

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED

APPEAL FROM THE ADMINISTRATIVE LAW COURT

John D. McLeod, Administrative Law Judge

Case No.: 15-ALJ-22-0497-AP

NOV 06 2016
SC Court of Appeals

Billie D. Mueller, Appellant,
vs
South Carolina Dept. of Employment &
Workforce
Respondent

Appellate Case No.: 2016-000037
INITIAL BRIEF OF APPELLANT
DESIGNATION OF MATTER TO BE
INCLUDED IN THE RECORD ON
APPEAL

Judicial Review from the decision
of the
State Of South Carolina
Administrative Law Court
dated January 4, 2016

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Appellant has no Attorney

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2 **APPELLATE'S BRIEF**
3

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5 **STATEMENT OF THE CASE**

6 **The Nature of the Proceeding and the Relief Sought**

7 This is a Petition for Review of a decision of the Administrative Law
8 Court affirming the decision of a Court of Appeals Judge decision denying
9 unemployment benefits to Appellate. Appellate requests that the decision be
10 reversed.

11 **The Nature of the Decision To Be Reviewed**

12 A final decision made and entered on January 4, 2016 by the
13 Administrative Law Court.

14 **Statement of the Statutory Basis for Appellate Jurisdiction**

15 This court has appellate jurisdiction over this matter pursuant to S.C.
16 Code Ann. 41-35-750

17 **Statement of Appellate Jurisdiction**

18 The Administrative Law Court entered its decision on January 4,
19 2016. The Petition for Judicial Review was filed on January 6, 2016.

20 **Questions Presented on Review**

- 21 A. Did the SCDEW Appellate Panel err in finding the
22 Appellant neglected to file her appeal in a timely manner?
23 B. Did the SCDEW Appellate Panel err in finding that
24 Appellant received the decision in a timely manner?
25

1 C. Did the Appellate Panel and Appeal Tribunal err in the decision on
2 Severance payments and bonus not being wages for which the
3 Appellant paid all Federal, State and FICA taxes?

4 **Summary of Argument**

5 I checked my mail on May 13, 2015 and my mail did not contain a
6 letter from SCDEW. I was staying with a friend while undergoing several medical
7 procedures. Cancer and Foot surgery so at the time I could not drive. I was
8 receiving the radiation treatments in Sumter and had foot surgery in Florence.
9 Went to check the mail again on May 20, 2015 and the letter from SCDEW was
10 obtained. The 10 day filing period had already passed so I submitted my appeal as
11 timely as possible. SCDEW has no certified proof that the decision was mailed in a
12 timely manner or that it was received in a timely manner. I am asking the court to
13 reconsider the decision of the Appellate Panel in this case. Again the SCDEW
14 mailed me their Brief postmarked Dec. 11, 2015 and it was not received in my mail
15 box until Dec. 22, 2015 which was 11 days later so how can they state that the
16 Appellate Panel's decision was received in a timely manner.

17 According to U.S. Supreme Court Certiorari To The United States
18 Court Of Appeals For The Sixth Circuit # 12-1408 (a) FICA defines "wages"
19 broadly as "all remuneration for employment." §3121(a). As a matter of plain
20 meaning, severance payments fit this definition: They are a form of remuneration
21 made only to employees in consideration for employment. "Employment" is "any
22 service . . . performed . . . by an employee" for an employer. §3121(b). By varying
23 according to a terminated employee's function and seniority, the severance
24 payments at issue confirm the principle that "service" "mea[ns] not only work
25 actually done but the entire employer employee relationship for which

1 compensation is paid." The Severance constituted 26 weeks pay for 26 years of
2 service to the employer. I am asking the court to reconsider the decision of the
3 Appellate Panel and the Appeal Tribunal in this case.

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Dated this 1st day of March, 2016

Billie D. Mueller

"H"

SOUTH CAROLINA DEPARTMENT OF EMPLOYMENT AND WORKFORCE
INITIAL DETERMINATION OF STATUS AS AN INSURED WORKER

SC WORKS CENTER 430

EFFECTIVE DATE 03/30/15

DATE FILED 03/31/15

DATE PREPARED 03/31/15

0

527-76-0453

BILLIE D MUELLER
1341 ROCKFISH DR

MANNING

SC 29102

*BENEFITS YOU MAY BE ELIGIBLE FOR:

MILITARY ASSIGNMENTS

WEEKLY BENEFIT AMOUNT 326.00

MAXIMUM TOTAL BENEFITS 6520.00

BENEFIT YEAR ENDS

03/29/16

*This statement establishes that you have the necessary wages to qualify for unemployment insurance. However, to receive benefits your job separation must also be considered. If you qualify, this is the maximum you may be entitled to receive.

SEE BACK FOR CLAIMANT INFORMATION

EMPLOYMENT RECORD		STANDARD BASE PERIOD QUARTERLY EARNINGS							
EMPLOYER	ACCOUNT NO.	YEAR	QTR.	YEAR	QTR.	YEAR	QTR.	YEAR	QTR.
EBTRON, INC.	289798	2013	04	2014	01	2014	02	2014	03
		15454.23		13317.36		35010.49			.00

NOTE: The weekly benefit amount on this form reflects your **GROSS PAYMENT EACH WEEK BEFORE ANY DEDUCTIONS** are made. Possible deductions to this amount include, but are not limited to, tax withholding, pension, child support, offset of overpayment, and part-time earnings. **ALSO, YOUR FINAL PAYMENT MAY BE LESS THAN THE FULL WEEKLY BENEFIT AMOUNT BASED ON THE BALANCE REMAINING IN YOUR ACCOUNT.**

STANDARD BASE QUARTER TOTAL

15454.23 13317.36 35010.49 .00

*QTR.

1-JAN, FEB, MAR 3-JULY, AUG, SEPT.

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B

Void <input type="checkbox"/>		Employee's social security number 527-76-0453		OMB No. 1545-0008 X4A		006115		000150			
b Employer identification number (EIN) 22-2455232				1 Wages, tips, other compensation 48327.85		2 Federal income tax withheld 6271.81					
c Employer's name, address, and ZIP code EBTRON INC 1663 HIGHWAY 701 S LORIS SC 29569				3 Social security wages 48327.85		4 Social security tax withheld 2996.33					
				5 Medicare wages and tips 48327.85		6 Medicare tax withheld 700.75					
				7 Social security tips		8 Allocated tips					
				9		10 Dependent care benefits					
d Control number 000150 CHAR/X4A				e Employee's first name and initial BILLIE		Last name MUELLER		11 Nonqualified plans		12a See instructions for box 12 W 446.15	
f Employee's address and ZIP code				13 <input type="checkbox"/> Secondary employer <input type="checkbox"/> Retirement plan <input type="checkbox"/> Third-party sick pay		12b		12c		12d	
				14 Other							
15 State Employer's state ID number SC 25319905 1		16 State wages, tips, etc. 48327.85		17 State income tax 3180.96		18 Local wages, tips, etc.		19 Local income tax		20 Locality rates	

Form **W-2** Wage and Tax Statement
Copy D -- For Employer

2014

Department of the Treasury - Internal Revenue Service
For Privacy Act and Paperwork Reduction Act Notice, see separate instructions.

Ag 7

"C"

Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

UNITED STATES v. QUALITY STORES, INC., ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

No. 12–1408. Argued January 14, 2014—Decided March 25, 2014

Respondent Quality Stores, Inc., and its affiliates (collectively Quality Stores) made severance payments to employees who were involuntarily terminated as part of Quality Stores’ Chapter 11 bankruptcy. Payments—which were made pursuant to plans that did not tie payments to the receipt of state unemployment insurance—varied based on job seniority and time served. Quality Stores paid and withheld, *inter alia*, taxes required under the Federal Insurance Contributions Act (FICA), 26 U. S. C. §3101 *et seq.* Later believing that the payments should not have been taxed as wages under FICA, Quality Stores sought a refund on behalf of itself and about 1,850 former employees. When the Internal Revenue Service (IRS) did not allow or deny the refund, Quality Stores initiated proceedings in the Bankruptcy Court, which granted summary judgment in its favor. The District Court and Sixth Circuit affirmed, concluding that severance payments are not wages under FICA.

Held: The severance payments at issue are taxable wages for FICA purposes. Pp. 4–15.

(a) FICA defines “wages” broadly as “all remuneration for employment.” §3121(a). As a matter of plain meaning, severance payments fit this definition: They are a form of remuneration made only to employees in consideration for employment. “Employment” is “any service . . . performed . . . by an employee” for an employer. §3121(b). By varying according to a terminated employee’s function and seniority, the severance payments at issue confirm the principle that “service” means not only work actually done but the entire employer-employee relationship for which compensation is paid.” *Social Security Bd. v. Nierotko*, 327 U. S. 358, 365–366. This broad definition is reinforced by the specificity of FICA’s lengthy list of exemptions. The

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