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BUREAU OF UNEMPLOYMENT COMPENSATION—APPLICATION FILED TO DETERMINE BENEFIT RIGHTS—PRIOR TO OCTOBER 30, 1953—CLAIMANT WHO FILED APPLICATION AFTER OCTOBER 30, 1953, ENTITLED TO INCREASED WEEKLY BENEFIT RATES—TOTAL BENEFITS TO WHICH CLAIMANT ENTITLED SHALL BE INCREASED PROPORTIONATELY TO PROVIDE FOR INCREASED WEEKLY BENEFITS—SECTIONS 4141.28, 4141.30 RC—AMENDED SB 174, 100 GA.

## SYLLABUS:

Where an application for determination of benefit rights shall have been filed with the Bureau of Unemployment Compensation pursuant to the provisions of Section 4141.28, Revised Code, prior to October 30, 1953, the claimant, in claims for benefits filed pursuant to such application after October 30, 1953, shall be entitled to the increased weekly benefit rates provided in Section 4141.30, Revised Code, as amended by Amended Senate Bill 174 of the 100th General Assembly; and the total benefits to which such claimant is entitled shall be increased proportionately to provide for such increased weekly benefits.

Columbus, Ohio, October 5, 1953

Hon. Ernest Cornell, Administrator, Bureau of Unemployment  
Compensation  
Columbus, Ohio

Dear Sir:

Your request for my opinion reads as follows:

"I desire that you advise as to the construction of the following section of the new Unemployment Compensation Law which is effective October 30, 1953. The new section is as follows:

'Section 4141.25 of this act shall become effective October 2, 1953, and the remaining sections of this Act shall become effective at the earliest date permitted by law; in cases where the application for determination of benefit rights was filed prior to the effective date of this act the claimant in claims for benefits filed pursuant to such application after the effective date of this act shall be entitled to the increased weekly benefit rates and increased total amount of benefits

provided in Section 4141.30 of the Revised Code and the administrator shall amend his original determination to allow the increase in weekly benefit rates and total amount of benefits.'

"There is some difference of opinion among our experts as to the intent of this statute and how it should be construed and administered."

The problem which you have presented arises under the following statutes as amended by Senate Bill No. 174 of the 100th General Assembly.

Section 4141.28, Revised Code, 1346-4, General Code, provides in part as follows:

"Applications for determination of benefit rights and claims for benefits shall be filed with a deputy of the administrator of the bureau of unemployment compensation designated for the purpose. \* \* \*

"The administrator or his deputy shall promptly examine any application for determination of benefit rights filed, and on the basis of any facts found by him shall determine whether or not such application is valid, and if valid the date on which the benefit year shall commence and the weekly benefit amount. All interested parties shall promptly be notified of the determination and the reasons therefor. \* \* \*"

Section 4141.29, Revised Code, 1345-6, General Code, provides in part as follows:

"Each eligible individual shall receive benefits as compensation for loss of remuneration due to total or involuntary partial unemployment in the amounts and subject to the conditions stipulated in sections 4141.01 to 4141.46, inclusive, of the Revised Code. \* \* \*"

Section 4141.30, Revised Code, 1345-8, General Code, provides in part as follows:

"\* \* \* (B) Benefits are payable to each eligible and qualified individual on account of each week of total unemployment after the specified waiting period at the weekly benefit amount appearing in column B following on the same horizontal line on which in column A there appears the total wages paid such employee in covered employment in that quarter of the base period in which such total wages were higher.

Column A	Column B
Wages Paid in Highest Quarter of Base Period	Weekly Benefit Amount
\$ 60.00—\$180.99	\$10.00
* * * * *	* * *
671.00— 700.99	28.00
701.00— 730.99	29.00
731.00 and over	30.00"

As pointed out in your request, the last two brackets were added by recent action of the General Assembly to become effective October 30, 1953.

Continuing, subsections (C) and (D) of Section 4141.30, Revised Code, provides in part as follows:

"(C) Benefits are payable to each partially unemployed individual otherwise eligible on account of each week of involuntary partial unemployment after the specified waiting period in an amount equal to his weekly benefit amount less that part of the remuneration payable to him with respect to such week which is in excess of two dollars increased to the next higher even multiple of one dollar.

"(D) Subject to division (E) of this section, the total benefits to which an individual is entitled in any benefit year, whether for partial or total unemployment, or both, shall be computed by multiplying the wages paid such individual by each of the employers in his base period by one-half, which, in the aggregate, for any benefit year, shall not exceed an amount equal to twenty-six times his weekly benefit amount shown in column B of the table in division (B) of this section. \* \* \* In addition to the benefit amount payable under division (B) of this section with respect to any week of total or partial unemployment, each eligible and qualified individual shall receive, with respect to such week, two and one-half dollars for each of his dependent children, but in no event shall such additional allowance exceed five dollars for any one week nor for more than twenty-six weeks in any benefit year. \* \* \*

The problem created by this recent increase in weekly benefits is well stated in the memorandum which was attached to your request. That statement is as follows:

"The increased weekly rates of \$29 and \$30 therefore, also provide new total benefit increases, for claimants with sufficient non-excluded base period wages to qualify.

Weekly Benefit Amount	Total Benefits 26 x Weekly Amount		Total Non-Excluded Base Period Wages
\$28.00	\$728.00	if	\$1456.00 or over
29.00	754.00	if	1508.00 or over
30.00	780.00	if	1560.00 or over

"A claimant with earnings of \$800. in his highest quarter and \$2000 in his base period, obtained the top of \$728 under the former act, under the amended act he would be entitled to \$780.—an increase in total of \$52.

"The above weekly and total benefit amounts are established, at the beginning of a claimant's benefit year. For claimants with benefit years established prior to October 30, 1953, effective date of this Section, and with portions of those benefit years extending beyond October 30, you have the question as to the extent that these 'old law' claimants can participate in the increased rates. \* \* \*"

The literal language of the new statute dealing with this problem is that "the claimant in claims for benefits filed pursuant to such application after the effective date of this act shall be entitled to the increased weekly benefit rates and increased total amount of benefits provided in Section 4141.30 of the Revised Code and the administrator shall amend his original determination to allow the increase in weekly benefit rates and total amount of benefits."

If this were a matter of first impression, a strong argument could be made that by the language used above the General Assembly intended to apply the full benefits of the new law to these "holdover" cases. However, the courts have already passed upon the question of retroactively applying increased unemployment benefits. In the case of *General Industries v. Jones, Administrator*, 89 Ohio App., 43, motion to certify overruled 23 Ohio Bar, 33, November 20, 1950, the second syllabus provides as follows:

"To the extent that Section 2 of Senate Bill 348 (121 Ohio Laws, 703) imposes upon employers the duty to pay unemployment compensation benefits for the period from August 15, 1945, to September 5, 1945, according to the increased schedule of benefits set out in Section 1 of said bill (which amended Section 1345-1 et seq., General Code, effective September 5, 1945), it is retroactive in operation and unconstitutional."

This case was based upon constitutional considerations, and it has consistently been held by this office that the Attorney General cannot pass

upon constitutional questions. However, when the courts have ruled upon a constitutional matter, this office properly can follow such a precedent and can use it in giving a constitutional construction to a legislative act. Applying the General Industries case to the present problem, therefore, it is my opinion that the language in question must be construed as prohibiting you from doing two things after October 30, 1953; (1) You cannot allow increases in benefits for weeks in which benefits were paid prior to October 30, 1953; and (2) You cannot—in such cases where benefits were paid prior to October 30, 1953—increase total benefits to the full extent of multiplying the new rate by twenty-six.

I reach this second conclusion as a necessary corollary to the first. If the Legislature cannot allow retroactive increases in benefits, it cannot allow future benefits which are simply accumulations of increased retroactive benefits. Furthermore, if the new maximum total benefits were applied to these "holdover" cases, it could result in cases in which compensation for total unemployment would be paid for a period in excess of 26 weeks. I do not believe that such a result would be consistent with the provisions of Section 4141.30 (D), Revised Code, set out above.

Having dealt with the things which you cannot do, we come to the problem of determining what you can and should do after October 30, 1953. There seems no doubt that weekly benefits paid after that date will be paid according to the new table set out in Section 4141.30 (B), *supra*. The real difficulty comes in re-determining the total benefits pursuant to sub-section (D).

There is some precedent for the solution of this problem of a proportional re-determination of total benefits following a change in the statute which increases benefits during a benefit year. In Opinion No. 953, Opinions of the Attorney General for 1949, page 600, the syllabus provides as follows:

"A person who filed a valid claim for unemployment compensation based upon unemployment in the week beginning August 28, 1949, who had filed a claim for benefits prior to August 22, 1949 and which application was allowed with the benefit year commencing July 3, 1949, is entitled to the increased weekly benefit provided for by subsection b of Section 1345-8, General Code, and the total benefits payable to such person during his benefit year should be recomputed proportionally from and after August 22, 1949 in accordance with the increase pro-

vided for by subsection d of said section, as amended by Amended Senate Bill 142 of the 98th General Assembly.”

I am informed by your department that following this opinion total benefits in cases such as are here under consideration were re-determined as follows: (For purposes of clarity I am using the date of October 30 as the effective date of the new law.)

1. The total amount of compensation paid prior to October 30 was determined.
2. This amount was subtracted from the total benefits as originally allowed.
3. The resulting difference was divided by the maximum weekly rate under the old law.
4. The resulting quotient was multiplied by the maximum rate under the new law.
5. The resulting product was added to the original amount of compensation paid prior to October 30.
6. The resulting sum was the re-determined total benefit.

Since this computation deals with amounts of money paid rather than with weeks in which compensation was paid, it is equally applicable to cases in which partial as well as total compensation will have been paid prior to October 30, 1953.

It is my opinion that the above method of computation is accurate and comports with the legal principles set out above, and that it should be applied in this case.

It is therefore my opinion and you are advised that where an application for determination of benefit rights shall have been filed with the Bureau of Unemployment Compensation pursuant to the provisions of Section 4141.28, Revised Code, prior to October 30, 1953, the claimant, in claims for benefits filed pursuant to such application after October 30, 1953, shall be entitled to the increased weekly benefit rates provided in Section 4141.30, Revised Code, as amended by Amended Senate Bill 174 of the 100th General Assembly; and the total benefits to which such claimant is entitled shall be increased proportionately to provide for such increased weekly benefits.

Respectfully yours,

C. WILLIAM O'NEILL  
Attorney General