

OHIO ATTORNEY
GENERAL'S OFFICE
RECEIVED
AUG 23 2012
TOLEDO, OHIO

JOURNALIZED 8-22-12
VOL. 90 PG. 260

FILED
FULTON COUNTY
COMMON PLEAS COURT
2012 AUG 21 A 10:56
PAUL E. MACDONALD
CLERK

IN THE COURT OF COMMON PLEAS
FULTON COUNTY, OHIO

DIANA L. WHEELER,

APPELLANT,

v.

SCHENKERS INTERNATIONAL
FORWARDERS INC. et al.,

APPELLEES.

* CASE NO. 12CV184
*
* JUDGE JAMES E. BARBER
*
* REMAND ORDER
*
*
*
*
*
*

* * * * *

In this administrative appeal, appellant, Diana Wheeler, seeks reversal of the May 23, 2012, decision of the Ohio Unemployment Compensation Review Commission. The Court finds the appeal well taken and, as explained below, remands the matter to the Review Commission for further proceedings.

I. Background

Appellant was separated from her former employer, Schenkers International Forwarders, Inc., for lack of work and given \$8,437.76 in severance pay. Appellant then applied for unemployment benefits. It was undisputed that appellant's termination was not for just cause under R.C. 4141.28(D)(2)(a). In her February 7, 2012, initial determination, therefore, appellee Director, Ohio Department of Job and Family Services found that she was eligible for benefits at a weekly amount of \$277.00.

However, because the employer did not initially allocate the severance payment to a particular time period, the Director, applying R.C. 4141.31(A)(6), determined that the severance pay was deductible from her unemployment-benefit payments and applied appellant's average weekly wage to each week following her separation from work until the \$8,437.76 was exhausted. From there, the Director, under R.C. 4141.31(A)(4), deducted appellant's average weekly wage from her weekly unemployment-benefit payments. Because appellant's average weekly wage exceeded her weekly unemployment benefit, she was effectively declared ineligible for benefits. The director affirmed this determination in his March 15, 2012, redetermination.

Appellant appealed, and jurisdiction was transferred to the Review Commission. After a hearing, the hearing officer on April 18, 2012 affirmed the Director's redetermination. In his decision, the hearing officer noted that, absent any indication to the contrary, the severance pay was required to be applied to the time period following appellant's separation and, therefore, deducted from her unemployment benefits.

Two days later, appellant filed a request for final administrative review. Shortly afterward, the Review Commission itself issued a document finally acknowledging that the employer did indeed confirm that appellant's severance pay "was 'allocated to the last day worked 1/13/2012.'" The full Review Commission, nonetheless, declined final review on May 23, 2012, leaving the hearing officer's erroneous decision intact.

Appellant then filed this R.C. 4141.282 administrative appeal, seeking reversal of the Review Commission's decision. The Court held a pre-trial on the matter on August 3, 2012. The administrative record was finally filed on August 9, 2012.

II. Standard of Review

R.C. 4141.282(H) in relevant part requires the Court to reverse the Review Commission's decision must be reversed if it is unlawful:

If the court finds that the decision of the commission was unlawful, unreasonable, or against the manifest weight of the evidence, it shall reverse, vacate, or remand the matter to the commission. Otherwise, the court shall affirm the decision of the commission.

III. Relevant Law and Discussion

Under R.C. 4141.31(A)(4) and (A)(5), unemployment benefits must be reduced by separation pay and unused-vacation pay, respectively, that the claimant receives with respect to the weeks when he is receiving unemployment benefits (emphasis added):

“(A) Benefits otherwise payable for any week shall be reduced by the amount of remuneration or other payments a claimant receives with respect to such week as follows:

“ * * *

“(4) Except as otherwise provided in division (D) of this section, remuneration in the form of separation or termination pay paid to an employee at the time of the employee's separation from employment;

“(5) Vacation pay or allowance payable under the law, terms of a labor-management contract or agreement, or other contract of hire, which payments are allocated to designated weeks.”

Here, neither the Director (in his initial determination and his redetermination) nor the hearing officer (during his review of the matter) had any information concerning how appellant's lump-sum payment was to be designated. Accordingly, they both properly determined that the payment was to be allocated to the time period after appellant's separation from work and, from there, applied appellant's average weekly wage to each week following her separation from work until the

\$8,437.76 was exhausted. See R.C. 4141.31(A)(6) (second paragraph):

“If there is no designation of the period with respect to which payments to an individual are made under this section then an amount equal to such individual's normal weekly wage shall be attributed to and deemed paid with respect to the first and each succeeding week following the individual's separation or termination from the employment of the employer making the payment until such amount so paid is exhausted.”

However, by the time the matter was before the Review Commission on appellant's request for final administrative review, the Review Commission had documentation that the severance payment had indeed been allocated to appellant's last day of work. The payment, accordingly, was not “received with respect” to the weeks during which appellant would be receiving unemployment benefits. Therefore, it is not deductible from appellant's unemployment benefits, and the full Review Commission improperly denied further review. Its decision, therefore, is reversed.

JUDGMENT ENTRY

It is ORDERED, ADJUDGED, and DECREED that the May 13, 2012, decision of the Ohio Unemployment Compensation Review Commission is REVERSED.

This matter is REMANDED to the Ohio Unemployment Compensation Review Commission with instructions that it order the Ohio Department of Job and Family Services to pay unemployment-compensation benefits to appellant, Diana L. Wheeler, consistent with this Order.

8-20-12
Date



JAMES E. BARBER, Judge

Distribution:

Rick Baum, Assistant Attorney General
Counsel for Appellee Director, Ohio Department of Job and Family Services

John J. Schlageter III
Counsel for Appellant, Diana L. Wheeler

Appellee Schenkers International Forwarders Inc.