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Maine Employment Security Commission

INTER-OFFICE MEMORANDUM

Date: April 10, 1963

To: Roy H. Sinclair, Chairman Office:

From: Milton L. Bradford, Assistant Attorney Gen'l. Office:

Subject: Opinion of the Attorney General, dated March 22, 1963

Reference is to your memorandum of April 1, 1963, asking the five questions quoted below, and answered, seriatim. The answers, the result of a series of conferences with the Attorney General and other members of his staff, are written with his approval.

The opinion which is the subject of this memorandum is to the effect that Section 15,I of the Maine Employment Security Law (Chapter 29, R.S. 1954, as amended) does not make it mandatory for the Commission to disqualify an employee for benefits who has left his employment due to illness or disability not associated with his employment and who upon recovery has returned to his place of employment and found his former job had been filled or that work was not available to him.

QUESTION NO. 1 "Can benefits be paid to those individuals who were disqualified subsequent to September 16, 1961, who would not have been disqualified had the Attorney General's opinion of March 22, 1963, been in effect on September 16, 1961?"

ANSWER: We interpret this question as asking, in effect, whether the Attorney General's opinion nullifies the disqualification imposed so as to allow payment of benefits for the week or weeks for which they were denied. It is also assumed that yuu have reference to decisions from which there are no appeals pending.

Section 16 of the Maine Employment Security Law provides that decisions at administrative levels shall become final unless appealed from within certain periods of time (varying at different levels) after notice thereof is mailed to a claimant's last known address.

> "...A correct conclusion is not necessary to the finality and binding character of administrative decisions...." 42 Am. Jur. 506 s 154.
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> "...Whether or not an administrative determination is final, binding, and conclusive depends primarily upon the intent of the legislature as expressed in the statute governing the proceeding..." 42 Am. Jur. 508 s 155.

"...A defect consisting of a lack of correctness of the decision with respect to the applicable law may be open to attack only in review proceedings...." 42 Am. Jur. 511 s 156.

"...Reliance on an erroneous decision which is afterwards reversed gives no right of action...and will not restore to a litigant a right which he has, in the meantime, forfeited...." 21 CJS 328 s 194.

The phraseology of Section 16 of the Maine Employment Security Law, with regard to finality of decisions, is clear and unambiguous. The purpose is to eliminate judicial review or review at a higher administrative level if a claimant or employer does not appeal within the time provided. Were this not so, there would be no end to the period of time within which any particular case could be reopened.

We find it necessary to express the view that the opinion under discussion does not nullify those decisions which have become final at administrative levels with no pending appeal to a higher administrative level or to the court, so as to allow payment of benefits for the week or weeks for which they were denied.

QUESTION NO. 2. "If the answer to the preceding question is in the affirmative, can payments be made to those individuals who subsequent to September 16, 1961, having been disqualified under this issue, did not continue to file claims for benefits while unemployed and otherwise eligible?"

ANSWER: The answer to QUESTION NO. 1 being in the negative, no reply to this question is necessary.

QUESTION NO. 3. "If benefits can be paid what disposition of experience rating record charge would be made on those cases receiving benefits?"

ANSWER: In view of the answer to QUESTION NO. 1, this inquiry is treated as having reference to prospective cases involving sickness and disability.

We see no reason, as far as the opinion is concerned, for disposing of charges any differently than has been done in cases where there was a sick leave or leave of absence policy and no work was available when the claimant recovered and returned to the job before sick leave or leave of absence has ended to find it filled or no work available.

QUESTION NO. 4. "In the application of the Attorney General's opinion relative to Section 15,I must a claimant have taken all reasonable precautions to protect his employment by having promptly notified his employer as to the reasons for his absence in order to be eligible for benefits?"

ANSWER: Both the Governor's question to the Attorney General, and the latter's reply, are silent on the question of necessity of notifying the employer as to the reasons for absence in order for a claimant to be eligible for benefits.

It could be said that removal of the sentence from the old law imposing that requirement could be construed as removing the need for such notice.

The opinion does, however, require return to the job upon recovery and for the Commission to require reasonable notice to the employer of the reason for absence -- in the absence of actual knowledge on the employer's part -- is not inconsistent with the opinion.

QUESTION NO. 5. "Does the Attorney General's opinion preclude favorable consideration on issues other than illness or disability under circumstances where it can be said as a matter of fact that a claimant had no choice in leaving his work?"

ANSWER: The Attorney General's opinion deals only with the question of whether illness or disability, as a cause for leaving work, is voluntary within the meaning of Section 15,I. When the opinion was written, no other circumstances were under consideration. It cannot be said either to preclude or to allow consideration of whether other reasons for leaving work are voluntary within the meaning of that section.

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cc - Mr. Cote
Mr. George