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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(El Dorado)

JOHN V. ADAMSKI,

Plaintiff and Appellant,

v.

CALIFORNIA UNEMPLOYMENT INSURANCE
APPEALS BOARD,

Defendant and Respondent.

C069596

(Super. Ct. No.
SC20110006)

John V. Adamski brought this petition for writ of mandate to set aside an administrative decision of the California Unemployment Insurance Appeals Board (the Board) that treated a lump sum payment he received in the last quarter of 2008 as though he had received it in equal shares in each quarter of the calendar year 2008, a year which he applied for, and received, unemployment benefits.

The trial court upheld the administrative decision and rendered judgment denying the writ of mandate. Adamski appeals from that judgment.

Because the trial court did not apply the correct standard of review of the administrative proceedings, we shall reverse the judgment and remand the matter for the trial court to apply its independent judgment to the evidence.

FACTS AND PROCEEDINGS

Adamski is the owner and sole shareholder of a corporation, Adamski Construction, Inc., whose business involves building custom homes.

On or about March 31, 2008, Adamski finished building a custom "spec" house on High Meadows Trail, and engaged a realtor to sell the house. Thereafter, although Adamski actively looked for work for himself and his corporation, he was unsuccessful in securing employment or work for either as the new-home construction industry suffered a serious downturn.

In September 2008, Adamski filed for unemployment insurance benefits with the California Unemployment Insurance Department. His request was approved, and he began collecting unemployment benefits.

In November 2008, the High Meadows Trail house sold. The corporation paid Adamski \$20,000, which Adamski characterized as a "delayed payment" for the work he had performed on the Meadows Trail House prior to March 31, 2008.

Immediately following his receipt of the November 2008 payment, Adamski contacted the Employment Development Department (EDD) to "explain the nature" of the payment. Based on Adamski's representation he had been unemployed since March 31, 2008, when construction was completed on the High Mountain Trails house, EDD agreed that Adamski continued to qualify for unemployment benefits.

Adamski filed another claim for unemployment insurance benefits, effective September 6, 2009, based upon his lack of employment between April 1, 2008, and March 31, 2009.

In October 2009, Adamski was contacted by EDD tax auditor Jason Powers. Powers was investigating whether the November 2008 payment Adamski received from the corporation represented wages for services he performed as a corporate officer over the course of 2008, and should be "spread," or allocated, over all four quarters of 2008. Powers determined that, during the whole of 2008, Adamski performed the duties necessary to maintain the corporation as a going concern, including actively looking for jobs for himself and the corporation, making bids, "trying to sell properties the business owns" and other administrative duties. Powers determined that "[t]he lump sum payment [Adamski received in November 2008] was for services rendered throughout the year." Powers cited Unemployment Insurance Code section 1282, which provides: "If the remuneration of an individual is not based upon a fixed period or duration of time or if the individual's wages are paid at irregular intervals or in such manner as not to extend regularly over the period of employment,

the wages for any week or for any calendar quarter for the purpose of computing an individual's right to unemployment compensation benefits shall be determined pursuant to authorized regulations. The regulations shall, so far as possible, secure results reasonably similar to those which would prevail if the individual were paid his wages at regular intervals."

We note also that title 22 of the California Code of Regulations, section 1282-1 states: "For the purpose of determining a claimant's maximum benefits and weekly benefit amount for unemployment compensation benefits, when because of the irregular or infrequent intervals of the wage payments, wage records would not otherwise fairly indicate the claimant's employment during his base period, the department shall apportion the amount of such wage payments among the calendar quarters covered by the wages according to the length of employment in each of such quarters."

Powers concluded that the November 2008 payment should be treated as though it had been received in equal increments during each quarter of 2008. Powers filed an audit report of his findings and, based on that report, EDD issued a "notice of status of wages" reflecting Powers's conclusion that Adamski effectively received \$5,000 in wages during each quarter of 2008.

The ALJ's Decision

Adamski challenged the wage adjustment and Powers's findings. An administrative law judge (ALJ) conducted an

evidentiary hearing, at which Adamski appeared by telephone. Adamski's accountant was present, but did not testify. The ALJ reasoned that Powers's findings--reflected in the EDD's October 2009 "notice of status of wages"--properly reallocated \$20,000 in wages received by Adamski from Adamski Corporation, Inc., from \$20,000 in the fourth quarter of 2008 to \$5,000 per quarter. The ALJ determined that, because Adamski is the sole corporate employee, and he "worked consistently throughout 2008 . . . to keep the business operating [by] performing various tasks at his discretion, and as necessary for the operation of the business[,]" EDD properly reallocated Adamski's wages.

The Appeals Board Decision

The Board affirmed the ALJ's ruling, stating the weight of the evidence supports the ALJ's finding Adamski "worked consistently . . . from January 2008 through December 2008, to keep the business operating, performing various tasks at his discretion, and as necessary for the operation of the business," and the ALJ properly found that EDD was correct in allocating Adamski's \$20,000 in wages in equal quarterly amounts over 2008.

In so doing, the Board declined to consider letters submitted to it by Adamski and his accountant in response to the factual and legal conclusions contained in EDD auditor Powers's report.

The Trial Court's Decision

Adamski filed this petition for writ of mandate to set aside the decision of the Board. In it, Adamski repeated his

arguments below that EDD erred in concluding the single "delayed" payment he received in November 2008 represented wages for work performed throughout 2008 as the sole corporate officer; the ALJ's finding that Adamski was employed after March 2008 was without evidentiary support; and the Board erred in refusing his proffered evidence because it was not "new." Exhibits to the petition included EDD guidelines; published appellate court decisions; EDD auditor Powers's field report; and the letter response prepared by Adamski's accountant, which stated that, after March 2008, Adamski's duties as a corporate officer were "limited to maintaining the corporation's licenses, maintaining this limited activity in the corporate checking account, and seeking construction projects for the business." The Board lodged the administrative record, but filed no return to the petition. (Code Civ. Proc., § 1094 [if no return is made, the case may be heard on the petitioner's papers].)

At the hearing on his petition, Adamski repeated his argument he found no work after March 2008, and the payment he received from the corporation in November represented a delayed payment for work performed prior to March 31, 2008, on the High Meadows Trail house. He argued the evidence showed he earned no income after March 31, 2008, to substantiate the EDD's conclusion he was "employed" thereafter.

The trial court denied the writ of mandate, and adopted its tentative ruling as its order. The order states that the standard of review to be applied by the court is "whether the agency has proceeded without, or in excess of jurisdiction (CCP

1094.5(b)[,])" and the court concluded the Board "has acted within the scope of its authority in determining the proper allocation of earnings for 2008. Unemployment Insurance Code section 1282 is clear when it provides that wages should be computed so as to 'secure results reasonably similar[] to those which would prevail if the individual were paid his wages at regular intervals.' [Unemp. Ins. Code, § 1282; Cal. Code Regs., tit. 22, § 1282-1.] [¶] Having determined that the application of the statute by the California Unemployment Insurance Appeals Board is proper," the trial court denied the writ.

DISCUSSION

On appeal, Adamski challenges the factual determinations made by EDD auditor Powers, thereafter relied upon by the ALJ and the Board, that Adamski was "continuously employed" after March 31, 2008, and complains the trial judge "overlooked or purposely disregarded" evidence on this issue.

We must agree with Adamski that the trial court did not exercise its independent judgment in considering the evidence.

The benefits provided by the Unemployment Insurance Act are fundamental, vested rights. (*Cooperman v. Unemployment Ins. Appeals Bd.* (1975) 49 Cal.App.3d 1, 7.) Once a claimant has been found to meet the requirements of the act, he is entitled to a certain sum of money, and cannot be deprived of this property right by an administrative agency without an independent evaluation by the trial court. (*Ibid.*; see also *Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th

763, 789 [trial courts must apply the "independent judgment" standard of review to administrative decisions that substantially affect a fundamental vested right].)

In applying its "independent judgment," a trial court accords a strong presumption of correctness to administrative findings, and the burden rests upon the complaining party to show that the administrative decision is contrary to the weight of the evidence. (*Fukuda v. City of Angels* (1999) 20 Cal.4th 805, 817; *Bixby v. Pierno* (1971) 4 Cal.3d 130, 139.) When a trial court reviews an administrative decision substantially affecting a fundamental vested right, it "not only examines the administrative record for errors of law but also exercises its independent judgment upon the evidence [Citations.]" (*Bixby*, at p. 143; see also *Fukuda*, at p. 817, fn. 8.)

The trial court here, then, was required to evaluate the evidence. (See *Cooperman v. Unemployment Ins. Appeals Bd.*, *supra*, 49 Cal.App.3d at p. 7.) The record shows this is not what happened. The trial court's written order suggests it mistakenly believed its inquiry was limited to whether the Board had jurisdiction to act as it did; it contains no discussion or assessment of the evidence, and no suggestion it evaluated whether the evidence supported the factfinding underlying the Board's decision.

At the hearing, the trial court also described its role as limited to reviewing the administrative proceedings for "legal defects." The court also seemed unaware that Powers's audit report, which contained many of the factual findings challenged

by Adamski, was contained in the administrative record.

Powers's audit report was also an exhibit to Adamski's petition.

Under these circumstances, reversal is required: reversal of the trial court's denial of a petition for writ of mandate is "mandated when the record showed that the trial court did not examine and weigh the losing party's evidence or exercise its independent judgment as to the credibility of witnesses and the overall weight of the evidence." (*Malibu Mts. Rec. v. County of L.A.* (1998) 67 Cal.App.4th 359, 370 and cases cited therein.)

DISPOSITION

The judgment is reversed. The matter is remanded to the trial court with directions to exercise its independent judgment on the evidence to determine whether by the weight of the evidence the Board abused its discretion. (Code Civ. Proc., § 1094.5, subd. (c).) Adamski is awarded his costs on appeal. (Cal. Rules of Court, rule 8.278(a)(1)(2).)

_____ HULL _____, Acting P. J.

We concur:

_____ BUTZ _____, J.

_____ MAURO _____, J.