

MAINE STATE LEGISLATURE

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STATE OF MAINE

Inter-Departmental Memorandum Date March 10, 1977
Affairs

To Emilien A. Levesque, Commissioner of Manpower /Dept. Employment Security Commission

From Patricia M. McDonough, Assistant Att'y.Gen'l. Dept. Attorney General

Subject Legal Opinion - Authority of Commissioner of Manpower Affairs to Review and
Decide Benefit Appeal Cases

FACTS:

One of the Commissioners of the Employment Security Commission has been ill and the length of his absence from his Commission duties is uncertain. The Commissioner of Manpower Affairs would like to review benefit appeal cases on the record in the absence of one of the Commissioners.

QUESTION:

Does 26 M.R.S.A. § 1081, 3 allow the Commissioner of Manpower Affairs to review and decide benefit appeal cases on the record?

ANSWER:

Yes.

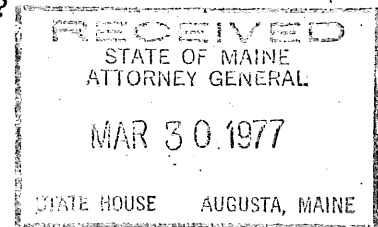
REASON:

26 M.R.S.A. § 1081, 3 provides as follows:

Any 2 commissioners shall constitute a quorum. Whenever the commission hears any case involving a disputed claim for benefits under this chapter, the Commissioner of Manpower Affairs shall act alone in the absence or disqualification of any other member, provided that in the event of illness or extended absence on the part of the Commissioner of Manpower Affairs or in the event of a vacancy in that position, the remaining members may act on appeals and conduct hearings and render a decision, provided both members agree. Except as otherwise provided, no vacancy shall impair the right of the remaining commissioners to exercise all of the powers of the commission.

26 M.R.S.A. § 1194, 5 provides, in part:

The commission may on its own motion affirm, modify or set aside any decision of an appeal tribunal on the basis of the evidence previously submitted in such case, or direct the taking of additional evidence, or may permit any of the parties of such decision to initiate further appeals before it.



Emilien A. Levesque, Commissioner of Manpower Affairs

March 10, 1977

Commission Regulation 12 provides, in part:

If leave to appeal is granted, the commission may, at its discretion, review the record as made at the appeal tribunal hearing, or schedule the case for hearing,

The phrase "hears any case involving a disputed claim for benefits" as used in 26 M.R.S.A. § 1081, 3 refers to all claims that come before the Commission and not only those claims in which a full hearing has been held. 26 M.R.S.A. § 1194, 5 and Commission Regulation 12 allow the Commission, in its discretion, to hold a further hearing or review on the record when considering a benefit appeal case. Section 1081, 3 relates only to the procedure to be followed by the Commission in benefit appeal cases when all members of the Commission are not available to attend the hearing or review the record. Nothing contained in § 1081, 3 limits the Commission's discretion to hold a hearing or review on the record.

Pursuant to 26 M.R.S.A. § 1081 (1) the Employment Security Commission is composed of three members - one representative of labor, one representative of employers and one impartial member representative of the public generally. The Commissioner of Manpower Affairs serves as the impartial member of the Commission. Section 1081 (3) provides that when the employer representative or the labor representative is absent or disqualified, the impartial member i.e. the Commissioner of Manpower Affairs, shall act alone on a benefit appeal claim.

Therefore, in the event of the absence or disqualification of any of the other commissioners, the Commissioner of Manpower Affairs acts alone on a benefit appeal claim after a hearing or a review on the record.

PMM:e

cc - Mr. Cote
Mr. George