

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Steven Rule, :
Petitioner :
v. : No. 2304 C.D. 2014
: Submitted: July 2, 2015
Unemployment Compensation :
Board of Review, :
Respondent :

BEFORE: HONORABLE DAN PELLEGRINI, President Judge
HONORABLE MARY HANNAH LEAVITT, Judge
HONORABLE ANNE E. COVEY, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION BY
PRESIDENT JUDGE PELLEGRINI

FILED: July 22, 2015

Steven Rule (Claimant) petitions for review of an order of the Unemployment Compensation Board of Review (Board) finding that he was not entitled to a moveable base year pursuant to Section 204(b) of the Workers' Compensation Act (WC Act)¹ because he did not meet the base-year requirements set forth in Section 401(a) of the Pennsylvania Unemployment Compensation Law (Law) due to a work-related injury compensable under the WC Act.² Finding no error in the Board's decision, we affirm.

¹ Act of June 2, 1915, P.L. 736, *as amended*, 77 P.S. §71(b).

² Act of December 5, 1936, Second Ex. Sess., P.L. (1937) 2897, *as amended*, 43 P.S. §§801(a) and 804(e). Section 401(a) of the Law provides:
(Footnote continued on next page...)

Claimant was employed by Faulkner Nissan of Jenkintown (Employer) from April 1, 2009, to August 28, 2013, the date on which he sustained an injury to his back while working. He did not receive workers' compensation benefits upon separation.

On August 18, 2014, Claimant and Employer reached a Compromise and Release (C & R) Agreement by Stipulation Pursuant to Section 449³ of the WC Act to settle the workers' compensation benefit claim and all outstanding petitions were dismissed as moot. Under the C & R Agreement, Claimant received \$20,000 to terminate his workers' compensation benefit claim.

(continued...)

Compensation shall be payable to any employe who is or becomes unemployed, and who—

(a) Satisfies both of the following requirements:

(1) Has, within his base year, been paid wages for employment as required by section 404(c) of this act.

(2) Except as provided in section 404(a)(3), not less than forty-nine and one-half per centum (49.5%) of the employe's total base year wages have been paid in one or more quarters, other than the highest quarter in such employe's base year.

Section 404(e) of the Law provides a "Table Specified for the Determination of Rate and Amount of Benefits."

³ Act of June 2, 1915, P.L. 736, added by section 22 of the Act of June 24, 1996, P.L. 350, *as amended*, 77 P.S. §1000.5. We note that the provisions of Section 449 of the Act must be strictly construed. *Rissmiller v. Workers' Compensation Appeal Board (Warminster Township)*, 768 A.2d 1212, 1213 (Pa. Cmwlth. 2001).

Claimant filed an application for unemployment compensation benefits effective August 17, 2014. Because he did not receive wages that met the base-year requirements, he requested to establish a moveable base year, readjusting the base year to immediately precede his work-related injury pursuant to Section 204(b) of the WC Act which provides:

For the exclusive purpose of determining eligibility for compensation under the [Law], any employe who does not meet the monetary and credit week requirements under [S]ection 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).

The Lancaster Unemployment Compensation Service Center (Service Center) determined that Claimant's base year comprised April 1, 2013, through March 31, 2014, found that Claimant did not have sufficient base-year wages under Section 401(a) of the Law⁴, and found him ineligible for an alternate base-year calculation under Section 204(b) of the WC Act because his "[w]orkers' [c]ompensation benefits were paid outside of the base year." (R. Item No. 9.) Claimant appealed the Service Center's determination.

⁴ Claimant's earnings within the base year were as follows: 2nd Quarter 2013, \$1,075; 3rd Quarter 2013, \$8,856; 4th Quarter 2013, \$0; 1st Quarter 2014, \$0; for a total base-year earnings of \$9,921.

Before the Referee, Claimant testified that he has not worked for any employer since August 28, 2013, and has had no earnings since then. He stated that he did not receive weekly compensation from Employer for his work injury. He also testified that after he suffered a lower back injury on the job, he notified Employer and filed for workers' compensation benefits. He further testified that he then received a lump sum for a period of time that he had a work-related injury that was settled by a C & R Agreement with Employer.

The Referee affirmed the Service Center's determination that Claimant is financially ineligible for benefits under Section 401(a) and 402(e) of the Law because Claimant had not earned at least 49.5% of his overall base-year earnings outside of his highest paid quarter.⁵ He also determined that Claimant is ineligible to obtain a moveable base year pursuant to Section 204(b) of the WC Act, because he had not shown that he was eligible for workers' compensation benefits during the established base year or that the C & R Agreement reached on August 18, 2014, was due to his work-related injury. Claimant appealed to the Board, which affirmed.⁶ This appeal followed.⁷

⁵ The Referee noted that the evidence shows that Claimant's highest paid quarter occurred in the 3rd Quarter of 2013, during which he earned \$8,856.

⁶ The Board modified the Referee's order, establishing that Claimant is ineligible under Sections 401 and 404 of the Law and is not eligible under the requirements of Section 204(b) of the WC Act.

⁷ 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 the necessary findings of fact are supported by substantial evidence. *Rock v. Unemployment Compensation Board of Review*, 6 A.3d 646, 648 n.5 (Pa. Cmwlth. 2010).

On appeal, Claimant again contends that he had a compensable work injury which entitles him to move his base year to the year preceding his injury pursuant to Section 204(b) of the WC Act. Specifically, Claimant argues that he had an established compensable work injury through the payment of benefits in his C & R Agreement, which Employer did not contest, and that the C & R Agreement indicates that Employer accepted liability for Claimant's compensable work injury.

A claimant bears the burden of proving financial eligibility for unemployment compensation benefits. *Pagliei v. Unemployment Compensation Board of Review*, 37 A.3d 24, 26 (Pa. Cmwlth. 2012). Per Section 401(a) of the Law, unemployment compensation benefits shall be payable to an unemployed claimant who “[h]as, within his base year, been paid wages for employment as required by section 404(c) of [the Law],” provided that “not less than forty-nine and one-half per centum (49.5%) of the employe’s total base year wages have been paid in one or more quarters, other than the highest quarter in such employe’s base year.” 43 P.S. §801(a). Section 4(a) of the Law defines “base year” as “the first four of the last five completed calendar quarters immediately preceding the first day of an individual’s benefit year.” 43 P.S. §753(a). Section 204(b) of the WC Act enables a claimant to elect an alternate base year, provided that he can establish a compensable work-related injury.

Our Supreme Court explained the meaning of a “compensable work-related injury” in *Richards v. Unemployment Compensation Board of Review*, 768 A.2d 852, 856 (Pa. 2001). The Court construed it to mean benefits “for which a claimant is entitled ... under the substantive, as opposed to the procedural,

provisions of the [WC Act].” *Id.* The Court further explained that an injury can be compensable even if it has not been compensated, and, conversely, a claimant may be compensated for an injury that is ultimately determined not to be compensable. *Id.* at 857. In order to use an alternate base year as per Section 204(b) of the WC Act, the claimant must be entitled to compensation. *Id.*

In settling the claim, the C & R Agreement provided:

The nature and extent of [Claimant’s] September 3, 2013 and *claimed/alleged* August 28, 2013 injuries; whether [Claimant] has fully recovered from his work-related injuries as of October 9, 2013; the availability of employment opportunities at [Employer] which fall within [Claimant’s] current vocational and physical abilities; the reasonableness and necessity of [Claimant’s] treatment with [a chiropractor]; parties agree that this is a fair and reasonable compromise which will avoid the time, risk and expense involved in litigating the pending Petitions before Workers’ Compensation Judge Bonnie Callahan to a conclusion and, consequently, is in the best interest of all concerned parties.

(R. Item No. 10, Exhibit 11B) (emphasis added).

The case the Board relied upon in its decision, *Bosch v. Unemployment Compensation Board of Review*, 55 A.3d 758 (Pa. Cmwlth. 2012), is controlling. In that case, the claimant and his employer’s workers’ compensation insurance carrier entered into a C & R agreement, stating that the employer did not recognize any liability for the claimant’s injury, and that approval of the agreement would render all pending petitions moot. *Id.* at 759. The board

found that the claimant was not entitled to an alternate base year pursuant to Section 204(b) of the WC Act because the C & R agreement expressly indicated that the employer did not accept liability for the injury and, thus, the claimant did not demonstrate that his work injury was compensable. *Id.* at 759-60. Affirming the Board, we held that because the claimant entered into a C & R agreement in which the employer did not accept liability for the injury, the claimant failed to establish that he suffered a compensable injury under the WC Act. *Id.* at 761.

Like in *Bosch*, Claimant settled his workers' compensation claim and all outstanding petitions were dismissed as moot. Despite Claimant's contentions, the C & R Agreement does not provide that Employer accepted liability for a compensable work injury for which Claimant is entitled to benefits, which needed to establish eligibility for a movable base year under Section 204(b) of the WC Act.

Accordingly, the order of the Board is affirmed.

DAN PELLEGRINI, President Judge

