

Case No.: 5818888

San Francisco Office of Appeals

CLT/PET: ANG Health Care, Inc.

ALJ: Peter J. Wercinski

Parties Appearing: Petitioner, Department

Parties Appearing by Written Statement: None

DECISION

On July 18, 2017, a hearing was held in this case, Administrative Law Judge Peter Wercinski presiding. Robert Schriebman, Esq. appeared for Petitioner ANG Health Care, Inc. ("Petitioner"). Ronnie Teh, Esq. appeared for the Employment Development Department ("Department"). The hearing addressed the issue whether Petitioner is entitled, pursuant to statutory construction and/or the principles of due process, to a hearing on the merits of Petitioner's claim for refund for penalties paid pursuant to Unemployment Insurance Code section 13052.5, and if so, is a refund appropriate.

FINDINGS OF FACT

The Department issued a Notice of Assessment to Petitioner dated June 30, 2015 asserting Petitioner's liability for unemployment insurance and disability contributions, personal income tax withholdings, interest, and penalties, including an additional worker information return penalty under Unemployment Insurance Code section 13052.5(d). In July 2015, Petitioner filed a Petition for Reassessment. On or about November 2, 2015, Petitioner paid the penalty under Unemployment Insurance Code section 13052.5(d). On or about November 17, 2015, Petitioner filed a Claim for Refund. The Department did not respond to the Claim for Refund, and Petitioner deemed that the Department had denied the Claim for Refund by operation of law. On February 22, 2016, Petitioner filed a Petition to Protest the Deemed Denial of Claim for Refund.

REASONS FOR DECISION

If any person or entity fails to report amounts paid as remuneration for personal services as required under Section 13050 of this code, that person or entity may be liable for a penalty. (Unemployment Insurance Code, section 13052.5(a).)

Section 1222 of the Unemployment Insurance Code shall not apply to assessments imposed by this section. (Unemployment Insurance Code, section 13052.5(d).)

Within 30 days of service of any notice of assessment or denial of claim for refund, any employing unit or other person given the notice may file a petition for review or reassessment or reassessment with an administrative law judge. (Unemployment Insurance Code, section 1222.)

A court's role in construing a statute is to ascertain the Legislature's intent so as to effectuate the purpose of the law. In determining intent, a court looks first to the words of the statute, giving the language its usual, ordinary meaning. If there is no ambiguity in the language, a court presumes the Legislature meant what it said, and the plain meaning of the statute governs. (*Hunt v. Superior Court* (1999) 21 Cal.4th 984, 1000.)

A court considers portions of a statute in the context of the entire statute and the statutory scheme of which it is a part, giving significance to every word, phrase, sentence, and part of an act in pursuance of the legislative purpose. *Curle v. Superior Court* (2001) 24 Cal.4th 1057, 1063.)

The central question to be decided here is whether the Legislature intended Unemployment Insurance Code section 13052.5(d) to bar administrative appellate review of a petition to protest a denial of a claim for refund regarding a penalty under Unemployment Insurance Code section 13052.5(a). The overall statutory scheme reflects that the Legislature intended that a petition for reassessment be treated differently than a claim for refund. Unemployment Insurance Code section 1178(d) provides that a party may file a claim for refund “[f]ollowing a final decision denying a petition for reassessment” and “upon payment of the amount of the assessment.” Thus, a claim for refund is an alternative and additional remedy to a petition for reassessment. In addition, Unemployment Insurance Code section 1179.5(a) provides that payment of an assessment shall automatically convert a petition for reassessment to a petition to review a denial of a claim for refund. Those statutory references reflect a legislative intent that a petition for reassessment and a petition for review of a denial of a claim for refund are different remedies and are not necessarily interchangeable. Moreover, Article 9 of Chapter 4 of the Unemployment Insurance Code, beginning with section 1176, specifically addresses refunds, thereby supporting the conclusion that the Legislature knew the difference between a petition for reassessment and a claim for refund and that a legislative reference to “assessments” should not, in the absence of clear evidence to the contrary, be construed to include claims for refund.

The language of section 13052.5(d) is unambiguous: administrative appellate review under section 1222 is not allowed for “assessments.” Section 13052.5(d) makes no mention of claims for refund. The Legislature clearly and unambiguously did not bar administrative appellate review regarding a claim for refund pursuant to the language it chose for inclusion in section 13052.5(d).

Section 1222, with its disjunctive reference to “any notice of assessment or denial of claim for refund,” further reflects that the Legislature understood the fundamental difference between an assessment and petition for reassessment on the one hand and a claim for refund and a petition to protest a denial of a claim for refund on the other hand.

The parties have not presented any authority regarding the legislative history of Unemployment Insurance Code section 13052.5(d). In the absence of any such authority, the plain meaning of Unemployment Insurance Code section 13052.5(d) governs. That plain meaning vests this appeals board with the authority to administratively review the Department’s deemed denial of Petitioner’s claim for refund of penalties under Unemployment Insurance Code section 13052.5(d). Subject to the rights of the parties to appeal this decision, Petitioner is entitled to a hearing on the merits of Petitioner’s claim for refund for penalties paid pursuant to Unemployment Insurance Code section 13052.5(d), and this matter shall be set for hearing.

SFOA/pjw/1/6