an offset under Section 404(d)(2) of the Unemployment Compensation Law (Law), 43 P.S. §804(d)(2).<sup>1</sup> Because we conclude that Claimant's unemployment compensation benefit should be offset by his retirement income, we affirm.

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<sup>1</sup> Act of December 5, 1936, Second Ex. Sess., P.L. (1937) 2897, *as amended*, 43 P.S. §804(d)(2). The text of Section 404(d)(2) is set forth *infra*.

After working for General Electric (Employer) for thirty-seven years, Claimant separated from employment on December 1, 2009. Claimant filed an application for unemployment benefits on April 11, 2010. The Erie UC Service Center issued a Notice of Determination that Claimant was eligible for a weekly benefit of \$114, after a reduction of \$450 per week for a retirement pension Claimant was receiving from Employer. Claimant appealed and a hearing was held by the Referee. Employer did not participate in the hearing.

The Referee determined that Claimant was eligible for \$564 per week in unemployment compensation benefits. The Referee further determined that Claimant was receiving a retirement pension from Employer in the amount of \$3,989.59 per month, and that Claimant had contributed to the pension plan during his employment. Additionally, Claimant's base-year earnings affected his eligibility for or increased the amount of his pension. Based upon the foregoing findings, the Referee held that Claimant's unemployment benefit was subject to the offset provision in Section 404(d)(2) of the Law, 43 P.S. §804(d)(2), and subtracted 50 percent of Claimant's pro-rated weekly pension amount from his original weekly benefit rate. This resulted in a revised weekly benefit rate of \$114, which was the same amount determined by the UC Service Center. Accordingly, the Referee affirmed the UC Service Center's determination.

Claimant appealed the Referee's decision and requested that the record be remanded for additional testimony. The Board adopted the Referee's findings and conclusions, affirmed her decision and denied Claimant's request for a remand hearing. Claimant now petitions for this Court's review.

On appeal,<sup>2</sup> Claimant argues that the Referee and the Board erred in applying the offset provision of Section 404(d)(2) of the Law to his original weekly unemployment benefit of \$564 because he won a prior appeal involving Section 404. Additionally, Claimant contends that the Referee and the Board erred in reaching a decision without Employer's input.<sup>3</sup>

We will address Claimant's second argument first. Regulations of the Department of Labor and Industry permit a Referee to hold an unemployment hearing and issue a decision in the absence of a party, provided that the absent party was notified of the date, hour, and place of the hearing and failed to attend without proper cause. 34 Pa. Code §101.51; *Kelly v. Unemployment Compensation Board of Review*, 747 A.2d 436, 439 (Pa. Cmwlth. 2000). Employer received notice of the hearing and was instructed to give the Referee's office a phone number where Employer could be reached to participate in the hearing. Employer was located more than fifty miles from the Referee's office. However, Employer failed to do so, forcing the Referee to conduct the hearing without Employer's participation. Therefore, the Referee did not err in issuing a decision and an order even though Employer failed to appear before the Referee to testify.

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<sup>2</sup> Our scope of review is limited to determining whether findings of fact are supported by substantial evidence, whether an error of law was committed, or whether any constitutional rights have been violated. Section 704 of the Administrative Agency Law, 2 Pa.C.S. §704; *Smithley v. Unemployment Compensation Board of Review*, 8 A.3d 1027, 1029 n. 5 (Pa. Cmwlth. 2010) (citing *Roberts v. Unemployment Compensation Board of Review*, 977 A.2d 12, 16 n. 2 (Pa. Cmwlth. 2009)).

<sup>3</sup> The Board asks us to quash Claimant's brief for failure to comply with the Pennsylvania Rules of Appellate Procedure. While Claimant's brief may be technically deficient under the appellate rules, we decline to quash the brief and dismiss his appeal because he is proceeding *pro se* and we are able to discern the legal issues raised. This Court is generally inclined to construe *pro se* filings liberally. *Smithley*, 8 A.3d at 1029 n. 6 (citing *Robinson v. Schellenberg*, 729 A.2d 122, 124 (Pa. Cmwlth. 1999)).

We now turn to Claimant's argument contesting the application of the Law's pension offset to his unemployment compensation benefits.<sup>4</sup> Section 404(d)(1) of the Law, which governs the rate and amount of unemployment compensation available to an individual, provides:

[E]ach eligible employee who is unemployed with respect to any week ending subsequent to July 1, 1980 shall be paid, with respect to such week, compensation in an amount equal to his weekly benefit rate.

43 P.S. §804(d)(1). Section 404(d)(2)(i) and (ii) of the Law contains the offset provision at issue; it states:

- (i) [F]or any week with respect to which an individual is receiving a pension, including a governmental or other pension, retirement or retired pay, annuity or any other similar periodic payment, under a plan maintained or contributed to by a base period or chargeable employer, *the weekly benefit amount payable to such individual for such week shall be reduced, but not below zero, by the pro-rated weekly amount of the pension as determined under subclause (ii).*
- (ii) *[I]f the pension is contributed to by the individual, in any amount, then fifty per centum (50%) of the pro-rated weekly amount of the pension shall be deducted.*

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<sup>4</sup> Claimant alleges that he prevailed on the offset issue in a prior "appeal" to the Pennsylvania Supreme Court. It appears Claimant is referring to a separate unemployment compensation claim against Employer that was pending before this Court when Claimant filed the instant appeal. In that case, the Referee dismissed as untimely Claimant's appeal of the UC Service Center's determination; the Board and this Court affirmed. *Mills v. Unemployment Compensation Board of Review*, (Pa. Cmwlth., No. 1067 C.D. 2010, filed April 4, 2011). Claimant's issues in that appeal are not of record since neither the Board nor this Court reached the merits. No appeal to the Supreme Court was filed.

43 P.S. §804(d)(2)(i) and (ii) (emphasis added). This Court has recognized that the pension offset serves two legitimate government objectives: promoting the unemployment compensation fund's fiscal integrity and eliminating duplicative "windfall" benefits to those receiving adequate wage replacement income from other sources. *General Motors Corp. v. Unemployment Compensation Board of Review*, 948 A.2d 256, 260 (Pa. Cmwlth.), *petition for allowance of appeal denied*, 599 Pa. 712, 962 A.2d 1198 (2008); *McFadden v. Unemployment Compensation Board of Review*, 806 A.2d 955, 961 (Pa. Cmwlth. 2002).

It is clear that the pension offset provision in Section 404(d)(2) of the Law applies to Claimant's unemployment compensation benefits. Claimant receives a pension from Employer to which he contributed, and his base-year earnings affected his eligibility for or increased the amount of his pension. Thus, Section 404(d)(2) of the Law requires 50 percent of the pro-rated weekly amount of the pension to be deducted from Claimant's weekly unemployment compensation benefit amount. The Referee and the Board properly applied the offset provision in Section 404(d)(2).

Claimant's brief expresses confusion as to the amount of the offset and why his weekly unemployment compensation benefit rate has been reduced from \$564 to \$114. Claimant's confusion is attributable to his misreading of Section 404(d)(2), which requires that his weekly benefit be reduced by *fifty percent of the pro-rated weekly amount of his pension*. 43 P.S. §804(d)(2). Presumably, Claimant believes the offset should be 50 percent of his weekly unemployment benefit. A straightforward application of Section 404(d)(2) shows the Department's calculations are correct; Claimant receives a pension of \$3,898.59 per month from Employer. Subtracting 50 percent of his pro-rated

weekly pension amount, \$450, results in a reduction of his weekly unemployment compensation benefit amount from \$564 to \$114.

For all of the foregoing reasons, we affirm the Board's order.

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MARY HANNAH LEAVITT, Judge

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Unemployment Compensation	:	
Board of Review,	:	
	:	
Respondent	:	

**ORDER**

AND NOW, this 15<sup>th</sup> day of July, 2011, the order of the Unemployment Compensation Board of Review dated November 15, 2010, in the above-captioned matter is hereby AFFIRMED.

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MARY HANNAH LEAVITT, Judge