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Employment Security (Attorney) Fees
Attorneys Fees
STATE OF MAINE

Inter-Departmental Memorandum Date June 9, 1977

To Emilien A. Levesque, Commissioner Dept. Employment Security Commission

From Patricia M. McDonough, Asst. Atty. Gen. Dept. Legal Division

Subject Commission Liability for Attorneys' Fees on Remands from Superior Court

FACTS:

Several decisions of the Employment Security Commission on appeal to Superior Court have been remanded to the Commission by the Court for the purpose of making further findings of fact. Several attorneys have submitted bills to the Commission for the payment of their fees, contending that the Employment Security Law (26 M.R.S.A. § 1044(2)) authorizes payment of their fees when a decision of the Commission is remanded for further findings by the Court.

ISSUE:

Whether 26 M.R.S.A. § 1044 requires that attorneys' fees be paid by the Employment Security Commission when a decision of the Commission is remanded by the Superior Court for further findings?

ANSWER:

No. However, payment for original Superior Court proceedings prior to remand for additional findings may be made where, after findings are returned, the Court renders a decision which, in whole or in part, reverses the Commission actions.

REASON:

Title 26 M.R.S.A. § 1044(2) provides, in part, that:

In the event a claimant has retained counsel for the purpose of prosecuting an appeal from a decision of the Commission and the final decision of such court results in a reversal, in whole or in part, of the decision appealed from, the fees for such service shall be paid by the Commission from its administrative fund.

In order for the Commission to be required to pay attorneys' fees, there must be a final decision by a court. A final judgment has been held to be one which "fully decides and disposes of the whole cause leaving no further questions for the future consideration and judgment of the court." Gilpatrick v. Glidden, 82 Me. 201, (1889). A final decision generally is one which ends the litigation on the merits and

Emilien A. Lévesque, Commissioner

Page 2

June 9, 1977

leaves nothing for the Court to do but execute the judgment. Catlin v. U.S., 324 U.S. 229, 65 S.Ct. 631 (1945). In Fidelity and Casualty Co. v. Bodwell Granite Co., 102 Me. 148 (1906), the Court stated that it "cannot be required and indeed has no jurisdiction to decide, prematurely, interlocutory questions which the subsequent proceedings in the case may show to be wholly immaterial."

It is clear that an order to remand is not a final decision of the court; it is part of a proceeding which will ultimately lead to a final decision. An order to remand for further findings does not reach the merits of the case. Such an order asks only that the Commission elaborate on its findings. It does not wholly dispose of the case as the Court has not yet reached the basis of the controversy.

A remand order is not appealable as it is not a final decision of a court. In Dalto v. Richardson, 434 F.2d 1019 (2nd Cir. 1970), an order of the District Court remanding a case to the Department of HEW for a further hearing was held not to be appealable as there had been no final decision. "The district court acted to vacate the case for reconsideration. It neither granted nor denied the relief which the appellant seeks." In Pauls v. Secretary of the Air Force, 457 F.2d 294 (1972), the District Court remanded the case for detailed findings of fact. On appeal of the order of remand, the Court of Appeals held that the remand was not a final judgment and, therefore, not reviewable. See also Barfield v. Weinberger, 485 F.2d 696 (5th Cir. 1973); United Transportation Union v. Ill. Cen. RR., 433 F.2d 566 (7th Cir. 1970); and Ringsby Truck Lines, Inc. v. U.S., 490 F.2d 620 (10th Cir. 1974).

A remand by the Superior Court of a decision of the Employment Security Commission does not constitute a final decision of the court. Therefore, 26 M.R.S.A. § 1044(2) does not provide for the payment of attorneys' fees in this situation. However, payment for the proceeding leading to the remand may be provided where, after return of the additional findings to the Court, the Court reverses the Commission action in whole or in part.

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