STATE OF WISCONSIN : CIRCUIT COURT : RACINE COUNTY
BRANCH 8

GEORGE PAUL,

Plaintiff,

vs,

DECISION AND ORDER
93-CV-2249

LABOR & INDUSTRY REVIEW
COMMISSION AND CARE
CORPORATION,

Defendants.

INTRODUCTION

This case is before the court for review of a decision of Defendant Commission under 108.09 and 227, stats.

FACTS

Plaintiff began working for Defendant Corporation in 1964. On 9 January 1992, Plaintiff broke his leg at home. His last day of work before the Christmas shutdown, (22 December 1991 to 27 January 1992) was 21 December 1991. The employer paid Plaintiff a holiday payment for the week beginning 29 December 1991, in the amount of $459.36. Plaintiff filed for unemployment compensation due to the shutdown. The first week for unemployment compensation began 5 January 1992. He received $230 for this week. However, Plaintiff was injured in this week on 9 January 1992. As a result of the injury Plaintiff received, not further unemployment compensation, but accident and sickness insurance benefits beginning 16 January 1992 in the after-tax amount of

$278 weekly. In addition, Plaintiff received another holiday payment from the employer for the week beginning 19 January 1992, in the amount of $153.12.

Plaintiff did not return to work when the Christmas layoff ended on 27 January 1992. However, Plaintiff did accept the employer's offer to participate in an early retirement program. This occurred in early February 1992.

In 1992, Plaintiff received weekly accident and sickness payments through 24 July 1992. The disability had then ended. Next Plaintiff received vacation payments from the employer for 4 weeks (26 July 1992 to and including the week of 16 August 1992). Thus accident and sickness payments were made through week 30 and vacation payments for weeks 31 through 34. Then Plaintiff again began receiving unemployment compensation of $240 per week beginning 23 August 1993. These payments were made for the remainder of 1992 and the first week of 1993. Further in 1993, Plaintiff received extended unemployment benefits through week 21 which began 16 May 1993.

Plaintiff then sought further unemployment benefits for the week beginning 24 May 1993. DILHR determined that Plaintiff was not eligible for further unemployment benefits. On page 3 of Judge Gordon's decision he states:

> "The appeal tribunal therefore finds that as of week 22 of 1993, the employee cannot establish a new benefit year because he did not earn wages of 5 times his weekly benefit rate subsequent to January 5, 1992, the start of his most recent benefit year in which benefits were paid, within the meaning of section 108.04(4)(c) of the statutes."

This decision was appealed by Plaintiff on 12 August 1993. The Commission affirmed the decision of Judge Gordon on 23 September 1993. A copy of the complete record of the Commission has been filed with the Court - including testimony of both Mr. Paul and Ms. Madisen and many exhibits.

THEORY OF PARTIES

A. PLAINTIFF - He asserts that the Commission wrongly determined that "earned wages" not include sick pay or vacation pay. When the term "wages" is alone looked to, it does include sick pay and vacation pay.

B. DEFENDANTS - They assert that the Commission correctly determined that Plaintiff's income after the start of his benefit year in week 2 of 1992 did not allow him to establish a new benefit year.

LAW

Plaintiff states that the Court should broadly construe the term "wages" in 108.04(4)(c). In interpreting statutes, certain basic rules apply. Recently they were noted in Cox v. DHSS, 184 W 2d 309 (C.A. 1994).

1. Look to the statute to see if it is clear and unambiguous. If it is, the trial court should give the law that clear meaning.

2. If the law is ambiguous, then the court is to look to legislative intent. If that intent can be discerned, then the court is to give it meaning.

A statute is ambiguous if it is not understandable or understandable in different ways by persons of common intelligence. Carlson and Erickson v. Lampert Yards, 183 W 2d

220 (C.A. 1993) and LaCrosse Footwear v. LIRC, 147 Wis. 2d 419 (C.A. 1988).

> Where 2 or more statutes are involved some additional construction rules apply. Courts construe statutes so as to make them harmonious if possible. In the Interest of Antonio, 182 W 2d 301 at 309 (C.A. 1994.

Also the legislature in creating statutes is presumed to have full knowledge of other or existing statutes. Murphy v. LIRC, 183 W 2d 204 at 218 (C.A. 1994). The basic rules for trial court review of the decision at issue are found at 102.23(1), et al, stats, and Chapter 108. Wages are defined at 108.02(4)(m) and 108.02(26), stats. Qualifying conditions are defined at 108.04(4)(c), stats.

Quite recently the Court of Appeals commented on the rules to be applied when a challenge is made to an interpretation of the statutes by LIRC. This occurred in Hill v. LIRC, 184 W 2d 101 at 109 (C.A. 1994).

> "...the Supreme Court has discussed the three levels of difference that appellate courts accord statutory interpretation in agency decisions. First, if the agency's experience, technical competence and specialized knowledge assist the agency in applying the statute, the agency's interpretation receives great weight. Second, if the agency's decision is very nearly one of first impression, it will be given due weight or great bearing. Finally, where it is clear that the case is one of first impression for the agency and the agency lacks special expertise in deciding the question presented, the review is de novo... Therefore, we will give great weight to LIRC's interpretation of sec. 102.35(3), stats., and affirm it if it is reasonable, even if an alternative view is also reasonable. With respect to LIRC's findings of fact, we are bound by those findings if there is credible evidence to support them. We may not substitute our judgement for LIRC's as to the credibility of witnesses or the weight to be accorded to the evidence. Finally, even if LIRC's findings

> appear contrary to the great weight and clear preponderance of the evidence, we must uphold them if they are supported by any credible evidence."

DECISION

Defendant LIRC has been responsible for decades for applying and interpreting Wisconsin's unemployment compensation laws. A "benefit year" consists of 52 consecutive weeks beginning with the week the actual claim is filed. See 108.02(5), stats. In this case Plaintiff first filed his unemployment compensation on 5 January 1992, which would be for week number 2. Thus, the last week of his benefit year would be week number 1 in 1993. In addition, Plaintiff's base period would be the last quarter of 1990 and the first 3 quarters of 1991. This determines his wage level.

The Commission determined that before Plaintiff would be eligible for a new benefit year, he would have to earn wages equal to at least 5 times his weekly benefit rate subsequent to the start of his first benefit year, (ie. 5 January 1992).

The facts establish that Plaintiff did not work for any employer after 5 January 1992, and also that he did not "earn" wages after 5 January 1992. Section 108.04(4)(c),stats. requires that an employee must earn wages subsequent to the start of the employee's most recent benefit year in order to be eligible to start "a new benefit year." Plaintiff is correct in stating that throughout, he did continue to be employed.

The statutory language is clear and not ambiguous. Resort

to legislative history or intent is not appropriate. In fact, the court is specifically not allowed to engage in that activity under the law. Public policy considerations cannot be looked to. The legislature is presumed to act with an understanding of the interrelationship that exists among connecting statutes. This includes other statutes that utilize the word or term "wages." The interpretation given by the commission to the term "earned" is reasonable. It reflects the Commission's special expertise and should be given great weight. Even an alternative interpretation by Plaintiff can't act to cause a reversal since the Commission's interpretation in reasonable and supported by the record. Vacation pay and sick pay do not constitute earned wages for purposes of a new benefit year. If the legislature intended the result suggested by Plaintiff, it could have so stated. To limit the term "wages" by the term "earned" would have no meaning if "earned wages" means the same thing as "wages" means.

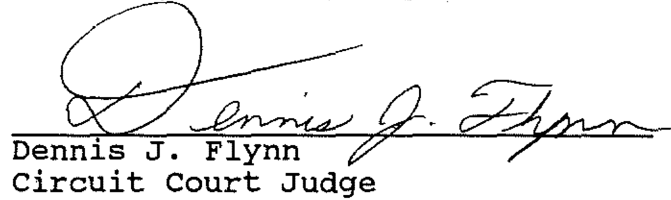
The Commission does not accept vacation pay earned for a period "prior" to Plaintiff's benefit year as earned income. In addition, the Commission does not accept accident and sick pay as constituting earned income. These interpretations regarding wages necessary as a predicate to establishing a new benefit year are reasonable and not prohibited by law.

ORDER

The petition of Plaintiff is denied for the reasons set forth above.

Dated this 30 day of August 1994.

BY ORDER OF THE COURT



Dennis J. Flynn
Circuit Court Judge