

workers' compensation disability she collected until June 2009 constituted "wages," entitling her to unemployment compensation under the Workers' Compensation Act.² Because she was not entitled to the disability compensation she received, her position lacks merit. We affirm the Board.

The facts are as follows. Claimant was employed as a check merchandiser by JC Penney (Employer) from August 4, 2005 until January 11, 2007. On March 24, 2006, Claimant sustained a work-related injury and began receiving workers' compensation benefits. Claimant returned to work on modified duty on August 6, 2006, and worked until January 11, 2007, when she again stopped working because of the injury. Claimant continued to receive workers' compensation throughout this time period. Employer terminated Claimant's employment on January 19, 2008, under a policy that employees be terminated if they are absent for more than one year.

On June 9, 2009, a Worker's Compensation Judge (WCJ) issued a decision terminating Claimant's workers' compensation benefits as of April 10, 2008, the date on which Claimant was found to be fully recovered from her work injury.³

On July 3, 2009, Claimant filed an application for unemployment benefits, using the period January 1, 2008, through December 31, 2008, as the "base year" for purposes of Section 401(a) of the Law. The UC Service Center found that

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in one or more quarters, other than the highest quarter in such employe's base year.

43 P.S. §801(a) (emphasis added).

² Act of June 2, 1915, P.L. 736, *as amended*, 77 P.S. §§1-1041.4, 2501-2708.

³ The Referee mistakenly found that the date of termination was April 10, 2009. However, both Claimant and the Board agree that the correct date is April 10, 2008. This typographical error does not affect the disposition of this case.

Claimant had not received any wages for most of the second quarter of the base year, 2008, after her compensation disability was terminated, and no wages in the third and fourth quarter. Although the Workers' Compensation Act allows an employee on workers' compensation to use another base year, this approach was rejected because Claimant's workers' compensation benefits were terminated as of April 10, 2008. The Referee affirmed the UC Service Center, and the Board affirmed the Referee. Claimant now petitions for this Court's review.

On appeal,⁴ Claimant argues that she is entitled to unemployment compensation benefits under Section 204(b) of the Workers' Compensation Act, 77 P.S. §71(b), because she received workers' compensation benefits throughout the base year in question, *i.e.*, 2008, while the termination petition was pending with the WCJ. Claimant argues that any financial ineligibility is solely due to a work-related injury.

To be eligible for unemployment compensation, an employee must have been paid a sufficient amount of wages during the base year. *See* Section 401(a) of the Law, 43 P.S. §801(a).⁵ However, Section 204(b) of the Workers' Compensation Act, allows employees to "move" their base year if their wages have been adversely affected by a compensable injury. Section 204(b) states as follows:

⁴ This Court's scope of review in an unemployment compensation case is limited to determining whether constitutional rights were violated, whether an error of law has been committed, or whether necessary findings of fact are supported by substantial evidence. *Roberts v. Unemployment Compensation Board of Review*, 977 A.2d 12, 16 n.2 (Pa. Cmwlth. 2009).

⁵ The "sufficient" amount of wages is calculated according to Section 404(c) of the Law, 43 P.S. §804(c). The base year is defined as the first four of the last five completed calendar quarters immediately preceding the first date of an individual's benefit year. Section 4(a) of the Law, 43 P.S. §753(a). Here, Claimant was seeking benefits in 2009, making 2008 the base year.

[A]ny employe who does not meet the monetary and credit week requirements under Section 401(a) of [the Law] *due to a work-related injury compensable under this act* may elect to have his base year consist of the four complete calendar quarters immediately preceding the date of the work-related injury.

77 P.S. §71(b) (emphasis added). Claimant asserts that her lack of wages in 2008 was the result of her compensable injury and, thus, she should be allowed to move her base year to the four quarters preceding her March 2006 work injury.

In *Richards v. Unemployment Compensation Board of Review*, 564 Pa. 375, 384, 768 A.2d 852, 857 (2001), our Supreme Court clarified the meaning of a “compensable work-related injury” for purposes of Section 204(b) of the Act. In that case, the WCJ terminated the claimant’s workers’ compensation benefits as of November 21, 1995, finding that the claimant had fully recovered as of that date. During the appeal of that determination, the claimant applied for unemployment compensation, using a base year from April 1, 1996, to March 31, 1997. The claimant was denied benefits by the Department because he did not earn any wages during this base year. The claimant appealed this determination, asserting that under Section 204(b) of the Workers’ Compensation Act, his base year should have been November 15, 1994, to November 15, 1995, because he had received workers’ compensation up until June 4, 1997, when they were terminated by the WCJ (as of November 21, 1995).

The Court construed a “compensable” work injury, as used in Section 204(b), to mean benefits “for which a claimant is entitled ... under the substantive, as opposed to the procedural, provisions of the [Workers’ Compensation Act].” *Id.* at 383, 768 A.2d at 856. Thus, according to the Court, “a claimant’s receipt of compensation does not necessarily establish an entitlement to that compensation.” *Id.*

at 383, 768 A.2d at 857. In other words, the receipt of workers' compensation benefits is irrelevant under Section 204(b) if the claimant was not legally entitled to those benefits in the first place. In *Richards*, the claimant's workers' compensation disability was terminated on November 21, 1995; thus, he did not have a compensable injury during the April 1, 1996, to March 31, 1997, base year, *even though he had received workers' compensation until June 4, 1997*. Accordingly, the claimant was not entitled to invoke the remedy in Section 204(b) of the Workers' Compensation Act to move his base year to the period of time that pre-dated his work injury when he was earning sufficient wages.

The facts here cannot be distinguished from those in *Richards*. Claimant received workers' compensation benefits until June 2009, but she was not entitled to the compensation benefits she received after April 10, 2008, the date on which she was found to be fully recovered. As in *Richards*, Claimant did not have a *compensable injury* after April 10, 2008, for purposes of Section 204(b) of the Workers' Compensation Act.

In sum, Claimant was not entitled to use a moveable base year, and the Board correctly found that she did not earn sufficient wages during her base year to qualify for unemployment compensation under Section 401(a) of the Law. Accordingly, we affirm the Board's adjudication.

MARY HANNAH LEAVITT, Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Isolina Rivera,	:	
	:	
Petitioner	:	
	:	
v.	:	No. 200 C.D. 2010
	:	
Unemployment Compensation	:	
Board of Review,	:	
	:	
Respondent	:	

ORDER

AND NOW, this 6th day of October, 2010, the order of the Unemployment Compensation Board of Review in the above-captioned matter, dated December 28, 2009, is hereby AFFIRMED.

MARY HANNAH LEAVITT, Judge