

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Cheryl Schell, :  
 :  
 Petitioner :  
 :  
 :  
 v. : No. 2793 C.D. 2010  
 : Submitted: May 6, 2011  
 :  
 Unemployment Compensation :  
 Board of Review, :  
 :  
 Respondent :

BEFORE: HONORABLE BONNIE BRIGANCE LEADBETTER, President Judge  
HONORABLE P. KEVIN BROBSON, Judge  
HONORABLE ROCHELLE S. FRIEDMAN, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION  
BY SENIOR JUDGE FRIEDMAN

FILED: June 10, 2011

Cheryl Schell (Claimant) petitions for review of the November 24, 2010, order of the Unemployment Compensation Board of Review (UCBR), which affirmed the referee's determination that Claimant is not financially eligible for unemployment compensation (UC) benefits. We affirm.

Claimant is a citizen of the Commonwealth of Pennsylvania who, since 2006, worked for Farmer's Insurance (Employer) in the state of Delaware. When Claimant was laid off in July 2010, Claimant applied for UC benefits in Pennsylvania. For purposes of determining financial eligibility, Claimant's base year consisted of the second, third and fourth quarters of 2009 and the first quarter of 2010. However, during that base year period, Claimant had no earnings except the

earnings she had while working in Delaware. Thus, the UC service center denied Claimant's application for benefits.

Claimant appealed the denial, and the matter was assigned to a referee. At the hearing before the referee, Claimant testified that she did not apply for benefits in Delaware because: (1) Claimant received severance pay, and she would not be eligible for benefits in Delaware until her severance pay ended, (N.T., 9/28/10, at 3); and (2) the maximum UC benefit in Delaware is \$330 per week, which would not cover her mortgage, (*id.* at 5). Claimant also testified that: (1) one of her Delaware co-workers, who worked in both Pennsylvania and Delaware, was able to obtain UC benefits in Pennsylvania,<sup>1</sup> (*id.* at 4, 7); and (2) one of her Delaware co-workers, who presented her W-2 and/or pay stub to UC authorities, was able to obtain UC benefits in Pennsylvania,<sup>2</sup> (*id.*).

After considering the matter, the referee determined that Claimant was not financially eligible for UC benefits under section 404 of the Unemployment

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<sup>1</sup> We note that Claimant is not similarly situated with this co-worker because Claimant did not perform work in Pennsylvania.

<sup>2</sup> Claimant did not testify as to whether the W-2 and/or pay stub contained information that qualified the co-worker for UC benefits. However, the UCBR states that, if Claimant had offered her W-2 as evidence at the hearing, it would have shown where Employer reported Claimant's wages. (UCBR's Brief at 6.) Moreover, the Notice of Financial Determination sent to Claimant advises Claimant to submit her W-2 to UC authorities if Claimant believes that the determination is incorrect. (C.R., Item No. 2.)

Compensation Law (Law).<sup>3</sup> Claimant appealed to the UCBR, which affirmed. Claimant now petitions this court for review.<sup>4</sup>

Claimant argues that section 404 of the Law does not specifically exclude the wages that Claimant earned in Delaware from qualifying wages. This is true. However, section 4(l)(2)(B) of the Law states that services performed outside the Commonwealth of Pennsylvania “shall not be . . . ‘Employment’ if contributions are required and paid [by the employer] with respect to such services under an unemployment compensation law of any other state.” 43 P.S. §753(l)(2)(B). Section 4(j)(5) of the Law provides, in part:

An employer . . . may elect to include within the term “employment,” . . . services performed by . . . employes with respect to which no contributions are required and paid under an unemployment compensation law of any other state, (a) if the employe or employes, included in such election, maintain a domicile within this Commonwealth and the services of such employe or employes, are performed entirely without this Commonwealth . . . .

43 P.S. §753(j)(5).

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<sup>3</sup> Act of December 5, 1936, Second Ex. Sess., P.L. (1937) 2897, *as amended*, 43 P.S. §804. Section 404 of the Law contains a table setting forth the rate of compensation for various levels of qualifying wages.

<sup>4</sup> Our scope of review is limited to determining whether constitutional rights were violated, whether the adjudication is in accordance with the law and whether the necessary findings of fact are supported by substantial evidence. Section 704 of the Administrative Agency Law, 2 Pa. C.S. §704.

Here, Claimant had the burden of proving that she was financially eligible for UC benefits. *Jackson v. Unemployment Compensation Board of Review*, 933 A.2d 155, 157 (Pa. Cmwlth. 2007). Because Claimant was domiciled in Pennsylvania but performed services for Employer only in Delaware, Claimant had to prove that Employer: (1) did not pay UC contributions in Delaware; and (2) elected to include Claimant’s services within the term “employment.” Claimant failed to meet that burden.<sup>5</sup>

Accordingly, we affirm.

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ROCHELLE S. FRIEDMAN, Senior Judge

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<sup>5</sup> In her brief, Claimant asserts that she sent an e-mail and certified letter to Employer seeking documentation that Employer elected to include Claimant’s services as “employment” under section 4(j)(5) of the Law, but she did not receive a response. (Claimant’s Brief at 10-11.)

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Unemployment Compensation	:	
Board of Review,	:	
	:	
Respondent	:	

ORDER

AND NOW, this 10th day of June, 2011, the order of the Unemployment Compensation Board of Review, dated November 24, 2010, is hereby affirmed.

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ROCHELLE S. FRIEDMAN, Senior Judge