

RECEIVED

FEB 23 2017

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT
John D. McLeod, Administrative Law Judge
Case No.: 15-ALJ-22-0497-AP

Billie D. Mueller, Appellant

v.

South Carolina Department of Employment & Workforce, Respondent

Appellate Case No.: 2016-000037

FINAL BRIEF OF APPELLANT

Billie D. Mueller
1341 Rockfish Drive
Manning, SC 29102
Telephone: 803-410-6935
E-mail address: dinkerboy49@gmail.com
Appellant has no Attorney

Trey McLeod
Office of General Counsel
SC Dept. of Employment and Workforce
PO Box 8597
Columbia, SC 29202
legal@dew.sc.gov
Attorney for Respondent SCDEW

INDEX

STATEMENT OF THE CASE

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1. The Nature of the Proceeding and the Relief Sought3
2. The Nature of the Decision to Be Reviewed.....3
3. Statement of the Statutory Basis for Appellate Jurisdiction...3
4. Statement of Appellate Jurisdiction.....3
5. Questions Presented on Review.....3-4
6. Summary of Argument.....4-5
7. Exhibits A-C.....6-9
8. Certificate of Appellant.....10

1 **APPELLATE'S FINAL BRIEF**

2

3

4 **STATEMENT OF THE CASE**

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

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

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

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

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

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

15 ***Statement of Appellate Jurisdiction***

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

18 ***Questions Presented on Review***

- 19 A. Did the SCDEW Appellate Panel err in finding the
20 Appellant neglected to file her appeal in a timely manner?
21 (ARA – Pg.29 lines 8-17)
- 22 B. Did the SCDEW Appellate Panel err in finding that
23 Appellant received the decision in a timely manner?
24 (ARA – Pg.05 lines 18-19)
- 25

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

4 (ARA – Pg.41 lines 24-26 & Pg.42 lines 1-7)

5 **Summary of Argument**

6 I checked my mail on May 13, 2015 and my mail did not contain a letter from
7 SCDEW. I was staying with a friend while undergoing several medical procedures. (ARA –
8 Pg.09 lines 15-18) Cancer and Foot surgery so at the time I could not drive. I was receiving the
9 radiation treatments in Sumter and had foot surgery in Florence. Went to check the mail again on
10 May 20, 2015 and the letter from SCDEW was obtained. The 10 day filing period had already
11 passed so I submitted my appeal as timely as possible. SCDEW has no certified proof that the
12 decision was mailed in a timely manner or that it was received in a timely manner. I am asking
13 the court to 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 box until
15 Dec. 22, 2015 which was 11 days later so how can they state that the Appellate Panel's decision
16 was received in a timely manner. (ARA – Pg.40 completely)

17 Also South Carolina is the only state that I have researched that does not extend the appeal time
18 for illness or incapacitation.

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

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

4 (ARA – Pg.47 48)

5
6
7 Dated this 21st day of February, 2017

8 Billie Mueller
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Exhibit B

Void <input type="checkbox"/>		Employee's social security number 527-76-0453		OMB No. 1545-0048 X4A		006115		000153	
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 ESTRON 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			
c Control number 000150 CHAR/X4A				9		10 Dependent care benefits			
e Employer's first name and initial BILLIE		Last name MUELLER		11 Nonqualified plans		12a See instructions for box 12 W 446.15			
f Employer's address and ZIP code POST OFFICE BOX 98 DAVIS STATION SC 29401				13 <input type="checkbox"/> Salaried employee <input type="checkbox"/> Part-time plan <input type="checkbox"/> Part-time job pay		12b			
				14 Other		12c			
						12d			
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 name	

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.

Slip Opinions

OCTOBER TERM, 2013

1

Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released as it 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" "mean[s] not only work actually done but the entire employer-employee relationship for which compensation is paid." *Social Security Bd. v. Nieracko*, 327 U.S. 358, 365-366. This broad definition is reinforced by the specificity of FICA's lengthy list of exemptions. The

Syllabus

exemption for severance payments made "because of . . . retirement for disability," §3121(a)(13)(A), would be unnecessary were severance payments generally not considered wages. FICA's statutory history sheds further light on the definition. FICA originally contained definitions of "wages" and "employment" identical in substance to the current ones, but in 1939, Congress excepted from "wages" "[d]ismissal payments" not legally required by the employer. 53 Stat. 1384. Since that exception was repealed in 1950, FICA has contained no general exception for severance payments. Pp. 4-7.

(b) The Internal Revenue Code chapter governing income-tax withholding does not limit the meaning of "wages" for FICA purposes. Like FICA's definitional section, §3401(a) has a broad definition of "wages" and contains a series of specific exemptions. Section §402(o) instructs that "supplemental unemployment compensation benefits" or SUBs, which include severance payments, be treated "as if" they were wages. Contrary to Quality Stores' reading, this "as if" instruction does not mean that severance payments fall outside the definition of "wages" for income-tax withholding purposes and, in turn, are not covered by FICA's definition. Nor can Quality Stores rely on §3402(o)'s heading, which refers to "certain payments other than wages." To the extent statutory headings are useful in resolving ambiguity, see *FTC v. Mandel Brothers, Inc.*, 359 U. S. 385, 388-389, §3402(o)'s heading falls short of declaring that all the payments listed in §3402(o) are "other than wages." Instead, §3402(o) must be understood in terms of the regulatory background against which it was enacted. In the 1950's and 1960's, because some States provided unemployment benefits only to terminated employees not earning wages, IRS Rulings took the position that severance payments tied to the receipt of state benefits were not wages. To address the problem that severance payments were still considered taxable income, which could lead to large year-end tax liability for terminated workers, Congress enacted §3402(o), which treats both SUBs and severance payments the IRS considered wages "as if" they were wages subject to withholding. By extending this treatment to all SUBs, Congress avoided the practical problems that might arise if the IRS later determined that SUBs besides severance payments linked to state benefits should be exempt from withholding. Considering this regulatory background, the assumption that Congress meant to exclude all SUBs from the definition of "wages" is unsustainable. That §3402(o) does not narrow FICA's "wages" definition is also consistent with the major principle of *Powen Cos. v. United States*, 452 U. S. 247: that simplicity of administration and consistency of statutory interpretation instruct that the meaning of "wages" should be in general the same for income-tax withholding and for FICA calculations. Pp. 7-

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Certificate of Appellant

The undersigned hereby certifies that the Final Brief of Appellant contains all material proposed to be included by any of the parties and not any other material.

February 21, 2017

Billie D. Mueller

Billie D. Mueller
1341 Rockfish Drive
Manning, South Carolina 29102
(803) 410-6935
Appellant has no Attorney

RECEIVED
FEB 23 2017
SC Court of Appeals