MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

M.W.,

Appellant,

v.

Review Board of the Indiana Department of Workforce Development,

Appellee.

June 30, 2022

Court of Appeals Case No. 22A-EX-83

Appeal from the Review Board of the Indiana Department of Workforce Development

The Honorable Gabriel Paul, Chairperson

The Honorable Larry A. Dailey, Member

The Honorable Heather D. Cummings, Member

Application No. 21-R-5919

Najam, Judge.

Statement of the Case

[1] M.W. appeals the decision of the Review Board of the Indiana Department of Workforce Development ("the Board") affirming the decision of the Administrative Law Judge ("ALJ") that M.W. had received deductible income in the form of severance pay such that he was ineligible for unemployment benefits. M.W. raises one issue for our review, namely, whether the Board erred when it determined that he was ineligible to receive unemployment benefits.

[2] We affirm.

Facts and Procedural History

[3] M.W. began working for Eaton Corporation ("Eaton") on May 31, 1995. In November 2020, Eaton informed its employees that it would be closing its plant. At that time, M.W. was employed full-time in the shipping department and earned $20.21 per hour. At some point thereafter, Eaton and M.W. entered into an Agreement and General Release ("the Agreement") to "establish their rights and obligations concerning the ending of [M.W.'s] employment with Eaton." Appellant's App. Vol. 2 at 8. Pursuant to the terms of the Agreement, M.W.'s employment would "end at the close of business on 5/1/2021[.]" In addition, Eaton agreed to pay M.W. a "Plant Discontinuance Benefit" in the amount of $44,116.80 "in consideration for performing [his] obligations in this Agreement." *Id.*

[4] In exchange, M.W. agreed to return certain items to the Human Resources Department; to not disclose any information "that would create a competitive disadvantage for Eaton"; to discharge Eaton from "all liabilities, claims, cause of actions, charges, complaints, losses, damages, injures, attorneys' fees and other legal responsibilities, of any for whatsoever, whether known or unknown"; and to not provide "any assistance, information, report, aid or cooperation to any private party, other than Eaton, in any litigation, investigation or other proceeding any against Eaton[.]" *Id* at 9-10. M.W. signed the Agreement on April 30, 2021, which was his last day of employment.[1] *See* Tr. at 8.

[5] On May 14, M.W. received a lump-sum payment from Eaton in the amount of $44,116.80. M.W. then applied for unemployment benefits from the Indiana Department of Workforce Development ("DWD"). DWD determined that M.W. had received "severance" pay, which was "deductible income." Ex. at 3. And DWD determined that M.W.'s deductible income exceeded his weekly benefit amount. Accordingly, DWD concluded that M.W. was not eligible for unemployment benefits for the week ending May 22, 2021, through the week ending May 14, 2022, and denied M.W.'s claim.

[6] M.W. appealed DWD's decision to the ALJ. M.W. alleged that the payment was a "bonus" from Eaton, which he received for "staying on from the closing

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[1] While the Agreement provided that his last day would be May 1, M.W. testified that his last day was Friday, April 30. *See* Tr. at 5.

announcement until [he was] asked to leave the facility[.]" *Id*. at 5. He further stated that any employee who left early "did not receive the stay[-]on bonus." *Id*.

[7] The ALJ held a telephonic hearing at which only M.W. appeared. During the hearing, M.W. alleged that the payment from Eaton was not "severance pay" but that it was a "plant discontinuance benefit," which Eaton paid "because the plant was discontinuing operations[.]" *Id*. at 6, 7. And he testified that the payment was based on "his hourly rate of pay" and "the amount of hours that [he] would work in a year." *Id*. at 8, 10. But he stated that he did not believe the payment was intended to be for fifty-two weeks because "there was never anything discussed" about "any type of pay period . . . for this being paid out." *Id*. at 10. Rather, he testified that neither his management nor his union had discussed "this payment being a severance." *Id*. at 12. He also confirmed that there were no "outstanding disputes or claims" between him and Eaton. *Id*. at 8.

[8] Following the hearing, the ALJ entered findings of fact and conclusions thereon. In particular, the ALJ found that

> [t]he payment was made by the employer to [M.W.] and the other employees due to the closing of the plant and the termination of their employment. The payment to [M.W.] was calculated based on his years of service, 26, and was the equivalent of pay at his regular gross weekly pay of $848.40 for 52 weeks. The payment was not made in connection with an outstanding dispute, disagreement or claim, and there was no outstanding dispute, disagreement or claim.

Appellant's App. Vol. 2 at 6.

[9] The ALJ then concluded that the "payment involved here was based on the claimant's years of service, and the payment was intended as additional compensation related to the employment separation and plant closing" and was "not made in connection with an outstanding claim or dispute." *Id*. Accordingly, the ALJ determined that the payment "constitutes severance pay" such that M.W. was ineligible for benefits and affirmed the decision of DWD. *Id*. M.W. appealed the ALJ's decision to the Board, which affirmed the decision of the ALJ without a hearing. *See* Appellant's App. Vol. 2 at 3. This appeal ensued.

Discussion and Decision

Standard of Review

[10] M.W. appeals the Board's determination that he was ineligible to receive unemployment benefits. Decisions of the Board are conclusive and binding as to all questions of fact. Ind. Code § 22-4-17-12(a) (2021). When the decision of the Board is challenged, an appellate court makes a two-part inquiry into (1) "the sufficiency of the facts found to sustain the decision" and (2) "the sufficiency of the evidence to sustain the findings of fact." *J.M. v. Review Bd. of Ind. Dep't of Workforce Dev.*, 975 N.E.2d 1283, 1286 (Ind. 2012); *see also* I.C. § 22-4-17-12(f). Under this standard, (1) the Board's findings of basic fact are reviewed for substantial evidence, (2) findings of mixed questions of law and fact (i.e., ultimate facts) are reviewed for reasonableness, and (3) legal

propositions are reviewed for correctness. *K.S. v. Review Bd. of Ind. Dep't of Workforce Dev.,* 33 N.E.3d 1195, 1197 (Ind. Ct. App. 2015). This Court neither reweighs the evidence nor assesses witness credibility, and it considers only the evidence most favorable to the Board's findings. *Id*. This Court will reverse the Board's decision only if there is no substantial evidence to support the Board's findings. *J.M.*, 975 N.E.2d at 1286.

[11] Further,

> [u]ltimate facts[, more appropriately characterized as mixed questions of law and fact,] are reviewed to ensure the Board has drawn a reasonable inference in light of its findings on the basic, underlying facts. [*McClain v. Review Bd. of Ind. Dep't of Workforce Dev.*, 693 N.E.2d 1314, 1317-18 (Ind. 1998)]. . . . "[T]he court examines the logic of the inference drawn and imposes any rules of law that may drive the result." *Id*. [at 1318]. The Board's conclusion must be reversed "if the underlying facts are not supported by substantial evidence or the logic of the inference is faulty, . . . or if the agency proceeds under an incorrect view of the law." *Id*.

Chrysler Group, LLC v. Rev. Bd. of the Ind. Dep't of Workforce Dev., 960 N.E.2d 118, 122-23 (Ind. 2012).

Background

[12] Indiana's Unemployment Compensation Act, Indiana Code Article 22-4, "was enacted 'to provide for payment of benefits to persons unemployed through no fault of their own.'" *Ind. State Univ. v. LaFief*, 888 N.E.2d 184, 186 (Ind. 2008) (quoting I.C. § 22-4-1-1 (2007)). To be eligible for unemployment benefits, "an

individual must meet the requirements set forth in Ind. Code ch. 22-4-14[] and must not be disqualified by any of the various exceptions provided in ch. 22-4-15[].” *Id.*

[13] Indiana Code Section 22-4-15-4(a)(1) (2021) provides that an individual “shall be ineligible for . . . benefit rights for any week with respect to which the individual receives, is receiving, or has received payments” in the form of “deductible income as defined and applied in IC 22-4-5-4 and IC 22-4-5-2” if the deductible income equals or exceeds “the individuals’ weekly benefit[.]” Deductible income includes, but is not limited to, renumeration for services, dismissal pay, vacation pay, pay for idle time, holiday pay, sick pay, travelling expenses, net earnings from self-employment, awards by the National Labor Relations Board, and payments made pursuant to the Fair Labor Standards Act. I.C. § 22-4-5-1(a). Further,

> [t]he payment of accrued vacation pay, dismissal pay, or severance pay to an individual separated from employment by an employing unit shall be allocated to the period of time for which such payment is made immediately following the date of separation, and an individual receiving such payments shall not be deemed unemployed with respect to a week during which such allocated deductible income equals or exceeds the weekly benefit amount of the individual’s claim.

I.C. § 22-4-5-2(b).

Analysis

Whether the Pay Constituted Severance Pay

[14] On appeal, M.W. challenges the Board's ultimate finding that the payment he received from Eaton constituted severance pay. M.W. contends that that finding is "not support by any record evidence." Appellant's Br. at 23. Instead, M.W. asserts that the Agreement and his testimony "conclusively establish that [he] did not receive severance pay as a matter of fact." *Id.*

[15] The term "severance pay" is not defined in Indiana Code Article 22-4. But according to the United States Department of Labor, "[s]everance pay is often granted to employees upon termination of employment. It is usually based on length of employment for which an employee is eligible upon termination." United States Department of Labor, https://www.dol.gov/general/topic/wages/severancepay (last visited June 17, 2022). Similarly, Merriam-Webster's online dictionary defines "severance pay" as "an allowance usually based on length of service that is payable to an employee on termination of employment." Merriam-Webster, https://www.merriam-webster.com/dictionary/severance%20pay (last visited June 17, 2022).

[16] We acknowledge that the Agreement does not identify the payment as a severance payment but simply identifies it as a "Plant Discontinuance Benefit." Appellant's App. Vol. 2 at 8. However, the Agreement provides that, as of M.W.'s last day, he would have twenty-six years of service "for purposes of calculating [his] Plant Discontinuation Benefit." *Id.* And the Agreement states

that Eaton would pay M.W. the money seven days after M.W. accepted the Agreement, which M.W. did when he signed it on his last day of employment. In other words, the plain language of the Agreement demonstrates that Eaton calculated M.W.'s plant discontinuation benefit based on his length of service and that Eaton paid it to M.W. shortly after the termination of his employment. Thus, the payment falls within the usual definition of "severance pay." *See* United States Department of Labor, *supra*; *see also*, Merriam-Webster, *supra*.

[17] In any event, M.W. maintains that the "various obligations" he was required to perform under the Agreement "prove that he did not receive severance pay." Appellant's Br. at 23. We cannot agree. Notably, the Agreement does not discuss Eaton's pending closure or otherwise indicate that the payment was in exchange for M.W. staying with Eaton until the plant closed. Rather, the Agreement explicitly provides that Eaton would pay M.W. "in consideration for performing [his] obligations in this Agreement[.]" Appellant's App. Vol. 2 at 8. And M.W.'s obligations included returning items to the Human Resources department, not disclosing company information, and discharging Eaton from known or unknown claims. Those tasks are all consistent with the termination of a person's employment and, contrary to M.W.'s assertions, do not demonstrate that the payment was anything other than severance pay.

[18] M.W. additionally contends that the payment was not severance pay but was instead an incentive to remain employed pending the plant's closure. To support his assertion, M.W. directs us to the portion of the Agreement that provides that his employment with Eaton "will end at the close of business on

5/1/2021." Appellant's App. Vol. 2 at 8. But that provision, without more, does not demonstrate that Eaton paid M.W. in exchange for M.W.'s agreement to remain on its workforce. That provision simply outlines when M.W.'s last day of work would be. As discussed above, the Agreement does not indicate that the payment was in exchange for M.W. to remain employed. Further, there is no evidence to demonstrate when Eaton first presented the Agreement to M.W. Rather, the evidence demonstrates that M.W. signed the Agreement on his last day of employment. *See* Tr. at 8. And to the extent M.W. contends that his testimony establishes that the payment was an "incentive" to remain employed, Tr. at 12, the Board was not required to accept M.W.'s opinion as fact in light of the terms of the Agreement. Based on the plain language of the Agreement—including how the pay was calculated—we cannot say that the Board's conclusion that the Plant Discontinuance Benefit was severance pay is unreasonable.

[19] Still, M.W. contends that the payment cannot be considered deductible income as a matter of law based on this Court's holding in *Green Ridge Mining, Inc. v. Ind. Unemployment Ins. Bd.*, 541 N.E.2d 550 (Ind. Ct. App. 1989). In that case, Green Ridge terminated Kraus' employment. Following his dismissal, Kraus filed a discrimination complaint before the Federal Mine, Safety and Health Review Commission ("MSHA"). In his complaint, Kraus alleged that Green Ridge had dismissed him "because Green Ridge was cited by MSHA for failing to report to MSHA an injury incurred by Kraus at the workplace." *Id*. at 551. Green Ridge and Kraus then entered into an agreement under which Green

Ridge paid Kraus $15,000 and Kraus "dropped the complaint." *Id*. Thereafter, Kraus sought unemployment with the Indiana Department of Employment and Training Services ("the Department"). Green Ridge disputed the claim and asserted that the $15,000 was deductible income. The Department determined that the payment was not deductible income but was "payment made in consideration of Kraus' dismissal and the release of Kraus' complaint against Green Ridge." *Id*. Green Ridge appealed.

[20] On appeal, this Court stated that, in order for Green Ridge to demonstrate that the payment was deductible income, it must "show that the payment made to Kraus was intended to replace lost income during a period of unemployment." *Id*. at 552. The Court then agreed with the Department that Green Ridge had paid Kraus "in consideration for claimant's dismissal of such complaint and release of employer from any know claim of claimant against employer[.]" *Id*. And the Court concluded that "the removal of any possibility of a later finding of liability on the discrimination charge to be of value to Green Ridge." *Id*. at 553. Accordingly, the Court held that "Green Ridge paid Kraus to dismiss the discrimination suit, not to compensate Kraus for lost income due to unemployment" such that the payment "should not be considered deducible income." *Id*.

[21] Here, M.W. contends that *Green Ridge* "is directly on point in all material respects" because, "like the employee in *Green Ridge,*" he "received the Plan Discontinuance Benefit because he entered into the Agreement." Appellant's Br. at 33. We again cannot agree. Although the payments in both *Green Ridge*

and here were made pursuant to the terms of an agreement, that is where the similarities end. In *Green Ridge*, the employer paid Kraus to dismiss an active discrimination complaint, while Eaton paid M.W. to return items to Human Resources and to not divulge company information. And while M.W. also agreed to release and discharge Eaton from any claim "whether known or unknown," there is a distinction between releasing a former employer from a hypothetical future lawsuit and releasing a former employer from a known and active discrimination claim. Appellant's App. Vol. 2 at 9.

[22] Nonetheless, M.W. contends that the "central analysis and holding" of that case "does not hinge or even bear on the fact that the $15,000.00 payment was provided in connection with the separated employee's MSHA complaint." Appellant's Br. at 38. We disagree. This Court explicitly held that "Green Ridge paid Kraus to dismiss the discrimination suit[.]" *Green Ridge*, 541 N.E.2d at 553. Thus, is it clear that Kraus' dismissal of the active complaint was central to this Court's holding that the payment did not constitute deductible income. There is no dispute here that M.W. did not have any active claims against Eaton. *See* Tr. at 8. As such, *Green Ridge* is readily distinguishable and does not preclude the Board's ultimate finding that the pay was severance pay.

[23] In sum, the Plant Discontinuance Benefit falls within the usual definition of "severance pay" and there is nothing in the Agreement to demonstrate that Eaton paid M.W. the Plant Discontinuance Benefit as an incentive to remain employed or that the payment was intended as something other than severance pay. Rather, it is clear from the plain language of the Agreement that Eaton's

payment to M.W., which was based on M.W.'s years of service and equated to a year's worth of pay, was intended to replace lost income. We therefore cannot say that the Board's ultimate finding that the payment was severance pay is unreasonable.

Whether the Pay was Allocable

[24] M.W. next contends that the Board erred when it allocated the severance pay over fifty-two weeks. M.W. maintains that Eaton "did not intend for the Plant Discontinuance Benefit to be allocated to any week other than the week in which it was paid." Appellant's Br. at 29. Again, Indiana Code Section 22-4-5-2(b) provides that severance pay shall be allocated to the period of time for which it is made, and an individual receiving such payments shall not be deemed unemployed with respect to a week "during which such allocated income equals or exceeds the weekly benefit amount" of the claim.

[25] M.W. contends that the payment was not allocable because he received the payment in one lump sum. Appellant's Br. at 31. In other words, M.W. appears to assert that a lump-sum payment cannot be allocated over time. But M.W. does not cite any authority to support that assertion. On the contrary, this Court has affirmed the treatment of a lump-sum severance payment as deductible income over time. *See Willet v. Rev. Bd. of the Ind. Dep't of Emp. and Training Servs*, 632 N.E.2d 736, 739-40 (Ind. Ct. App. 1994) (affirming the determination of the Board that the lump-sum severance payment received by Willet in an amount equal to twelve months' salary was deductible income as allocable wages over a period of time).

[26] Similarly, here, M.W. received a lump-sum severance payment in an amount equal to twelve months' wages. *See* Tr. at 9-10. And M.W. has failed to demonstrate that the distribution of his severance as a lump-sum payment should have any effect on the treatment of those payments as deductible income over fifty-two weeks. The Board's ultimate finding that the severance pay was allocable over fifty-two weeks is not unreasonable.

Conclusion

[27] The Board's ultimate finding that the Plant Discontinuance Benefit was severance is reasonable under the plain terms of the Agreement. And the Board did not err when it allocated that payment over twelve months. As such, the Board did not err when it concluded that M.W. was not entitled to benefits from the week of May 22, 2021, through the week of May 14, 2022. We affirm the Board's decision.

[28] Affirmed.

Bradford, C.J., and Bailey, J., concur.