

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Stanley J. Czeczotka, :  
Petitioner :  
 :  
v. : No. 294 C.D. 2010  
 : Submitted: September 24, 2010  
Unemployment Compensation :  
Board of Review, :  
Respondent :

BEFORE: HONORABLE DAN PELLEGRINI, Judge  
HONORABLE PATRICIA A. McCULLOUGH, Judge  
HONORABLE JOHNNY J. BUTLER, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION  
BY JUDGE PELLEGRINI

FILED: October 21, 2010

Stanley J. Czeczotka (Claimant) appeals *pro se* from an order of the Unemployment Compensation Board of Review affirming the decision of the Referee finding that he was not entitled to unemployment compensation benefits pursuant to Section 402(h) of the Unemployment Compensation Law (Law)<sup>1</sup> because he was an independent contractor. For the reasons that follow, we affirm the Board's decision.

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<sup>1</sup> Act of December 5, 1936, Second Ex. Sess., P.L. (1937) 2897, *as amended*, 43 P.S. §802(h). That section provides that "an employe shall be ineligible for compensation for any week – in which he is engaged in self-employment."

On April 2, 2008, Claimant went to Vendor Surveillance Corporation (VSC). That agency specialized in finding work for professionals/contractors in the aerodynamics field and other highly technical manufacturing businesses. Claimant signed an Independent Contractor Agreement with VSC stating that he was an independent contractor.<sup>2</sup> Claimant alleged that he worked for seven months for various clients but then filed for unemployment compensation because his

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<sup>2</sup> Paragraph 2 of the Independent Contractor Agreement specified:

In the performance of the duties and obligations devolving upon Contractor under this Agreement, notwithstanding any contrary provision, it is mutually understood and agreed that Contractor and his agents and employees, if any, are at all times acting and performing their duties and functions in the capacity of independent contractors; that it is Contractor's firm which enters this agreement; and that no provision in this Agreement shall imply or create an employer-employee relationship, agency or any similar relationship between Contractor and VSC. Further, it is mutually understood and agreed that VSC shall neither have the right to nor exercise control, over the detail, manner, means or methods by which Contractor and such agents and employees use in performing their duties under this Agreement, including, but not limited to, the number and right to control the frequency of breaks, how the work is to be performed, the type of equipment or tools to use (all of which Contractor shall provide), or the working schedule or place. It is further mutually understood and agreed that VSC does not require Contractor to work full-time and that Contractor may and does perform other work as part of Contractor's independent trade, in which Contractor has a significant investment in relation to the total cost of all facilities use, and which may include, among other items, an office, recurring expenses, business licenses, assistants and advertising; that the business of Contractor and VSC are separate and apart so that each party shall be solely responsible for their own profit or loss arising out of this Agreement, and that neither party shall have the right nor authority to enter into agreements on behalf of the other.

hours were reduced from full-time to part-time. The UC Service Center granted him benefits under Section 402(h) of the Law because it found that he was not free from direction or control in the performance of his job. VSC filed an appeal from the decision of the UC Service Center and requested a hearing before a Referee.

At the hearing, Bernard Fallon (Fallon), the President of VSC, explained that VSC maintained a database of qualified individuals who could provide services to aerospace and other highly technical manufacturing businesses and it provided a list of qualified individuals to a client who was seeking to employ an individual to provide qualified inspection services. The client then selected which individuals to interview or hire. In turn, the specialist or inspector could turn down the assignment and negotiate the fee for the services. The specialist or inspector reported to the client's facility as directed by the client and not by VSC. VSC did not provide any tools or benefits, and Claimant was not required to attend any meetings with anyone at VSC. There were no specific numbers of hours that Claimant had to work. VSC did not require Claimant to report back to it. Services were almost exclusively performed at the supplier facilities. All project specialists generally maintained a home office with a computer, phone and other support services. Transportation to and from their home, insurance and various other types of professional subscriptions and briefings were chosen by the project specialists. VSC did not withhold taxes or pay for workers' compensation insurance. Fallon offered the Independent Contractor Agreement into evidence.

Claimant testified that he worked for VSC and told the staff at the UC Center that he was an independent contractor at VSC.

The Referee determined that Claimant had registered with VSC to solicit work, could list himself with any other agency, and had no restrictions for whom he could work. He also found that VSC had only provided referrals of assignments to Claimant which he was free to accept or refuse, he negotiated his own fee for an assignment that he was given, and was not given directions as to how to perform the duties of the assignments obtained through VSC. Based on the above, the Referee concluded that Claimant was free from control or direction over the performance of the services, was engaged in an independently established trade, occupation, business or profession, and denied him benefits under Section 402(h) of the Law. Claimant appealed to the Board, which affirmed, and this appeal followed.<sup>3</sup>

On appeal, the sole issue Claimant raises in his brief is that the Board did not address the “four-part proviso” as set forth in *Vuknic v. Unemployment Compensation Board of Review*, 405 A.2d 1030 (Pa. Cmwlth. 1979), to determine whether he was an independent contractor. *Vuknic* provided that under Section 402(h), the four-part proviso:

“precludes disqualification under the following conditions: (1) that the self-employment precedes valid separation from full-time work; (2) that the self-employment continues without substantial change after separation; (3) that the claimant remains available for full-time work after separation; and (4) that the self-

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<sup>3</sup> Our scope of review of the Board’s decision is limited to determining whether an error of law was committed, constitutional rights were violated, or whether findings of fact were supported by substantial evidence. 2 Pa. C.S. §704; *Frazer v. Unemployment Compensation Board of Review*, 833 A.2d 1181 (Pa. Cmwlth. 2003).

employment is not the primary source of claimant's livelihood.”

*Vuknic*, 405 A.2d at 1032. Claimant contends that the Board should have addressed whether:

- His self-employment preceded valid separation from full-time work;
- His self-employment continues without substantial change after separation; and
- His self-employment was not the primary source of his livelihood.

However, Claimant never raised this issue in his petition for review. Claimant only alleged that 1) he was entitled to benefits because he met the eligibility requirements and was awarded unemployment by the UC Center; 2) the Referee's decision was not accurate and she made incorrect findings of fact; 3) he did not work for Vendor Surveillance Company; and 4) “I claim my unemployment when there is a stoppage of work and only collect then per UC Section 402.B.” Failure to raise an issue in a petition for review is sufficient reason to decline consideration of the issue. Pa. R.A.P. 1513(a); *McDonough v. Unemployment Compensation Board of Review*, 670 A.2d 749 (Pa. Cmwlth. 1996). Even if we addressed his concerns, we do not see how that is relevant to this case because Claimant admitted at the hearing before the Referee that he was an independent contractor. (*See* August 13, 2009 Hearing Transcript at 21-22.)

Because Claimant did not raise the issue he is seeking to have reviewed and, in any event, admitted that he was an independent contractor and the Board so found, he is not entitled to unemployment compensation benefits. Accordingly, the order of the Board is affirmed.

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DAN PELLEGRINI, JUDGE

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  : :  
Unemployment Compensation :  
Board of Review, :  
  : Respondent :

**ORDER**

AND NOW, this 21<sup>st</sup> day of October, 2010, the order of the  
Unemployment Compensation Board of Review, dated December 30, 2009, at No.  
B-493020, is affirmed.

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DAN PELLEGRINI, JUDGE