

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Edgar Bridges, Jr. :
:
:
v. :
:
:
Philadelphia Housing Authority :
Pension Board Review Panel, : No. 1609 C.D. 2013
Appellant : Argued: May 13, 2014

BEFORE: HONORABLE DAN PELLEGRINI, President Judge
HONORABLE RENÉE COHN JUBELIRER, Judge
HONORABLE ROCHELLE S. FRIEDMAN, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION BY
PRESIDENT JUDGE PELLEGRINI

FILED: May 30, 2014

The Philadelphia Housing Authority (PHA)¹ appeals the order of the Court of Common Pleas of Philadelphia County (trial court) reversing the Philadelphia Housing Authority Pension Board Review Panel's (Pension Board) decision to forfeit Edgar Bridges, Jr.'s (Bridges) pension and retirement benefits pursuant to the Public Employee Pension Forfeiture Act (Pension Forfeiture Act)²

¹ This appeal was filed by the Philadelphia Housing Authority Pension Board Review Panel, not by the PHA, but the PHA filed all briefs in this matter. Both parties refer to the party in interest in this appeal as PHA, and so will we.

² Act of July 8, 1978, P.L. 752, 43 P.S. §§1311–1315.

because PHA failed to establish that Mr. Bridges' tax evasion conviction was related to his public employment. For the reasons that follow, we affirm.

I.

The following facts are not in dispute. Bridges was employed by PHA for nearly 11 years. In his most recent position as an insurance-services manager, he oversaw contracts involving – and approved payment of invoices – for insurance vendors, including West Agency Insurance (West). While employed at PHA, Bridges secretly negotiated a position and salary with West and subsequently retired from PHA. Approximately two months later, he began employment with West as Vice-President of Insurance Operations, at which time he received a \$5,000 sign-on bonus. After working for West for approximately two months, West awarded Bridges an additional \$30,000 bonus (the subject bonus) which was not reported to the Internal Revenue Service (IRS).

Following an investigation by the Federal Bureau of Investigation (FBI), Bridges was charged with and pled guilty to tax evasion under 26 U.S.C. §7203 for failing to report the subject bonus.³ He also acknowledged that his

³ Paragraph 1 of the plea agreement states:

The defendant agrees to plead guilty to Count One of an information ... charging him with willful failure to supply required information, in violation of 26 U.S.C. §7203, all arising from his failure to timely supply to the [IRS] required information about his income, that is, his receipt of a \$30,000 "bonus" on or about January 2, 2007.

(Reproduced Record [R.R.] at 90a.)

dealings with West while still employed by PHA violated the Public Official and Employee Ethics Act.⁴

II.

Subsequently, the PHA Pension Board sent Bridges a letter on PHA stationary signed by the Pension Board's Chair stating that Bridges' pension had to be forfeited pursuant to the Pension Forfeiture Act due to his guilty plea to tax evasion.⁵ Bridges appealed to the Pension Board, claiming that his tax evasion was not related to his public employment at PHA, and a hearing was held. In support of forfeiture, Leon Goodman (Goodman), Chief Counsel of PHA's Office of Audit and Compliance, testified that upon being notified of Bridges' guilty plea, he initiated an investigation and obtained copies of the plea agreement and an

⁴ 65 Pa. C.S. §§1101–1113. Paragraph 6(c) of the plea agreement further states:

The parties stipulate that in 2006, the defendant secretly negotiated for and accepted a paid position at [West] when PHA was still paying him for his expertise and advice regarding PHA's business with West, in violation of 65 Pa. C.S.A. [sic] §1103(a). The parties further stipulate that in 2007, in violation of 65 Pa. C.S.A. [sic] §1103(g), the defendant represented West, with actual compensation, on a matter before PHA less than a year after he left PHA, in violation of 65 Pa. C.S.A. [sic] §1103(g).

(R.R. at 92a.)

⁵ Sections 2 and 3(a) of Pension Forfeiture Act mandate forfeiture of a public employee's benefits when he is convicted of or pleads guilty or no defense to a crime enumerated under the Act or a federal crime substantially similar to a crime enumerated under the Act, and the crime is related to public employment. 43 P.S. §§1312–1313. Section 2 states that a crime is "related to" public employment when it is "committed by a ... public employee through his public office or position or when his public employment places him in a position to commit the crime." 43 P.S. §1312.

indictment against West's owner, Kobe West.⁶ He further testified that before Bridges retired, he approved a \$2 million invoice submitted by West, and in exchange, West provided him with employment and the \$30,000 bonus. (R.R. at 9a.) When questioned about the nexus between the tax evasion and Bridges' public position at PHA, Goodman cited Paragraph 6(c) of Bridges' plea agreement and stated:

Mr. Bridges was in the position to commit the – the tax fraud in question as a result of his position at PHA, having negotiated with [West] prior to his leaving, and then working for them [sic] in negotiating points with PHA subsequent that placed himself in the position to be a public employee to fall under the auspices of the [Pension Forfeiture Act]. But for the fact that he was employed with PHA he wouldn't have had the ability to gain the [\$]30,000.

(*Id.* at 13a.)

On cross-examination, Goodman stated that his knowledge regarding the reason for the \$30,000 bonus was gleaned from the plea agreement and Kobe West's indictment.⁷ Citing Paragraph 9 of Kobe West's indictment, Goodman testified that while still employed by PHA, "Bridges was secretly negotiating the terms, including salary and bonus, of an offer from West," inferring that Bridges

⁶ Kobe West was indicted for theft from PHA regarding a \$2 million invoice West submitted, a count which Bridges was not charged with following the FBI investigation.

⁷ Although Kobe West's copy of the indictment was referenced during the hearing, it was not made part of the certified or reproduced record.

negotiated the \$30,000 bonus – rather than the \$5,000 sign-on bonus – while at PHA by agreeing to approve the \$2 million invoice. (November 13, 2012 transcript of proceedings before the Pension Board at 71–72.)⁸ When questioned as to whether the indictment indicated which bonus was negotiated during Bridges’ PHA employment, Goodman stated, “It doesn’t specify which bonus, it specifies bonus.” (*Id.* at 71.)

The Pension Board argued that Bridges received the \$30,000 bonus “in exchange for services” he provided while at PHA, stating that the U.S. Attorney’s Office (USAO) included the language about Bridges’ ethical violations in Paragraph 6(c) of the plea agreement for tax evasion “because the [USAO] felt that [the \$30,000 bonus] related to the performance of his duty.” (R.R. at 81a.)

In opposition, Bridges testified that he was provided the subject bonus as a reward for his hard work in negotiating several premier contracts at West. He stated that the bonus had nothing to do with his work at PHA, was not promised to him prior to his retirement, and was not for purposes of inducing him to perform tasks while still employed by PHA. On cross-examination, he testified that bonuses are typically paid when a contract is “closed” and stated that he closed approximately three contracts before receiving his bonus. (R.R. at 68a–69a.)

⁸ Because pages 71–74 of the November 13, 2012 hearing transcript were omitted from the reproduced record, we cite to the pages of the transcript that are contained in the certified record.

In another letter on PHA stationary and signed by the Pension Board Chair, the Pension Board denied the appeal, merely stating that “The Philadelphia Housing Authority Pension Board Review Panel has decided to uphold the Initial Forfeiture Determination of the Philadelphia Housing Authority Pension Board.” (R.R. at 2a.) Bridges appealed to the trial court, claiming that substantial evidence did not support the Pension Board’s finding that the \$30,000 bonus was related to his PHA employment. The trial court agreed and reversed the Pension Board’s decision, noting that the only supporting evidence was based upon speculation. Specifically, the trial court explained:

When questioned about the connection between [Bridges’] work at PHA and the aforementioned \$30,000 bonus, a PHA investigator told the Board that paragraph 6(c) of the guilty plea was “the only information we have as it relates to Mr. Bridges.” *See Transcript*, at 17; however, Paragraph 6(c) does not indicate how [Bridges’] ethics violations admissions relate to any other misconduct except what is plainly stated in the guilty plea—namely, misconduct that would not trigger forfeiture under the Act.

In an effort to clarify the investigator’s testimony at the Board hearing, PHA counsel made the bald and unsupported assertion that paragraph 6(c) was included in the plea because, “[T]he U.S. Attorney felt that that related to the performance of [Bridges’] duty.” *Id.* at 79. However, PHA failed to introduce any substantive evidence whatsoever regarding the U.S. Attorney’s motivation for including that language in the plea agreement.

PHA counsel further implied that Mr. West’s indictment for theft related to an insurance contract that [Bridges] had worked on while employed at PHA, one that benefited West Insurance Agency, and that this was evidence that [Bridges’] \$30,000 bonus was related to, or

the result of, [Bridges'] employment at PHA. *Id.* at 67–71. However, there was no evidence presented that [Bridges] improperly facilitated or benefited in any way from his participation in this insurance contract and, additionally, there was no evidence presented that linked that contract with [Bridges'] bonus. *Id.*

* * *

Furthermore, the investigator testified that the West indictments failed to distinguish the unreported bonus, which led to [Bridges'] guilty plea, from the reported \$5,000 signing bonus....

(R.R. at 177a–178a.)

III.

On appeal,⁹ PHA contends that the trial court erred by reversing the Pension Board's decision that Bridges' tax evasion was related to his PHA employment because the finding was supported by substantial evidence¹⁰ because the following undisputed facts give rise to the inference that Bridges' crime was

⁹ Our scope of review is limited to determining whether constitutional rights were violated, whether the adjudication is not in accordance with the law, whether local agency procedures have been violated, or whether “any findings of fact made by the agency and necessary to support its adjudication are not supported by substantial evidence.” *Drennan v. City of Philadelphia, Board of Pensions & Retirement*, 525 A.2d 1265, 1266 (Pa. Cmwlth. 1987); *see* Section 754(b) of the Local Agency Law, 2 Pa. C.S. §754(b). Because PHA prevailed before the fact finder, we construe the evidence in the light most favorable to PHA and provide it the benefit of all inferences reasonably deduced from the evidence. *Birmingham Fire Insurance Co. v. Workmen's Compensation Appeal Board (Kennedy)*, 657 A.2d 96, 98 (Pa. Cmwlth. 1995).

¹⁰ We have defined “substantial evidence” as such “relevant evidence that a reasonable mind might consider adequate to support a conclusion.” *Palladino v. Unemployment Compensation Board of Review*, 81 A.3d 1096, 1100 n.3 (Pa. Cmwlth. 2013).

related to his public employment: (1) Bridges secretly negotiated for a paid position at West while still employed by PHA; (2) two months after Bridges' retirement, West awarded him a \$30,000 bonus; and (3) neither Bridges nor West reported the \$30,000 bonus to the IRS. However, these facts alone do little more than raise a suspicion regarding the nature of Bridges' bonus, and such a suspicion does not amount to substantial evidence. *See Lewis v. Civil Service Commission, City of Philadelphia*, 542 A.2d 519, 522 (Pa. 1988).

Moreover, one cannot conclude, merely because Bridges committed tax evasion after he left PHA, that the crime was related to his PHA employment. Indeed, based upon these facts alone, it is equally as probable that Bridges received the bonus for work performed at West. *Commonwealth v. Woong Knee New*, 47 A.2d 450, 468 (Pa. 1946) ("When a party on whom rests the burden of proof in either a criminal or a civil case, offers evidence consistent with two opposing propositions, he proves neither."). While PHA is correct that its circumstantial evidence need not exclude every other reasonable possibility, the contention that he pled guilty to tax evasion for not reporting a "pay off" is simply not supported by Bridges' plea.

PHA next points to Paragraph 6(c) of the plea agreement and Goodman's testimony regarding Kobe West's indictment.¹¹ Our Supreme Court has explained the limits of circumstantial evidence:

¹¹ We reject PHA's suggestion that the trial court reversed the Pension Board's decision because Kobe West's guilty plea and indictment were not entered into evidence. This alleged basis does not appear anywhere in the trial court's opinion. The trial court actually reviewed Goodman's testimony regarding Kobe West's indictment and did not, at any time, reject that (Footnote continued on next page...)

All circumstantial evidence is based in part upon “positive” or direct evidence.... The circumstances from which the major fact in issue is to be inferred have to be proved chiefly by testimonial or positive evidence. If [t]he so-called “positive” evidence is erroneous or merely conjectural, no reliable inference can be drawn from it.

Woong Knee New, 47 A.2d at 454. The “positive” or “direct” evidence to which PHA directs our attention is Paragraph 6(c) of the plea agreement (*see* footnote 3, *supra*), but this paragraph does not establish any relationship between the tax evasion and Bridges’ public position.

Paragraph 6(c) establishes that Bridges negotiated for and accepted a paid position at West while still employed by PHA. It further states that Bridges’ actions in this regard violated the Public Official and Employee Ethics Act. However, Paragraph 6(c) does not mention Bridges’ tax evasion, let alone touch upon the relationship between the tax evasion and his PHA position. Rather, the Pension Board appeared to infer from the mere fact that this language was included in the plea agreement that the USAO “felt” that such a relationship existed. Not only are the USAO’s unsubstantiated feelings irrelevant in the instant matter, speculation regarding what those feelings are is of no evidentiary value. *See Lewis*, 542 A.2d at 522.

Likewise, Goodman’s inference that the necessary relationship existed, gleaned from Kobe West’s indictment, was pure conjecture. Ignoring that

(continued...)

testimony on the grounds that the documents were not made part of the record. (R.R. at 178a.) Moreover, the trial court expressly found that the certified record was complete. (*Id.* at 176a.)

the indictment itself is not part of the record, Goodman testified that the indictment stated that while still employed by PHA, “Bridges was secretly negotiating the terms, including salary and bonus, of an offer from West,” but he admitted that the indictment failed to specify the bonus to which it referred. (November 13, 2012 transcript of proceedings before the Pension Board at 71–72.) Because it is at least equally likely that the indictment referred to Bridges’ sign-on bonus rather than his \$30,000 bonus, this evidence does not give rise to an inference that the necessary relationship existed.

PHA also contends that the trial court erred in crediting Bridges’ testimony regarding the reasons for his \$30,000 bonus, even though the Board rejected his testimony, and in finding Goodman’s testimony speculative and unsupported when the Board credited it. Initially, we would point out that we do not know what credibility determinations were made or facts found because the Board did not make findings or give reasons for its adjudication as required by Section 507 of the Administrative Agency Law, 2 Pa. C.S. §507. In any event, the trial court made no such finding. It neither credited Bridges’ testimony nor even discussed the reason he provided for the bonus. Instead, the trial court agreed that the bonus was “suspicious” but explained for the reasons articulated above that PHA failed to raise this suspicion to the level of substantial evidence. (R.R. at 178a.) PHA’s argument regarding Goodman’s testimony is likewise without merit. While credibility determinations are indeed within the province of the Pension Board as fact finder when we know what it found, again, the trial court did not engage in making a credibility determination but merely found that the evidence advanced by PHA was not substantial evidence to cause Bridges’ pension to be

forfeited under Sections 2 and 3(a) of the Pension Forfeiture Act. 43 P.S. §§1312–1313(a).

Finally, PHA argues that the trial court erred in holding that to be “related” to public employment for purposes of the Pension Forfeiture Act, a crime must be committed during the term of public employment. In so arguing, PHA misconstrues the trial court’s holding, which never interpreted the Act as including such a requirement. Instead, the trial court noted that a temporal nexus did not exist between the \$30,000 bonus and Bridges’ PHA employment because the bonus was received two months after Bridges retired. (R.R. at 177a.) The trial court did not stop there, though, and considered other evidence of a purported relationship; namely, Goodman’s testimony regarding Paragraph 6(c) of the plea agreement and Kobe West’s indictment, but found the evidence speculative and therefore insufficient. (*Id.*)

Accordingly, we affirm the trial court’s order reinstating Bridges’ pension and retirement benefits.

DAN PELLEGRINI, President Judge

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ORDER

AND NOW, this 30th day of May, 2014, the order of the Court of Common Pleas of Philadelphia County dated September 3, 2013, at No. 121201172, is affirmed.

DAN PELLEGRINI, President Judge