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**IN THE
COURT OF APPEALS OF INDIANA**

G.W.,)
)
Appellant,)
)
vs.) No. 93A02-1004-EX-542
)
REVIEW BOARD OF THE INDIANA)
DEPARTMENT OF WORKFORCE)
DEVELOPMENT and)
HERRMAN & GOETZ, INC.,)
)
Appellees.)

APPEAL FROM REVIEW BOARD OF THE
INDIANA DEPARTMENT OF WORKFORCE DEVELOPMENT
Cause No. 10-R-00768

January 31, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

NAJAM, Judge

STATEMENT OF THE CASE

G.W. appeals the decision of the Review Board of the Indiana Department of Workforce Development (“Review Board”), which denied him his claim for full unemployment benefits. G.W. raises a single issue for our review, namely, whether the Review Board erred when it concluded that G.W.’s employer, rather than G.W., contributed to a pension plan from which G.W. had received benefits following his unemployment.

We affirm.

FACTS AND PROCEDURAL HISTORY

In October of 2009, G.W. lost his job as an electrician with Herrman & Goetz, Inc. (“Herrman”). G.W. filed a claim for unemployment benefits, which was approved but was then reduced based on benefits G.W. had received through a pension with Herrman. G.W. appealed the reduction of his benefits to an Administrative Law Judge (“ALJ”).

The ALJ who presided over G.W.’s appeal found and concluded as follows:

FINDINGS OF FACT: The claimant began work for the employer on August 11, 2003. The claimant is a member of the union Local 153. The claimant last worked for the employer on October 16, 2009. The claimant receives a monthly pension payment of \$1595.43 from the Michiana Electrical Worker’s Pension Fund. Per the collective bargaining agreement[,] under Pension it states, “It is also agreed that the EMPLOYERS will contribute for the employees, excluding first (1st) and second (2nd) period Apprentices, to designated Trust and/or trustees The employer shall pay a sum of \$3.21 per hour for each hour worked by Journeyman . . . and \$4.03 per hour for General Foreman.” The employer contributed monies to the pension fund through a third party administrator on behalf of the claimant.

CONCLUSIONS OF LAW: Under Ind. Code § 22-4-15-4(a)(2), “An individual shall be ineligible for waiting period or benefit rights: For any week with respect to which the individual receives, is receiving, or has

received payments equal to or exceeding his weekly benefit amount in the form of . . . any pension, retirement or annuity payments, under any plan of an employer whereby the employer contributes a portion or all of the money. This disqualification shall apply only if some or all of the benefits otherwise payable are chargeable to the experience or reimbursable account of such employer, or would have been chargeable except for the application of this chapter.” The claimant is receiving a \$1595.43 monthly pension payment from a fund contributed to by a base period employer. Although the money in the pension plan was part of a deferred compensation plan[,] the money was contributed to the plan by the employer through a third party administrator of the pension plan. The employer contributed to the pension fund on behalf of the claimant and the pension payment is deductible income. The amount \$1595.43 multiplied by 12 months then divided by 52 weeks equals the amount of the weekly deduction of \$369 rounded up to the nearest dollar.

Appellant’s App. at 17-18 (citation omitted; omissions original). G.W. appealed the ALJ’s decision to the Review Board, which adopted and affirmed the ALJ’s decision. This appeal ensued.

DISCUSSION AND DECISION

G.W. contends that the pension payments may have been made by Herrman, but they were made with his money and, therefore, the Review Board erred in applying Indiana Code Section 22-4-15-4 to reduce his benefits. Specifically, he states that the pension consists of income that he elected to defer and that “[h]e should not be penalized for deferring some of the wages to which he was entitled at the time.” Appellant’s Br. at

7. Our standard of review is as follows:

The Indiana Unemployment Compensation Act [] provides that “[a]ny decision of the review board shall be conclusive and binding as to all questions of fact.” Ind. Code § 22-4-17-12(a). When the Board’s decision is challenged as contrary to law, the reviewing court is limited to a two-part inquiry into the “sufficiency of the facts found to sustain the decision” and the “sufficiency of the evidence to sustain the findings of facts.” Ind. Code § 22-4-17-12(f). Under this standard, we are called upon to review: (1) determinations of specific or basic underlying facts; (2) conclusions or

inferences from those facts, or determinations of ultimate facts; and (3) conclusions of law. McClain v. Review Bd. of the Ind. Dep't of Workforce Dev., 693 N.E.2d 1314, 1317 (Ind. 1998).

Review of the Board's findings of basic fact is subject to a "substantial evidence" standard of review. Id. In this analysis, we neither reweigh the evidence nor assess the credibility of witnesses and consider only the evidence most favorable to the Board's findings. General Motors Corp. v. Review Bd. of the Ind. Dep't of Workforce Dev., 671 N.E.2d 493, 496 (Ind. Ct. App. 1996). We will reverse the decision only if there is no substantial evidence to support the Board's findings. KBI, Inc. v. Review Bd. of the Ind. Dep't of Workforce Dev., 656 N.E.2d 842, 846 (Ind. Ct. App. 1995).

The Board's determinations of ultimate facts involve an inference or deduction based upon the findings of basic fact and [are] typically reviewed to ensure that the Board's inference is reasonable. McClain, 693 N.E.2d at 1317-18. We examine the logic of the inference drawn and impose any applicable rule of law. Id. at 1318. Some questions of ultimate fact are within the special competence of the Board, and it is therefore appropriate for us to accord greater deference to the reasonableness of the Board's conclusion. Id. However, as to ultimate facts which are not within the Board's area of expertise, we are more likely to exercise our own judgment. Id.

Finally, we review conclusions of law to determine whether the Board correctly interpreted and applied the law. Parkison v. James River Corp., 659 N.E.2d 690, 692 (Ind. Ct. App. 1996). In sum, basic facts are reviewed for substantial evidence, conclusions of law are reviewed for their correctness, and ultimate facts are reviewed to determine whether the Board's finding is a reasonable one. McClain, 693 N.E.2d at 1318. The amount of deference given to the Board turns on whether the issue is one within the particular expertise of the Board. Id.

Stanrail Corp. v. Rev. Bd. of the Department of Workforce Dev., 735 N.E.2d 1197, 1201-02 (Ind. Ct. App. 2000), trans. denied.

Although G.W. asserts that the pension payments were based on "his wages that he received from Hermann," he does not challenge the evidentiary record underlying the ALJ's findings or the findings themselves. See Appellant's Br. at 7. This is fatal to

G.W.'s appeal. The ALJ expressly found, based on the language of the collective bargaining agreement, that Hermann contributed monies to the pension. According to Indiana Code Section 22-4-15-4, payments received by a former employee from a pension to which "the employer contributes a portion or all of the money" requires a reduction in the former employee's unemployment benefits.

The law is clear as written. Nevertheless, G.W. asserts that the "Department of Workforce Development should not disincentive people to save for the future by unjustly reducing their unemployment benefits." Appellant's Br. at 5. But the legislature has made the policy choice to prohibit employers from paying double compensation and to prohibit former employees from receiving double benefits. And G.W.'s arguments on appeal are merely requests for this court to reconsider the evidence that was before the ALJ, which we will not do. Thus, we affirm the Review Board's decision.

Affirmed.

DARDEN, J., and BAILEY, J., concur.