2015 IL App (1st) 141982-U

No. 1-14-1982

Fourth Division
March 26, 2015

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

AMANDA REED,	)	Appeal from the
Plaintiff-Appellant,	)	Circuit Court of
v.	)	Cook County.
ILLINOIS DEPARTMENT OF	)	
EMPLOYMENT SECURITY, *et al*.,	)	No. 14 L 50158
Defendant-Appellee,	)	
DIRECTOR OF ILLINOIS DEPARTMENT	)	Honorable
OF EMPLOYMENT SECURITY,	)	Edward S. Harmening,
Defendant,	)	Judge, presiding.
BOARD OF REVIEW,	)	No. 14 L 50158
Defendant,	)	
and RESURRECTION LUTHERN	)	
CHURCH,	)	
Defendant.	)	

JUSTICE COBBS delivered the judgment of the court.
Presiding Justice Fitzgerald Smith and Justice Ellis concurred in the judgment.

O R D E R

¶ 1 *Held*: Plaintiff's appeal contesting the denial of unemployment insurance benefits was properly dismissed based on her employer's exemption from the state unemployment system.

¶ 2 Unemployment compensation claimant sought review of a decision of the Board of Review of the Illinois Department of Employment Security (IDES), which affirmed the determination of an unemployment compensation referee that claimant was disqualified from receiving unemployment compensation benefits because she worked for an exempted employer. The Circuit Court, Cook County, Edward S. Harmening, affirmed. Claimant appealed.

¶ 3 BACKGROUND

¶ 4 In August 2013, Reed filed an application for unemployment insurance benefits with IDES. A Department claims adjudicator denied the application because the church was "non-liable" and Reed had earned too little from a secondary employer to be eligible to receive benefits. Reed sought reconsideration of the decision, which was denied.

¶ 5 A Department referee held an evidentiary hearing, at which Reed testified on her own behalf, and the Reverend Larry Frazier, the pastor of the church and Shirley Johnson, the payroll reporter for the church and former principal of the school, testified for the church.

¶ 6 The testimony established that Resurrection Lutheran Church is a nonprofit Illinois corporation organized for religious purposes serving its congregation, operating the church and school. It hired and supervised all school personnel and determined their compensation. Reed was hired by the board of directors of the church. The school did not have a separate corporate charter or legal organization. The church did not pay unemployment contributions because it was tax-exempt. The church did not inform its employees that they would not be able to receive unemployment benefits.

¶ 7 The school had been an elementary school that instructed children from pre-school through sixth grade. The church building and the school building are physically attached.

Four teachers had been employed at the school. Reed worked as a food service coordinator from 2004 through 2013. She also worked at the church's school. Reed's check stubs indicated that her employer was Resurrection Lutheran Church. In 2013, the church closed the school and Reed was laid off.

¶ 8 After the hearing, the referee issued her decision in which she determined that Reed was not eligible for unemployment insurance benefits under section 211.3A(1) of the Illinois Unemployment Insurance Act (Act) (West 2012). The referee explained that under section 211.3A(1) of the Act, employment for purposes of the Act does not include services performed in the employ of a church. The referee reasoned that because the school was not separately incorporated from the church, it constituted an arm of the church and school employees constituted church employees. The referee stated because Reed had not been in the church's employment for purposes of the Act, the money she was paid by the church did not constitute wages for purposes of the Act (820 ILCS 405/234 and 245 (West 2012)) and could not be considered when determining Reed's eligibility for benefits. Finally, the referee found that the income Reed earned at her secondary summer employment (approximately $936) was insufficient to meet the minimum monetary requirements to collect benefits.

¶ 9 Reed administratively appealed that decision to the Board of Review, which affirmed the referee's decision. In February, 2014, Reed then filed a *pro se* complaint for administrative review of the Board of Review's decision in the circuit court. On June 4, 2014, the court affirmed the Board's decision. Reed filed this timely notice of appeal on June 26, 2014.

¶ 10 ANALYSIS

¶ 11 Initially, this court notes that Reed has failed to comply with our supreme court's rules governing appellate review. See Supreme Court Rule 341 (eff. Feb. 6, 2013), and 342 (eff.

Jan. 1, 2005). Most notably, Reed has failed to articulate an organized and cohesive legal argument, and her brief is completely devoid of any citation to legal authority. Reed's *pro se* status does not relieve her of the burden of complying with the format for appeals as mandated by our supreme court's rules (*Twardowski v. Holiday Hospitality Franchising*, 321 Ill. App. 3d 509, 511 (2001)), and her noncompliance with these rules subjects her appeal to dismissal (*LaGrange Memorial Hospital v. St. Paul Insurance Co*., 317 Ill. App. 3d 863. 876 (2000)). However, because the issue on appeal is straightforward and we have the benefit of a cogent appellee's brief (see *Twardowski*, 321 Ill. App. 3d at 511), we choose to entertain the appeal (see *Harvey v. Carponelli*, 117 Ill. App. 3d 448, 451 (1983)).

¶ 12 Our review of the Board's decision to affirm the referee's dismissal of Reed's appeal is governed by the Administrative Review Law. 735 ILCS 5/3-112 (West 2012). While our review extends to all questions of law and fact presented by the record (735 ILCS 5/3-110 (West 2012)), this court reviews an agency's decision and not the decision of the circuit court. *Thompson v. Department of Employment Security*, 399 Ill. App. 3d 393, 394 (2010)). A reviewing court may not consider evidence which is beyond the administrative record. *Lyson v. Department of Children and Family Services*, 209 Ill. 2d 264, 271 (2004); 735 ILCS 5/3-110 (West 2012).

¶ 13 The applicable standard of review depends on the issue raised. *Cinkus v. Village of Stickney Municipal Officers Electoral Bd.*, 228 Ill. 2d 200, 210 (2008). An agency's findings of fact are entitled to deference, and will be affirmed unless they are against the manifest weight of the evidence. *Id*. Pursuant to this deferential standard, the reviewing court deems the Board's factual findings to be *prima facie* true and correct. 735 ILCS 5/3-110 (West 2012). Findings of fact will be reversed only if the opposite conclusion is clearly evident.

Cinkus, 228 Ill. 2d at 210. A reviewing court may not usurp an agency's functions by weighing the evidence or judging the credibility of the witnesses. *Id.*; *Greenlaw v. Department of Employment Security*, 299 Ill. App. 3d 446, 448 (1998).

¶ 14 "Mixed questions of law and fact (where historical facts are established or undisputed, and the issue is whether those facts satisfy the statutory standard) are examined with a standard of review of clearly erroneous." *City of Sandwich v. Illinois Labor Relations Board*, 406 Ill. App. 3d 1006, 1008 (2011) (citing *Cinkus*, 228 Ill. 2d at 211). The clearly erroneous standard of review lies between the manifest weight of the evidence standard and the *de novo* standard, and as such, it grants some deference to the agency's decision. *AFM Messenger Service, Inc. v. Department of Employment Security*, 198 Ill. 2d 380, 392 (2001). "[W]hen the decision of an administrative agency presents a mixed question of law and fact, the agency decision will be deemed 'clearly erroneous' only where the reviewing court, on the entire record, is 'left with the definite and firm conviction that a mistake has been committed.' " *Id.* (quoting *United States v. United States Gypsum Co.*, 333 U.S, 364, 395 (1948)). That the clearly erroneous standard is largely differential does not mean, however, that a reviewing court must blindly defer to the agency's decision. *AFM Messenger*, 198 Ill. 2d at 395.

¶ 15 In administrative review cases, the hearing officer functions as the fact finder, determines witness credibility and the weight to be given their statements, and draws reasonable inferences from the evidence. *Young-Gibson v. Board of Education of the City of Chicago*, 2011 IL App (1st) 103804 ¶ 56. "We may affirm the agency's decision on any basis supported by the record." *Id.*

¶ 16 Here, the Board's finding is, in part, factual because it involves considering whether the facts in this case support a finding that Reed was not eligible for unemployment benefits.

Nevertheless, the Board's finding also concerns a question of law because the term "employment" is a legal term that requires interpretation. *City of Belvidere v. Illinois State Labor Relations Board*, 181 Ill. 2d 191, 205 (1995).

¶ 17 Under the framework established by the Act, (820 ILCS 405/700 (West 2012)) a claimant's application for benefits is initially decided without a full hearing by a claims adjudicator. An appeal from a claims adjudicator's determination is considered first by the referee, while a final decision lies with the Board. 820 ILCS 405/800, 803 (West 2012). The individual seeking unemployment benefits carries the burden of proving eligibility. *AFM Messenger*, 198 Ill. 2d at 396-97.

¶ 18 The Act (820 ILCS 405/100 *et seq*. (West 2004)) was enacted to provide economic relief to individuals who became involuntarily unemployed, through the collection of compulsory contributions from employers and the payment of benefits to eligible unemployed persons. *Manning v. Department of Employment Security*, 365 Ill. App. 3d 553, 557 (2006). Liability for contributions and eligibility for benefits is dependent, in part, on the existence of an "employment" relationship. *AFM Messenger*, 198 Ill. 2d at 396-97.

¶ 19 Section 206 of the Act defines "employment" in relevant part as "any service * * * performed by an individual for an employing unit." 820 ILCS 405/206 (West 2012). Section 211.3 provides that the term "employment" for purposes of the Act shall not include services performed:

> "A. In the employ of (1) a church or convention or association of churches, or (2) an organization or school which is not an institution of higher education, which is operated primarily for religious purposes and which is operated, supervised,

> controlled or principally supported by a church or convention or association of churches". 820 ILCS 211.3A (West 2012).

¶ 20 Where, as here, the school is not separately incorporated from a church or convention or association of churches, it is exempt from coverage under the state unemployment system under section 211.3A(1) because the teachers and other personnel are direct employees of the church. 820 ILCS 211.3A(1) (West 2012).

¶ 21 As in other states, Illinois' unemployment insurance legislation implements mandatory federal minimum standards of coverage established by the Federal Unemployment Tax Act (FUTA) (26 U.S.C.A. secs. 3301 *et seq* (eff. Nov 6, 2009)). Section 3309 of FUTA states in pertinent part;

> "State law coverage of services performed for nonprofit organizations or government entities:
>
> * * *
>
> (b) Section not to apply to certain service--This section shall not apply to service performed--(1) in the employ of (A) a church or convention or association of churches, (B) an organization which is primarily for religious purposes and which is operated, supervised, controlled, or principally supported by a church or convention or association of churches, or (C) an elementary school which is operated primarily for religious purposes, ***." 26 U.S.C.A. § 3309 (eff. Dec. 21, 2000).

¶ 22 The Supreme Court has held that subsequent amendments to FUTA did not alter the exemption for church-operated schools that had no separate legal existence from a church or association of churches. See *St. Martin Evangelical Lutheran Church v. South Dakota*, 451

U.S. 772, 777-78 (1981); *Lutheran Church-Missouri Synod v. Bowling*, 89 Ill. App. 3d 100, 101-02 (1980).

¶ 23 We conclude that section 3309(b)(1)(A) was meant to apply to schools, like Resurrection's, that have no separate legal existence from a church. Resurrection Lutheran Church financed, supervised and controlled the school's operations. The school did not have a separate legal charter or existence. Thus, the employees working within this school plainly were "in the employ*** of a church *** " § 3309 (b)(1)(A). See *Lake Region Conference v. Ward*, 170 Ill. App. 3d 999, 1000 (1988) (exemption applied where no school had separate corporate charter or legal organization).

¶ 24 Here, since statutorily, employees of churches and/or organizations operated primarily for religious purposes and controlled, supervised, operated or mainly supported by a church are exempted, it is readily apparent that the church was entitled to the religious exemption, and accordingly, Reed as an employee, was not eligible to receive benefits.

¶ 25 CONCLUSION

¶ 26 For the reasons set forth above, we affirm the judgment of the circuit court and uphold the decision of the Board.

¶ 27 Affirmed.