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SPORTS FRANCHISE, LLC
Appellant/Employer

v.

A.B.
Appellee/Claimant

Case No.: 2010-DOES-02776

FINAL ORDER

I. Introduction

Appellant/Employer appealed a Department of Employment Services (“DOES”) Claims Examiner Determination qualifying Appellee/Claimant, A.B., to receive benefits because she was “laid off for lack of work.” *See* Exhibit 300. By Scheduling Order issued December 6, 2010, the court set the case for a hearing on December 20, 2010, at 9:30 a.m. Benefits Administrator, B.C., represented and testified for Employer, as did Human Resources Coordinator, C.D. Claimant represented and testified for herself. I admitted Exhibit 200 into evidence and I considered Exhibits 300 and 301 to determine jurisdiction.

II. Findings of Fact

A. Jurisdiction: Timeliness of the Appeal

DOES mailed the Determination to Employer on November 9, 2010, and Employer appealed on November 19, 2010. *Compare* Exhibits 300 and 301.

B. Separation from Employment

Claimant works for Employer on an hourly basis as a Guest Services Representative at the home venue for a local sports franchise. The job is seasonal, meaning Claimant works on a regular basis during the sports season, but not during the off-season. Her work cycle begins each year in late March, when she and other venue workers undergo pre-season training. She then works through the end of the sports season in late September or early October. Although the exact start and stop dates vary slightly from year to year, Claimant works about 6 months during the sports season followed by 6 months of down time when she earns no regular wages until the next season.

This year, Claimant worked through the team's last home game on September 29, 2010, followed by some charity events at the venue until early November 2010. *See* Exhibit 200 (Employee Time History Report). Claimant has not worked for Employer since, although both parties anticipate she will return to work in late March 2011 for the upcoming sports season.

III. Conclusions of Law

A. Jurisdiction: Timeliness of the Appeal

Any party may appeal a Claims Examiner's Determination within 15 calendar days after DOES mails it to the party's last-known address. D.C. Official Code § 51-111(b), as amended. Compliance with the appeal deadline is essential for this administrative court to have jurisdiction to decide an appeal on the merits. *Chatterjee v. Mid Atl. Reg'l Council of Carpenters*, 946 A.2d 352, 354 (D.C. 2008). Here, Employer appealed on time. Jurisdiction is established and I may decide the case on the merits.

B. Separation from Employment

Unemployed claimants generally are qualified to receive benefits if they satisfy the eligibility criteria enumerated in D.C. Official Code § 51-109.¹ There are some disqualifying exceptions where, for example, claimants voluntarily quit their jobs or where they are discharged for work-related misconduct. D.C. Official Code § 51-110(a)-(b). Employers bear the burden of proving disqualifying exceptions to avoid paying benefits. *Green v. D.C. Dep't of Employment Servs.*, 499 A.2d 870, 876-77 (D.C. 1985); *Morris v. U.S. EPA*, 975 A.2d 176, 181 (D.C. 2009).

Here, both parties agree that Claimant neither quit her job nor committed work-related misconduct. Employer, however, disagrees with the DOES Determination that Claimant was “laid off for lack of work” because Employer did not permanently sever its relationship with Claimant, who is expected to return to work for the 2011 sports season. The phrase “laid off for lack of work” may indeed imply a permanent separation from work that does not precisely fit Claimant’s temporary off-season hiatus. But regardless of the phrasing in the Determination, the fact remains that Claimant does not get paid during the off-season, making her unemployed as a matter of law. In that regard, the applicable statute specifies that a claimant is “unemployed” for purposes of receiving benefits “with respect to any week during which he performs no services and with respect to which no earnings are payable to him, or with respect to any week of less than full-time work if 80% of the earnings payable to him with respect to such week are less than his weekly benefit amount plus \$20.” D.C. Official Code § 51-101(5).

¹ Nothing in the record suggests any issue has been raised or preserved concerning the benefits eligibility criteria enumerated in D.C. Official Code § 51-109, such as base period wages, ability to work, or availability for work.

The legislature has considered the subject of seasonal employment and has determined that benefits “shall not be paid” to narrow categories of employees, including teachers and certain professional sports participants who receive reasonable assurances of returning for their next semester or season. *See* D.C. Official Code § 51-109(7)-(8). The professional sports provision states in pertinent part as follows:

Benefits shall not be paid to any individual on the basis of any services, substantially all of which consist of participating in sports or athletic events or training or preparing to so participate

D.C. Official Code § 51-109(8) (emphasis added).

The foregoing provision clearly applies to actual sports participants (*i.e.*, athletes) and could perhaps be construed to encompass persons such as coaches who train or prepare athletes to participate in the events. But given the well-established remedial policy objectives of the unemployment compensation statute,² the provision cannot be stretched to deny benefits to seasonal workers like Claimant, who only provide ancillary guest services for stadium attendees. This conclusion is consistent with decisions in other states which narrowly construe the same statutory text to prohibit benefit payments to professional athletes only. *See, e.g., Hanlon v. Boden*, 306 N.W. 2d 858, 861 (Neb. 1981) (construing Nebraska Revised Statute 48-628). The Determination is therefore affirmed and Claimant remains qualified to receive benefits.

² The District of Columbia Court of Appeals has long held that the applicable benefits statute is remedial and should be construed liberally, whenever appropriate, to accomplish the legislative objective of minimizing the economic burden of unemployment. *Green v. D.C. Dep’t of Employment Servs.*, 499 A. 2d 870, 875 (D.C. 1985).

IV. Order

Based on the above findings of fact, conclusions of law, and the entire record in this case, it is, this 23rd day of December 2010

ORDERED, that the Determination that Appellee/Claimant A.B. is qualified to receive unemployment compensation benefits is **AFFIRMED**; and it is further

ORDERED, that Appellee/Claimant A.B. remains **QUALIFIED** to receive benefits; and it is further

ORDERED, that the appeal rights of any party aggrieved by this Order are stated below.

Scott A. Harvey
Administrative Law Judge