SO ORDERED.
SIGNED this 12th day of February, 2016

THIS ORDER HAS BEEN ENTERED ON THE DOCKET.
PLEASE SEE DOCKET FOR ENTRY DATE.

Nicholas W. Whittenburg
UNITED STATES BANKRUPTCY JUDGE

IN THE UNITED STATES BANKRUPTCY COURT FOR THE EASTERN DISTRICT OF TENNESSEE

In re:	)	
	)	
Ginger Fay Jones	)	**No. 1:15-bk-12299-NWW**
	)	**Chapter 7**
Debtor	)	

ORDER

This case is before the court upon the Trustee's Motion for Turnover filed on December 8, 2015. The parties have filed stipulations of fact and briefs in support of their positions. The stipulations indicate that the debtor is employed by Volkswagen Group of America and, on May 18, 2015, the employer issued letters informing employees that they would receive bonuses. The debtor's letter, which was not delivered to her until September 3, 2015, notified her that –

> the Company has elected to distribute a Bonus, which reflects the performance of the Volkswagen Brand including Chattanooga Operations, and your individual contribution in 2014. Your Bonus awards are as follows:

Personal Performance Bonus:	$4,080 USD
Company Bonus:	$8,960
Total Bonus:	**$13,040**

Your Bonus will be paid May 29, 2015.

The letter states the bonus was attributable to "the performance of the Volkswagen Brand . . . and [the debtor's] contribution in 2014."

The debtor commenced this chapter 7 case on May 31, 2015. Her schedules of assets listed the bonus as a "Potential VW Bonus" in an "Unknown" amount. She initially claimed as exempt "0.00" of the value of the bonus. At that time the debtor was on a leave of absence from work due to injuries suffered in an automobile accident. She returned to work on September 3, 2015, and received the bonus on September 18, 2015, when she received her first paycheck after returning to work. The net bonus, after taxes, was $8,782.44 and, on February 5, 2016 – five months after she received the letter notifying her of the amount of the bonus and more than four months after she received the bonus itself – the debtor amended her Schedule B to disclose the net amount of the bonus. The debtor also filed an amended Schedule C, claiming the bonus as exempt to the extent of $6,781.00. The deadline for objections to the amended exemption claim will not expire until March 7, 2016. Fed. R. Bankr. P. 4003(b)(1). The trustee in this case seeks the turnover of the gross amount of the bonus, less any allowable exemption.

The filing of a bankruptcy petition creates an estate consisting of "all legal or equitable interests of the debtor in property as of the commencement of the case." 11 U.S.C. § 541(a)(1). While paragraph (1) of § 541(a) is broad, paragraph (6) excludes

from property of a chapter 7 estate "earnings from services performed by an individual debtor after the commencement of the case." A chapter 7 trustee is entitled to turnover of all property of the estate unless it is "of inconsequential value or benefit to the estate." *Id.* § 542(a).

As evidenced by the letter from Volkswagen dated May 18, 2015, the debtor held a legal right to receive the bonus prior to the commencement of this chapter 7 bankruptcy on May 31, 2015. While paid postpetition, the debtor does not contend that the bonus is attributable to earnings from services performed by the debtor after the commencement of the case. Accordingly, the bonus is property of the estate. *See*, *e.g.*, *Booth v. Vaughan (In re Booth)*, 260 B.R. 281 (B.A.P. 6th Cir. 2001) (holding that a profit sharing benefit paid postpetition was property of the estate to the extent it was paid with respect to a prepetition year, even though the profit was not declared at the time the petition was filed). Indeed, the debtor's original Schedule B disclosed the "Potential VW Bonus" as property held on the petition date.

Notwithstanding Volkwagen's election to award the bonus prior to the commencement of this bankruptcy case and that the bonus related to the debtor's "contribution" to Volkswagen prior to the petition date, the debtor contends that she had no legal or equitable interest in the bonus on the petition date. The debtor maintains that the bonus is not property of the estate because the right to receive the bonus was contingent upon her return to work. She relies on the facts that she did not receive the May 18, 2015 letter until she returned to work on September 3, 2015, and the bonus was not distributed to her until September 18, 2015, while the May 18, 2015, letter stated that the bonus would be paid on May 29, 2015. However, the debtor's argument fails as a

matter of law because "a contingent interest is an interest in property that becomes property of the estate under 11 U.S.C. § 541(a)(1) when a bankruptcy petition is filed." *Rankin v. Brian Lavan & Assocs. (In re Rankin)*, 438 F. App'x 420, 425 (6th Cir. 2011); *accord*, *e.g.*, *Sicherman v. Ohio Pub. Emps. Deferred Comp. Program (In re Leadbetter)*, 992 F.2d 1216 (6th Cir. 1993) (unreported table decision), *available at*, 1993 WL 141068, at *2; *In re Petitt*, No. 07-07569-JKC-7A, 2009 WL 1012977 (Bankr. S.D. Ind. Apr. 15, 2009) (bonus became property of the estate even though it was expressly contingent upon the debtor's continued employment). Even if the bonus had been contingent on the debtor's continued employment, the bonus was nevertheless property of the estate. The estate's interest in the bonus may have been subject to the contingency that the debtor return to work for Volkswagen, but that contingency was satisfied when the debtor returned to work on September 3, 2015.

The debtor relies on a line of cases holding that employee bonuses were excluded from the bankruptcy estate. *Lewis v. Chappo (In re Chappo),* 257 B.R. 852 (E.D. Mich. 2001); *Sharp v. Dery*, 253 B.R. 204 (E.D. Mich. 2000); *Vogel v. Palmer (In re Palmer)*, 57 B.R. 332 (Bankr. W.D. Va. 1986). These cases are distinguishable from the facts in the present case. In each of the cases cited by the debtor, at the time of the filing of bankruptcy the employer had discretion not to award, or to terminate or suspend, the bonus. Thus, the bonus was not merely contingent, i.e., subject to a condition, but the employee had no enforceable right to the bonus at the time the bankruptcy petition was filed. As noted by the Tenth Circuit discussing these cases, "the employee's interest in the bonus was a mere expectancy and should not be part of the bankruptcy estate." *Parks v. Dittmar (In re Dittmar)*, 618 F.3d 1199, 1209 (10th Cir. 2010). In this

case, the bonus was awarded by Volkswagen no later than May 18, 2015. Unlike the line of cases relied on by the debtor, in this case there is no evidence suggesting that Volkswagen had any discretion to terminate the bonus. The debtor maintains only that the distribution was contingent upon her return to work. As of the commencement of this case, the debtor's interest in the bonus was not "a mere expectancy."

Moreover, the court does not find that there was such a contingency. The parties have submitted this dispute upon a stipulation of facts, which recites that the debtor "was told by VW that she would receive her bonus when she returned to work." That stipulation does not, however, establish that the bonus was contingent upon her return to work. The stipulation merely relates to the timing of the payment of the bonus. Further, Volkswagen's letter of May 18, 2015, is, on its face, unconditional. The letter unequivocally stated: "Your Bonus awards are as follows: . . . ." and "Your Bonus will be paid May 29, 2015." The court finds that the debtor became entitled to the bonus no later than May 29, 2015. That she may not have been aware of the amount of the bonus award until she returned to work on September 3, 2015, and did not receive the bonus until September 18, 2015, is irrelevant. The debtor provided insufficient factual evidence that the bonus was contingent and cited no legal authority suggesting that she could not have enforced the bonus award reflected in the May 18, 2015, letter from Volkswagen, whether or not she returned to work.

The funds cannot be said to be of inconsequential value or benefit to the estate. The debtor has claimed about half of the $13,040.00 bonus as exempt so, if the exemption is not disallowed, $6,259.00 would inure to the bankruptcy estate. The debtor contends that the only amount subject to turnover is what she received, i.e., the bonus net

of tax withholding ($8,782.33), minus the debtor's exemption. Even if that is correct, the estate would be entitled to receive $2,001.33, which is not inconsequential. Regarding the issue of whether the full amount of the bonus or only the net amount came into the estate (subject to the debtor's exemption), the court concludes that the parties have not adequately addressed the issue since the trustee offers no legal authorities in support of his position and the debtor's authorities are not on point.

For the foregoing reasons, it is ORDERED that the court determines that the bonus is subject to turnover, subject to the debtor's exemption if allowed. It is further ORDERED that the court will conduct a hearing at 10:35 a.m. on March 10, 2016, in Courtroom A of the Historic U.S. Courthouse, 31 East 11th Street, Chattanooga, Tennessee, for the purpose of receiving oral argument on the issue of whether it is the gross or net amount of the bonus that is subject to turnover after deducting the amount of the debtor's exemption.

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