

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Gregory Palmer, :  
 :  
 Petitioner :  
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 :  
 v. :  
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 Unemployment Compensation Board :  
 of Review, : No. 924 C.D. 2009  
 Respondent : Submitted: November 25, 2009

BEFORE: HONORABLE DAN PELLEGRINI, Judge  
 HONORABLE ROCHELLE S. FRIEDMAN, Senior Judge  
 HONORABLE KEITH B. QUIGLEY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION  
 BY JUDGE PELLEGRINI

FILED: January 5, 2010

Gregory Palmer (Claimant) petitions *pro se* for review of the order of the Unemployment Compensation Board of Review (Board) affirming the Referee’s decision that he was ineligible for benefits under Section 402(h) of the Unemployment Compensation Law (Law)<sup>1</sup> because he was self-employed. Finding no error in the Board’s decision and because Claimant failed to properly preserve certain issues on appeal, 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. §802(h). That section provides:

An employee shall be ineligible for compensation for any week – (h) In which he is engaged in self-employment.

In October 2008, Claimant filed for unemployment compensation benefits with the Department of Labor and Industry (Department) when his corporation, Palmer Bedding Company, ceased operations. Claimant himself filled out the employer questionnaire indicating that he was the owner and president of the corporation, he was its only employee, he determined his own work hours, he had the authority to hire and fire employees, and he had the authority to establish pricing of the corporation's products. The Department issued a determination denying Claimant benefits because he was self-employed, and he timely appealed.

Before the Referee, Claimant testified that his grandfather established Palmer Bedding as a mattress manufacturer in 1929, and Claimant then inherited it from his father in 1998. Claimant served as the president of the corporation and was its sole shareholder as well as the only employee. Claimant testified that he conducted the manufacturing himself and that he ran the day-to-day operations of the corporation. When asked the reason for the corporation's closure, Claimant stated, "Due to economic conditions, I was forced to close my doors. I had no more revenue." He also indicated that his accountant and lawyer advised him not to file for bankruptcy because it would cost too much.

The Referee found Claimant was ineligible for compensation benefits because he was self-employed and the Law does not provide compensation for unemployed businessmen. Section 402(h) of the Law states that an employee is not eligible for compensation for any week in which he is self-employed. The test for whether an individual is self-employed is whether he "exercises a substantial degree of control over the corporation." *Starinieri v. Unemployment Compensation Board of Review*, 447 Pa. 256, 289 A.2d 726 (1972). Such determinations are made on a case-by-case basis, and no one factor is dispositive

of the issue. *Essick v. Unemployment Compensation Board of Review*, 655 A.2d 669 (Pa. Cmwlth. 1995). If the individual exercised substantial control over the corporation, then he is a businessman rather than an employee, and, therefore, ineligible to receive unemployment compensation. Because Claimant was the sole owner and president of Palmer Bedding and he admittedly ran the day-to-day operations of the company, the Referee determined that he had substantial control over the corporation and was self-employed making him ineligible for benefits. The Referee also found that Claimant closed his corporation due to poor economic conditions. The Board adopted those findings and affirmed the Referee's decision. This appeal followed.<sup>2</sup>

On appeal, Claimant generally contends that the decision of the Board is erroneous and that he is entitled to unemployment benefits. However, he did not specifically challenge any of the Board's findings in his petition for review or in his brief; therefore, these findings are conclusive on appeal. *Campbell v. Unemployment Compensation Board of Review*, 694 A.2d 1167 (Pa. Cmwlth. 1997). The Board found that Claimant was the president and sole shareholder of Palmer Bedding, he was the only employee, ran the day-to-day operations of the business and exercised total control over the company.

The sole issue Claimant develops on appeal is that he is entitled to unemployment benefits under the exception set forth in Section 402.4(a) of the

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<sup>2</sup> This Court's scope of review is limited to determining whether constitutional rights were violated, whether an error of law was committed, and whether necessary findings of fact were supported by substantial evidence. *Essick v. Unemployment Compensation Board of Review*, 655 A.2d 669 (Pa. Cmwlth. 1995).

Law that allows benefits even if a person exercised substantial control over a corporation if it declares involuntary bankruptcy. It provides:

Notwithstanding any other provision of this act, an officer of a corporation deemed to be a self-employed person because he exercised a substantial degree of control over the corporation and who becomes unemployed due to the fact that the corporation enters into involuntary bankruptcy proceedings under the provisions of Chapter 7, Title 11 of the United States Code shall be entitled to receive unemployment compensation under this act.

43 P.S. §802.4(a), added by Act of July 21, 1983, P.L. 68, No. 30, §19. According to Claimant, he was forced to close his business “due to the poor economic conditions of the recession” and he could not file for bankruptcy as this option was not economically feasible. He argues that he should not be penalized for his decision but rather should receive unemployment compensation because being forced to cease operations is tantamount to involuntary bankruptcy.

However, this exception is very narrow and specifically states that it applies to individuals who are self-employed and become unemployed due to *involuntary bankruptcy proceedings*. In *Gaetani v. Unemployment Compensation Board of Review*, 507 A.2d 930 (Pa. Cmwlth. 1986), this Court held that an individual did not qualify for the exception found in Section 402.4 if he was unemployed as a result of *voluntary* bankruptcy proceedings. The legislature was very clear in its language and chose to only allow the exception for self-employed individuals when forced into involuntary bankruptcy. If we have determined that

the exception does not encompass voluntary bankruptcy proceedings, then it certainly cannot be read to encompass instances where a corporation never declared bankruptcy at all but rather closed due to “poor economic conditions.” Claimant chose to avoid bankruptcy proceedings by voluntarily shutting down operations when his corporation failed. As our Supreme Court stated in *Starinieri*, “[t]he Unemployment Compensation Law was not enacted to compensate individuals who fail in their business ventures and become unemployed businessmen.”

Accordingly, the Board’s order is affirmed.

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DAN PELLEGRINI, Judge

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**ORDER**

AND NOW, this 5<sup>th</sup> day of January, 2010, the order of the Unemployment Compensation Board of Review, dated March 31, 2009, is affirmed.

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DAN PELLEGRINI, Judge