Maine Employment Security Commission

INTER-OFFICE MEMORANDUM

Date: February 10, 1965

To: Roy U. Sinclair, Chairman Office:

From: Milton L. Bradford, Assistant Attorney General Office:

Subject: Opinion re Self-Employment. Earnings for Requalification Purposes

QUESTION:

(1). In your memorandum dated February 4, 1965, you request an opinion as to whether or not that part of Administrative Letter #UC-395 which states, "A claimant cannot satisfy the earnings requirement by self-employment," is consistent with the provisions of the Maine Employment Security Law.

(2). You also ask, if my answer to the above is in the negative, would a person having four full weeks of self-employment avoid disqualification under Section 1193, subsection 1 of said law (formerly Section 15,I).

ANSWER:

(1). No, as to Section 1193, subsections 1, 2, and 3.

Yes, as to Section 1193, subsections 6 and 7.

(2). No.

OPINION:

(1). The Maine Employment Security Law does not use the term self-employment. Neither does it define "earnings." Section 1193 (subsections 1, 2, and 3) sets up requalification requirements when a claimant has been disqualified for certain acts. Each of these subsections provides that disqualification "shall continue until claimant has earned ..." certain amounts (underlining supplied).

The word "earned" as used in those sections of the law makes no distinction as to the source of the earnings, whether from subject employment, non-subject employment, or self-employment.

Remuneration for personal services resulting from any of these sources is earned.

It is my opinion that a claimant who has been disqualified under any of these sections can satisfy the earnings requirement for requalification with self-employment earnings.

However, the burden of proof will be on such claimant to provide satisfactory evidence of income, expenses, etc., in arriving at his net income as "earnings" to meet that requirement.

Section 1193, subsection 6 and 7 have not been included in the discussion up to this point because of the fact they provide that disqualifications thereunder "...shall continue until claimant shall have earned not less than $400 thereafter in subsequent employment." and "...shall continue for all weeks subsequent until such individual has thereafter earned not less than $400 in employment." respectively. (Emphasis supplied).

Basically, the definition of employment (Section 1043, subsection 11) is service performed for wages under a contract of hire. There are exceptions, even though the service is so performed, e.g., agricultural labor and domestic labor in a private home -- among others.

In many instances employment refers to what we call covered employment which means the same as "insured work."

"Insured work" is defined as "...employment by employers" (see Section 1043, subsection 15).

That the term employment does not always mean insured work (covered employment) when used in the law is pointed up by Section 1043, subsection 9, paragraph A which provides that employer means an employing unit which "...for some portion of a day ... in each of 20 different weeks ... had in employment 4 or more individuals..." (Emphasis supplied).

The underlined word in the above quote cannot be construed to mean "insured work" (or covered employment). Such a construction would mean that there would be no subject employers.

In my opinion, the term employment when used in Section 1193, subsections 6 and 7 means service performed of a nature which would make it employment under the basic definition but for the fact that such service is specifically removed from that definition.

Section 1043, subsection 11, paragraph E reads as follows:

> "E. Services performed by an individual for remuneration shall be deemed to be employment subject to this chapter unless and until it is shown to the satisfaction of the commission that:
>
> > "(1) Such individual has been and will continue to be free from control or direction over the performance of such services, both under his contract of service and in fact; and
> >
> > "(2) Such service is either outside the usual course of the business for which such service is performed, or that such service is performed outside of all the places of business of the enterprise for which such service is performed; and
> >
> > "(3) Such individual is customarily engaged in an independently established trade, occupation, profession or business." (Emphasis supplied).

Self-employment, when considered under "E" supra, does not constitute employment under any circumstances.

I am of the opinion that use of the term employment in Section 1193, subsections 6 and 7 means that a claimant cannot satisfy the earnings requirement of said Sections with self-employment earnings.

(2). The second question has reference to the last sentence of Section 1193, subsection 1 which reads:

> "...In no event shall disqualification for voluntarily leaving regular employment be avoided by periods of other employment unless such other employment shall have continued for 4 full weeks." (Emphasis supplied).

For the same reasons given in connection with Section 1193, subsection 6, I am of the opinion that a claimant cannot avoid disqualification under the "four week" clause by four full weeks, or longer, of self-employment.

Should it be asked whether earnings in non-covered employment, as contrasted with earnings in self-employment, would satisfy the earnings requirements of subsections 1, 2, 3, 6, and 7, previously discussed, my answer would be in the affirmative.

/e
cc - Mr. Cote
Mr. George