

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

Bruce L. Rich

Appellee

v.

Director, Ohio Department of
Job and Family Services

Appellant

Court of Appeals Nos. L-09-1106
L-09-1108

Trial Court Nos. CI0200806556
CI0200807579

DECISION AND JUDGMENT

Decided: October 23, 2009

* * * * *

Francis J. Landry, for appellee.

Richard Cordray, Attorney General of Ohio, and Eric A. Baum,
Managing Attorney, for appellant.

* * * * *

OSOWIK, J.

{¶ 1} This is an appeal from two parallel judgments of the Lucas County Court of Common Pleas which reversed decisions of the Unemployment Compensation Review Commission ("UCRC") denying appellee's eligibility for unemployment compensation

benefits during two time periods. Both of the subsequent trial court reversals of these UCRC decisions were timely appealed.

{¶ 2} On April 28, 2009, the appeals were consolidated by this court under L-09-1106 given the analogous facts, parties, and issues. For the reasons set forth below, this court affirms the judgments of the trial court.

{¶ 3} Appellant, the Ohio Department of Job and Family Services ("ODJFS"), sets forth the following sole assignment of error:

{¶ 4} "A RETIREMENT-PLAN PAYOUT MUST BE DEDUCTED FROM UNEMPLOYMENT BENEFITS IF IT IS REASONABLY ATTRIBUTABLE TO THE EMPLOYEE'S TERMINATION FROM EMPLOYMENT. WHERE THE PAYOUT IS NOT DESIGNATED TO A SPECIFIC PERIOD, IT IS TO BE ATTRIBUTED TO THE WEEK FOLLOWING THE TERMINATION. THE TRIAL COURT ERRED IN HOLDING THAT THE PENSION PAYMENT CAN ONLY BE DEDUCTED FROM UNEMPLOYMENT BENEFITS IF IT IS MADE DURING THE SAME WEEK."

{¶ 5} The following undisputed facts are relevant to the issues raised on appeal. Appellee, Bruce L. Rich, was employed by Hanson Building Materials Inc. ("Hanson") for 27 years. Hanson is not a party to this case.

{¶ 6} Appellee possessed two separate savings plans pursuant to his employment with Hanson. Appellee had both a traditional pension plan and a separate 401(k) savings plan associated with his employment at Hanson.

{¶ 7} On March 12, 2007, appellee fully cashed out his 401(k) savings plan. The \$87,000 original balance in the plan netted appellee \$58,000 after taxes and penalties. The subsequent ramifications triggered by that financial transaction gave rise to this case. On March 31, 2007, appellee separated from employment with Hanson. Appellee subsequently filed for unemployment benefits.

{¶ 8} On March 3, 2008, the UCRC denied appellee's application for unemployment benefits for the time period extending from April 7 until October 6, 2007, on the basis of appellee's above-referenced prior 401(k) cash out. The UCRC held that the 401(k) cash out offset and exceeded potential unemployment benefits, thereby rendering appellee ineligible for unemployment benefits pursuant to R.C. 4141.312(A).

{¶ 9} On May 19, 2008, appellee filed notice of appeal of the UCRC denial. On September 10, 2008, a new hearing was conducted. A new hearing became necessary as the UCRC was unable to locate the transcript of the original hearing. On October 1, 2008, the UCRC again denied appellee's application for unemployment benefits on the identical basis of appellee's prior 401(k) cash out.

{¶ 10} On May 5, 2008, the UCRC denied appellee's application for unemployment benefits for a separate time period extending from January 12 until March 29, 2008, on the same basis of the prior denial of benefits. Appellee appealed both UCRC denials to the trial court.

{¶ 11} On March 13, 2009, the trial court ruled in separate entries that both UCRC denials of unemployment benefits were against the manifest weight of the evidence. In

support, the court emphasized that appellee's 401(k) savings plan cash out occurred prior to any week with respect to which appellee was seeking unemployment benefits. ODJFS filed timely notice of appeal of both judgments of reversal. On April 28, 2009, this court consolidated the appeals under L-09-1106.

{¶ 12} In its single assignment of error, ODJFS contends that the trial court erred in determining that appellee's eligibility for unemployment benefits could not be offset by his 401(k) cash out because the payout did not occur in any of the same weeks as those for which benefits were sought. In support, appellant contends that because there was an arguable nexus between the savings plan cash out and appellee's subsequent unemployment, it should fall within the parameters of an offsetting payment pursuant to R.C. 4141.312(A). Appellant maintains that because appellee suspected that his employment with Hanson was precarious when he cashed out his 401(k) savings plan, the payout should be construed to be a statutory offsetting payment negating his subsequent unemployment eligibility.

{¶ 13} We must apply a deferential standard of review in this matter and determine whether the disputed UCRC decisions were unlawful, unreasonable, or were against the manifest weight of the evidence. If not, they may not be disturbed. Thus, we apply the same standard of review as that utilized by the trial court. R.C. 4141.282(H). See, also, *Tzangas, Plakas & Mannos v. Ohio Bur of Emp. Serv.* (1995), 73 Ohio St.3d 694, 697.

{¶ 14} In order to weigh the merits of the disputed UCRC decisions, we must examine the specific language of the applicable unemployment eligibility statutory provisions and apply them to the specific facts of this case.

{¶ 15} R.C. 4141.31(A)(3) establishes that, "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 * * *."

{¶ 16} In conjunction with the above general provision establishing the existence of certain types of payments which automatically offset unemployment eligibility by statute, R.C. 4141.312(A) specifically mandates that, "the amount of benefits payable to a claimant for any week with respect to which the claimant is receiving a governmental or other pension, retirement or retired pay, annuity or any other similar periodic payment which is based on the previous work of the individual, shall be reduced by an amount equal to the amount of the pension, retirement or retired pay, annuity or other payment which is reasonably attributable to that week."

{¶ 17} We have carefully reviewed and considered the record of evidence in this matter. The record establishes that on March 12, 2007, appellee fully cashed out a 401(k) savings plan through Hanson. The record shows that this transaction was a single savings account cash out rather than the requisite receipt of a stream of periodic payments connected to prior employment so as to be deemed offsetting to unemployment eligibility within the parameters established by R.C. 4141.312(A).

{¶ 18} Appellant asserts that because appellee suspected at the time of his savings cash out that his ongoing employment with Hansen was in jeopardy, the March 12, 2007 cash payment should be construed as being "reasonably attributable" to future unemployment benefits sought by appellee. We find this rationale unpersuasive. Appellee could have properly cashed out this savings plan at his discretion in order to reduce his overall personal debt load, submit an early payoff of a financed asset, reinvest in an alternative investment product, or deposit in his checking account to apply towards his daily living expenses. Appellee could legitimately close out and spend his savings plan at his discretion. There is no relevant nexus between the cash out and appellee's subsequent unemployment.

{¶ 19} The UCRC denials of unemployment benefits sought by appellee were against the manifest weight of the evidence for two primary reasons. First, the March 12, 2007 lump-sum savings cash out does not constitute a periodic payment so as to be offsetting to unemployment eligibility pursuant to R.C. 4141.312(A) regardless of whether appellee was motivated by fear of potential future unemployment in undertaking the savings cash out. Second, it is not reasonable to conclude that the March 12, 2007 lump-sum savings cash out is "reasonably attributable" so as to be offsetting to appellee's future unemployment eligibility for time periods ranging from April 7, 2007 until March 29, 2008. The record does not establish that appellee conclusively knew on March 12, 2007 that his 27-year employment would cease on March 31, 2007. The record does not establish that appellee knew with any certainty at the time of the savings

plan cash out that he would be unemployed at a future point in time or that he knew the duration of the future unemployment such that the cash out could be construed as "reasonably attributable" to the future time periods of unknown starting or ending dates.

{¶ 20} We find that appellant's position is speculative in nature and not persuasive in this matter. Appellee's March 12, 2007 savings plan cash out did not constitute an unemployment benefit eligibility offset pursuant to R.C. 4141.312(A). We find appellant's sole assignment of error not well-taken.

{¶ 21} On consideration whereof, the judgments of the Lucas County Court of Common Pleas are affirmed. Appellant is ordered to pay the costs of this appeal pursuant to App.R. 24.

JUDGMENTS AFFIRMED.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See, also, 6th Dist.Loc.App.R. 4.

Arlene Singer, J.

JUDGE

Thomas J. Osowik, J.

JUDGE

Charles D. Abood, J.
CONCUR.

JUDGE

Judge Charles D. Abood, retired, sitting by assignment of the Chief Justice of the Supreme Court of Ohio.

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at: <http://www.sconet.state.oh.us/rod/newpdf/?source=6>.