STATE OF MINNESOTA
IN COURT OF APPEALS
A12-0253

Michael D. Rott,
Relator,

vs.

TCR Engineered Components, LLC.,
Respondent,

Department of Employment and Economic Development,
Respondent.

Filed October 22, 2012
Affirmed
Connolly, Judge

Department of Employment and Economic Development
File No. 28684380-4

Michael D. Rott, Elk River, Minnesota (pro se relator)

TCR Engineered Components, LLC, Minneapolis, Minnesota (respondent)

Lee B. Nelson, Minnesota Department of Employment and Economic Development, St. Paul, Minnesota (for respondent department)

Considered and decided by Connolly, Presiding Judge; Stoneburner, Judge; and Harten, Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, §10.

U N P U B L I S H E D O P I N I O N

CONNOLLY, Judge

Relator challenges the decision of the unemployment-law judge (ULJ) that the severance payments relator received from his former employer made relator ineligible for unemployment benefits during the weeks he received the payments and the ULJ's refusal to schedule an additional evidentiary hearing after relator presented new evidence. Because we see no error in the ULJ's decision on relator's ineligibility and no likelihood that the new evidence would have changed the outcome of the case, we affirm.

FACTS

In December 2000, relator Michael Rott began working for respondent TCR Engineered Components (TCR). In 2003, he invested $88,000 in TCR: $78,000 in Class A units and $10,000 in Class B units. June 14, 2011, was relator's last day of work for TCR; he was then its CEO/President with an annual salary of $217,000. Later in June, relator applied for unemployment benefits. He established an account with a weekly benefit of $578.

Early in July, relator and TCR executed a separation agreement. It provided that: (1) TCR would make a severance payment of 26 weeks of salary ($108,500) in twice-monthly installments from July 15, 2011, to December 31, 2011; (2) TCR would purchase for $1 relator's Class A units and relator would forfeit his Class B units; and (3) relator "expressly agree[d] and acknowledge[d] that the Separation Payment [was] not otherwise due or owing to [him] under any agreement . . . or policy . . . ."

In October 2011, TCR reported to respondent Minnesota Department of Employment and Economic Development (DEED) that relator was receiving a "severance" payment of $108,500 between July 15 and December 31. DEED asked relator to "[g]ive the date(s) that [he] received or will receive severance pay"; relator answered "none" and said the total gross amount of his payment was "$0.00". DEED then determined that, from June 12 to December 17, 2011, relator received or would receive a total of $108,500 from TCR, he was ineligible for benefits during this period, and the $9,826 he had already received was an overpayment.

Relator appealed, arguing that the payments from TCR were not severance pay but "a return of [his 2003] investment." Following a telephone hearing, the ULJ issued a decision that, because relator's payments from TCR exceeded his weekly benefit amount, he was ineligible for benefits and had been overpaid $9,826.

Relator requested reconsideration and presented new evidence. The ULJ declined to hold an evidentiary hearing on the new evidence and affirmed the prior decision.

On certiorari appeal, relator challenges the ULJ's determination that relator's payments from TCR made him ineligible to receive unemployment benefits and argues that the ULJ erred in failing to hold an evidentiary hearing on relator's new evidence.

D E C I S I O N

1. Severance Payments

"'Wages' means . . . severance payments . . . ." Minn. Stat. § 268.035, subd. 29(a) (2010).

> An applicant is not eligible to receive unemployment benefits for any week with respect to which the applicant is receiving, has received, or has filed for payment, equal to or in excess of the applicant's weekly unemployment benefit amount, in the form of:
>
> . . . .
>
> (2) severance pay . . . paid by an employer because of, upon, or after separation from employment, but only if the payment is considered wages at the time of payment under section 268.035, subd. 29.

Minn. Stat. § 268.085, subd. 3(a) (2010). The ULJ concluded that, as a matter of law, relator was not entitled to unemployment benefits during the six months when he was receiving severance payments from TCR. "An appellate court will exercise its own independent judgment in analyzing whether an applicant is entitled to unemployment benefits as a matter of law." *Irvine v. St. John's Lutheran Church*, 779 N.W.2d 101, 103 (Minn. App. 2010).

The separation agreement between relator and TCR provided that "[TCR] shall make a severance payment to [relator] equivalent to twenty-six (26) weeks of salary at his final rate of pay of $217,000 for a total payment to [him] of $108,500 (less applicable withholding and deductions) (the 'Separation Payment')." Thus, relator received the equivalent of $4,173 per week for 26 weeks.[1]

For 17 of those 26 weeks, he also received $578 in unemployment benefits, a total of $9,826.[2] Because relator was receiving payment "equal to or in excess of [his] weekly unemployment benefit amount, in the form of . . . severance pay," he was not eligible for his unemployment benefit during those weeks. Minn. Stat. § 268.085, subd. 3(a).

[1] 26 x $4,173 = $108,498.
[2] 17 x $578 = $9,826.

Relator argues that the ULJ erred in relying on the separation agreement and concluding that TCR's payments were "wages" within the meaning of Minn. Stat. § 268.085, subd. 3, because they "were a return of a prior investment in [TCR] . . . ." But the separation agreement was the document governing both the payments TCR made to relator and the termination of relator's equity in TCR. The 26 payments were clearly described as a severance payment; their amount was established by relator's annual salary, not by the amount of his investment.

The separation agreement also provided that, as a condition to the severance payment, relator would sell his Class A units of stock for $1 and would forfeit his Class B units. By stating that the $1 sale and the forfeiture were conditions precedent to the severance payment, the settlement agreement precluded relator's interpretation that the severance payment was actually payment for his stock: the settlement agreement could not mean that TCR would pay relator both $1 and $108,500 for the same non-forfeited stock.

At the telephone hearing, TCR was represented by its CFO, who was questioned by the ULJ.

> [ULJ]: It looks like based on that [separation] agreement there was a separation payment made to [relator] of $108,500. Is that correct?
> [CFO]: It hasn't been completely made yet. . . . [W]e have made 23 payments to date.
> [ULJ]: All right. And it looks like that was to represent 26 weeks of pay.
> [CFO]: Yes.
> . . . .
> [ULJ]: And is $108,500 the gross amount?
> [CFO]: Yes.

> . . . .
> [ULJ]: All right. And this $108,500 is that something that you are reporting to [DEED] as payments made to [relator]?
> [CFO]: Yes.

When the ULJ asked relator what he considered the severance payment to be, relator replied:

> [T]he $78,000 [that he had invested in 2003] over eight years . . . at eight percent would have been worth $150,000. We couldn't agree to eight percent. What we kind of imputed and agreed to [was] that it would be worth four percent, which is right around $108,000. And since that was money that came from a 401K and it was pre-taxed it was going to have to be taxed. So I think for two reason[s], one being simplicity, we kind of said, let's do it as six months' salary, we'll run it through the payroll system, taxes and withholdings will be held back. And two, I don't think [TCR felt it was] in a position to pay it out in a lump sum financially at that point, so we ran it through the . . . payroll system.

The ULJ also questioned relator:

> [ULJ]: . . . [A]ccording to that agreement . . . the parties agreed to consider it separation pay, correct?
> [Relator] . . . [A]bsolutely. That is exactly what it says . . .
> [ULJ]: . . . [I]t was characterized as a separation payment under paragraph 2 [of the settlement agreement], correct?
> [Relator]: Yes, it is.

When asked if he wanted to explain anything else about the payment, relator said, "[Y]ou kind of had to be . . . in on the discussions of this negotiation to know the spirit of what this, this $108,000 is. It's not, it wasn't intended to be separation pay. It was intended to re-pay me for my investment . . . [using] the payroll system."

In his closing statement, the CFO said, "[W]e followed the . . . separation agreement and then ran the payments through payroll. . . ." Relator, in his closing

statement, said, "To me, it was my money and they [were] just giving it back to me. So, I didn't . . . interpret that as severance pay." He added, "And further, the spirit of all of the conversations again, unfortunately [the chairman of TCR who negotiated and signed relator's settlement agreement] is not present to attest, but that was kind of the way we came at it."[3]

The ULJ noted that, "While [relator] may have intended this payment to reimburse him for his investment, a preponderance of evidence [i.e., the settlement agreement itself and the testimony of TCR's CFO] shows that it was negotiated and agreed to be paid out as a severance payment through [TCR's] payroll." We see no error in the ULJ's conclusion that relator was ineligible for his weekly $578 unemployment benefit while receiving his weekly $4,173 severance payment.

2. Evidentiary Hearing

With his request for reconsideration, relator submitted new evidence consisting of seven documents dated March 27, 2003; April 1, 2003; February 15, 2007; April 5, 2007; July 1, 2011; and October 2011. All of these documents could have been submitted prior to the November 14, 2011, hearing. "In deciding a request for reconsideration, the [ULJ] must not, except for purposes of determining whether to order an additional evidentiary hearing, consider any evidence that was not submitted at the evidentiary hearing . . . ." Minn. Stat. § 268.105, subd. 2(c) (2010). A ULJ must order an additional evidentiary

[3] In his brief, relator argues that he "voiced his concern" at the absence of the TCR chairman from the telephone hearing. But this was at the end of his closing statement. Relator did not ask to have the TCR chairman present as a witness or say that his testimony was essential either before the hearing or earlier during the hearing.

hearing if the new evidence "would likely change the outcome of the decision and there was good cause for not having previously submitted that evidence." *Id.*

Here, the ULJ found that:

> [Relator] did not show good cause for failing to submit the evidence earlier, and it would not likely change the outcome . . . . [Relator] is submitting the additional evidence to support the argument that he already made in the hearing, that his separation pay was meant to reimburse him for investments he made in the company in 2003. . . . The new information . . . would not likely change the outcome of the decision.

Because the settlement agreement on which the payment of six months' salary was based clearly identified the payment as a severance or separation payment and the CFO's testimony also indicated that TCR considered it a severance or separation payment, relator's untimely evidence supporting his argument that it was not a severance or separation payment would not have been convincing. Nor did relator offer any reason why he had not submitted this evidence earlier.

Absent both a showing of good cause for the failure to timely submit the new evidence and any likelihood that the new evidence would have changed the outcome, the ULJ had no basis for ordering another evidentiary hearing. *See* Minn. Stat. § 268.105, subd. 2(c).

Affirmed.