DEPARTMENT OF EMPLOYMENT AND TRAINING

BOARD OF APPEALS
1100 NORTH EUTAW STREET
BALTIMORE, MARYLAND 21201

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— DECISION —

IN THE MATTER OF THE APPEAL OF:

Pennsylvania Manufacturers Assoc.
Insurance Company

Decision No.: 3-EA-86

Date: March 24, 1986

Exec. Determ. No.: 4603

Emp. Account No.:

ISSUE: Whether the compensation paid to Nancy I. Lee (S. S. No. and Ann D. Hopper (S. S. No. are chargeable to the petitioner's account.

— NOTICE OF RIGHT OF FURTHER APPEAL —

ANY INTERESTED PARTY TO THIS DECISION MAY REQUEST A FURTHER APPEAL AND SUCH APPEAL MAY BE FILED IN ANY EMPLOYMENT SECURITY OFFICE, OR WITH THE APPEALS DIVISION, ROOM 515, 1100 NORTH EUTAW STREET, BALTIMORE, MARYLAND 21201, EITHER IN PERSON OR BY MAIL.

THE PERIOD FOR FILING A FURTHER APPEAL EXPIRES AT MIDNIGHT ON April 23, 1986

— APPEARANCES —

For the Appellant:

George Davis - Attorney

For the Secretary:

John Roberts -
Legal Counsel

EVALUATION OF THE EVIDENCE

The Board of Appeals has considered the evidence presented before the Special Examiner in this case. Before the Board itself, legal argument was heard from the petitioner and alleged employer, Pennsylvania Manufacturers Association Insurance Company, and by the Department of Employment and Training.

FINDINGS OF FACT

The Board of Appeals adopts the findings of fact of the Special Examiner.

CONCLUSIONS OF LAW

The agency argues in its appeal that the Special Examiner used common law doctrines of master-servant relationship in order to determine an issue which is properly determined by the statutory provisions of the unemployment insurance law. More specifically, the agency argues that, irrespective of whether the common law relationship of master-servant exists, the provisions of Section 20(g)(6)(i), (ii) and (iii) are applicable to this case. Under those sections, a person performing services, whether an independent contractor or not, is nevertheless a covered employee within the meaning of the unemployment insurance law unless the specific tests of the statute are met. The agency argues that the nurses employed in the home of the injured worker do not meet the requirements of Section 20(g)(6) of the law and are therefore employees of PMA for the purposes of the unemployment insurance statute.

This argument misses the point. It is not necessary to decide whether the nurses are either independent contractors under the common law or whether they meet the standards of Section 20(g)(6) of the law. The nurses aides simply do not work for PMA at all. Under Section 20(g)(1) of the law employment is defined as "service, including service in interstate commerce, performed for remuneration or any contract of hire, written or oral, express or implied." Obviously, there is no contract of hire, written or oral, express or implied between PMA and the nursing aides. PMA has no right to hire, supervise or fire the nurses aides. PMA would have no obligation to pay the nurses aides if a contract dispute or disputed wage claim was brought by one of them. PMA's only obligation is to reimburse the family for the necessary medical expenses. The fact that PMA pays the expenses directly to the nurses aides in order to avoid financial hardship for the family is simply not that significant a factor, considering that the nurses aides are not responsible to PMA and PMA is not directly responsible for the nurses aides' wages.

The other part of that section speaks of service "performed for remuneration." Of course, the service in this case was performed for remuneration. The question is, <u>for</u> <u>whom</u> was the service performed. The comments of the Special Examiner with respect to the privity of contract argument are appropriate. The nurses aides have no privity of contract with PMA and are not performing services <u>for</u> PMA for remuneration.