SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-4912-15T4

STEVEN D'AGOSTINO,

Appellant,

v.

BOARD OF REVIEW,
DEPARTMENT OF LABOR AND
WORKFORCE DEVELOPMENT,
J&J PIZZA, INC. and
TOO MUCH MEDIA, LLC,

Respondents.

Argued November 30, 2017 – Decided December 14, 2017

Before Judges Haas and Rothstadt.

On appeal from the Board of Review, Department of Labor and Workforce Development, Docket No. 079415.

Steven D'Agostino, appellant, argued the cause pro se.

Christopher Weber, Deputy Attorney General, argued the cause for respondent Board of Review (Christopher S. Porrino, Attorney General, attorney; Melissa Dutton Schaffer, Assistant Attorney General, of counsel; Christopher Weber, on the brief).

Respondents J&J Pizza, Inc. and Too Much Media, LLC, have not filed briefs.

PER CURIAM

Appellant appeals from the June 17, 2016 final decision of the Board of Review, which concluded that the Deputy Claims Examiner properly calculated appellant's $414 weekly benefit rate on his approved claim for unemployment compensation benefits. We affirm.

By way of background, a claimant's weekly benefit rate is 60% of the average weekly wage earned by the claimant during his or her base year, which in turn is comprised of base weeks. N.J.S.A. 43:21-3(c)(1). In pertinent part, N.J.S.A. 43:21-19(u) defines "average weekly wage" as follows:

> For benefit years commencing on or after July 1, 1986, "average weekly wage" means the amount derived by dividing an individual's total base year wages by the number of base weeks worked by the individual during the base year; provided that for the purpose of computing the average weekly wage, the maximum number of base weeks used in the divisor shall be [fifty-two].

A claimant's "base year" consists of "the first four of the last five completed calendar quarters immediately preceding an individual's benefit year[,]" N.J.S.A. 43:21-19(c)(1), which begins on the day he or she "first files a valid claim for benefits[.]" N.J.S.A. 43:21-19(d). A "base week" is defined as

"any calendar week during which the individual earned in employment from an employer remuneration not less than an amount [twenty] times the [New Jersey] minimum wage in effect . . . on October 1 of the calendar year preceding the calendar year in which the benefit year commences[.]"[1] N.J.S.A. 43:21-19(t)(3).

In this case, appellant filed his claim for benefits on January 3, 2016, which established a "base year" that ran from October 1, 2014 to September 30, 2015, which were "the first four of the last five completed calendar quarters immediately preceding" his benefit year. N.J.S.A. 43:21-19(c)(1). The Deputy determined that appellant was eligible for benefits and proceeded to calculate appellant's weekly benefit rate.

Appellant had two different employers during his base year. While working for the first employer, appellant earned $4911.73 in gross wages during sixteen base weeks. For his second employer, appellant worked thirty-seven base weeks and earned $31,038.48 in gross wages. Thus, in total, appellant worked fifty-three base weeks and earned $35,950.21 in gross wages during his base year.

In determining his "average weekly wage" during this period, the Deputy divided appellant's $35,950.21 by fifty-two as required

[1] In January 2016, when appellant filed his claim for benefits, a claimant needed to earn $168 or more in a week for it to be considered a "base week."

by N.J.S.A. 43:21-19(u). Based on this calculation, appellant's average weekly wage was $691.35. Finally, the Deputy calculated 60% of this amount, rounded to the next lower multiple of $1, and determined that appellant's weekly benefit rate was $414.

Appellant challenged the Deputy's calculation, and argued that only the wages he earned for his second employer should have been considered in determining his "average weekly wage." However, the Appeal Tribunal and the Board rejected appellant's contention.

As the Board explained in its June 17, 2016 decision, appellant's argument was based upon the version of N.J.S.A. 43:21-19(u) that was in effect prior to its amendment on March 26, 1984. L. 1984, c. 24. At that time, a claimant's average weekly wage was determined by dividing his or her total wages earned from the "most recent base year employer with whom he has established at least [twenty] base weeks, by the number of base weeks in which such wages were earned." N.J.S.A. 43:21-19(u). However, the statute was amended in 1984 to provide that "[f]or benefit years commencing on or after July 1, 1986, 'average weekly wage' means the amount derived by dividing an individual's total base year wages by the number of base weeks worked by the individual during the base year[.]" Ibid.; L. 1984, c. 24, § 12.

The Deputy determined appellant's average weekly wage as required by the amendment to N.J.S.A. 43:21-19(u) because

appellant obviously filed his claim after July 1, 1986. Therefore, the Board concluded that the Deputy properly calculated appellant's $414 weekly benefit rate. This appeal followed.

On appeal, appellant continues to argue that the Deputy, the Appeal Tribunal, and the Board misinterpreted N.J.S.A. 43:21-19(u) in determining his weekly benefit rate. We find insufficient merit in appellant's arguments to warrant discussion in a written opinion. R. 2:11-3(e)(1)(D). We add the following brief comments.

When the language of a statute "clearly reveals the meaning of the statute, the court's sole function is to enforce the statute in accordance with those terms." In re Estate of Fisher, 443 N.J. Super. 180, 190 (App. Div. 2015) (quoting State v. Olivero, 221 N.J. 632, 639 (2015)), certif. denied, 224 N.J. 528 (2016). Here, the language of the 1984 amendment to N.J.S.A. 43:21-19(u) is clear and unambiguous.

As noted above, for all claims filed after July 1, 1986, a claimant's average weekly wage is determined by considering the claimant's total wages earned during his or her base year. Ibid. As our Supreme Court held in Mortimer v. Bd. of Review, 99 N.J. 393, 399 (1985), "[p]ursuant to [the 1984 amendment], commencing July 1, 1986[,] the calculation of the average weekly wage will be made by combining all eligible base year wages without making any distinction between employment that lasted more or less than

[twenty] weeks." The Deputy followed this directive in computing appellant's weekly benefit rate. Thus, appellant's contention to the contrary clearly lacks merit.

Affirmed.

I hereby certify that the foregoing is a true copy of the original on file in my office.

CLERK OF THE APPELLATE DIVISION