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APPEAL FROM DECISION OF ADMINISTRATOR OF B.U.C. ON CLAIMS FOR WEEK OF UNEMPLOYMENT OCCURRING BEFORE OCT. 16, 1959—NOT GOVERNED BY H.B. NO. 1130, 103, G.A., §1.20, R.C.

SYLLABUS:

1. By reason of the provisions of Section 1.20, Revised Code, relative to "pending proceedings," the provisions of House Bill No. 1130 of the 103rd General Assembly, effective October 16, 1959, relative to unemployment compensation, do not apply to an appeal from a decision of the administrator of the bureau of unemployment compensation on a claim for benefits for a week of unemployment occurring before October 16, 1959.

2. Pursuant to Section 3 of House Bill No. 1130 of the 103rd General Assembly, relative to unemployment compensation, effective October 16, 1959, benefit rights with respect to weeks of unemployment beginning on and after October 16, 1959, are to be determined in accordance with the provisions of Sections 4141.01 to 4141.46, inclusive, Revised Code, as effective October 16, 1959.

Columbus, Ohio, December 23, 1959

Hon. R. L. Krabach, Chairman, Board of Review
Bureau of Unemployment Compensation, Columbus, Ohio

Dear Sir:

Your request for my opinion reads as follows:

"The Board of Review, Bureau of Unemployment Compensation, respectfully requests your opinion with respect to the various matters hereinafter set forth:

"House Bill No. 1130 became effective October 16, 1959, which substantially changed existing procedures and many of the remedial provisions of the former unemployment compensation law.

"Inquiry: To what extent, if any, shall the amendments of the Ohio Unemployment Compensation Law, effective October 16, 1959, apply to applications for determination of benefit rights filed prior to October 16, 1959, and to claims for benefits filed thereunder after the effective date thereof?

"We believe that the answer to our inquiry should include consideration of Section 1.20 R.C., relating to pending proceed-

ings; Section 3, of House Bill No. 1130, particularly the meaning of the word 'eligibility' as used in the fifth line of the second paragraph of said section; Attorney General Opinion No. 6210, dated February 3, 1956, and decision of First Appellate District Court of Ohio, Case No. 8207, dated March 11, 1957, in the case of Truman A. Musick v. State of Ohio, Board of Review, et al.

"Specific problems with respect to the foregoing inquiry may serve to clarify situations with respect to which we desire your opinion.

"(1) Claimant files an original application for determination for determination of benefit rights on September 22, 1959. Application is allowed with the benefit year beginning September 20, 1959. First week (week ending September 26, 1959) is allowed as a waiting period week. He claims the week ending September 26, 1959, which is allowed by the Administrator. Employer, an interested party, requests reconsideration and the Administrator's decision on reconsideration dated October 10, 1959, affirms the initial determination. On October 17, 1959, employer appeals to the Board of Review.

"QUERY: Do the appellate procedures set forth in Section 4141.28 R.C., in effect prior to, or on or after October 16, 1959, apply to such appeal and subsequent proceedings before the Board of Review?

"(2) Assume that claimant has a benefit year beginning September 20, 1959, as set forth in (1) above, becomes re-employed on October 5, 1959, and thereafter becomes unemployed due to pregnancy, on October 20, 1959. The expected date of confinement is on or about December 1, 1959. She claims benefits for the week ending October 31, 1959.

"QUERY: Do the provisions of Section 4141.29 (9) R.C., in effect prior to October 16, 1959, apply or do the provisions of Section 4141.29 (A) (4) (a) R.C., in effect on and after October 16, 1959, apply?

"(3) Assume that claimant has an existing benefit year prior to October 16, 1959, and files an additional claim for benefits for the week ending October 31, 1959. The Administrator issues an initial determination disallowing said week. Claimant files a timely request for reconsideration and the Administrator's decision on reconsideration dated November 16, 1959, affirms the initial determination. Claimant files an appeal with the Board of Review on November 25, 1959.

“QUERY: Do the procedures set forth in Section 4141.28 R.C. in effect prior to or on or after October 16, 1959, apply?”

The questions which you present are concerned with an interpretation of Section 3 of House Bill No. 1130 of the 103rd General Assembly, which section reads as follows:

“Sections 4141.01 to 4141.46, inclusive, of the Revised Code, as amended by this act, shall apply to all applications for the determination of benefit rights filed on or after the effective date of this act.

“Any individual who has had his benefit rights determined prior to the effective date of this act and is in an unexpired benefit year on the effective date of this act shall, with respect to weeks of unemployment beginning on and after the effective date of this act and within such unexpired benefit year, have his eligibility to receive benefits for such weeks determined in accordance with the provisions of Sections 4141.01 to 4141.46, inclusive, of the Revised Code, as amended by this act, and shall be entitled for such weeks, upon application, to:

“(a) Have his weekly benefit amount recomputed under division (B) of section 4141.30 of the Revised Code, as amended by this act, and any remuneration paid to him in the base period of his unexpired benefit year may be used in such recomputation, notwithstanding any previous exclusion of wages under division (E) of section 4141.30 of the Revised Code as it existed prior to the effective date of this act;

“(b) Have his total benefits redetermined by multiplying his recomputed weekly benefit amount by the number of full weeks of benefits, if any, still available to him on the effective date of this act;

“The administrator of the bureau of unemployment compensation shall notify the claimant and any potentially chargeable employer of such recomputation. Such employer’s account shall be charged according to the recomputed weekly benefit amount, but in no event shall the total charges to an employer’s account exceed the maximum permissible under division 4141.24 of the Revised Code, as it existed prior to the effective date of this act. In short, Section 3 provides:

1. Sections 4141.01 through 4141.46, inclusive, of the Revised Code, as amended, are applicable to all applications for the determination of benefit rights filed on and after October 16, 1959.

2. An individual who has had his benefit rights determined prior to October 16, 1959, shall with respect to *weeks* of unemployment on and after October 16, 1959, have his *eligibility* to receive benefits for such weeks of unemployment *determined* in accordance with Sections 4141.01 through 4141.46, Revised Code, as effective October 16, 1959.

3. Such individual, upon application, (a) shall be entitled to have his weekly benefit amount recomputed, and (b) have his total benefits redetermined.

Your request is basically concerned with provision number 2 above in which the General Assembly has specifically provided that Sections 4141.01 through 4141.46, inclusive, of the Revised Code, as effective October 16, 1959, shall apply to claims for benefits filed on or after October 16, 1959. Your first question asks if the procedure of Section 4141.28, Revised Code, as effective on October 16, 1959, applies to an appeal made on October 17, 1959, on a decision of the administrator made on October 10, 1959, regarding a claim for benefits for the week ending on September 26, 1959. This poses the question of the application of Section 1.20, Revised Code, to Section 3 of House Bill No. 1130, *supra*.

Section 1.20, Revised Code, to which you refer, reads as follows :

“When a statute is repealed or amended, such repeal or amendment does not affect pending actions, prosecutions, or proceedings, civil or criminal. When the repeal or amendment relates to the remedy, it does not affect pending actions, prosecutions, or proceedings, unless so expressed, nor does any repeal or amendment affect causes of such action, prosecution, or proceeding, existing at the time of such amendment or repeal, unless otherwise expressly provided in the amending or repealing act.”

Since the proceedings here concerned are remedial, the pertinent words are: “When the repeal or amendment relates to the remedy, it does not affect pending actions, prosecutions, or proceedings, unless so expressed.”

In the recent case of *Woodward v. Eberly*, 167 Ohio St., 177, the Ohio Supreme Court relied heavily on the case of *Cleveland Railway Co. v. Atkinson, Admr., Bureau of Unemployment Compensation*, 138 Ohio St., 157, in its interpretation of Section 1.20, Revised Code, when it held :

“1. Section 1.20, Revised Code, operates as a savings clause as to all statutes which amend or repeal prior legislation and makes applicable to pending actions the law as it existed before the amendment or repeal, *unless otherwise expressly provided in the amending or repealing act.* (Emphasis added)

It appears clear that, when taken, an appeal from the decision of the administrator as in the fact situation of question (1) of your request, would constitute a part of the pending proceeding (*Julius Jaskiewicz v. Board of Review, etc., et al.*, No. 23559, Cuyahoga County Court of Appeals, decided January 11, 1956, reported in Ohio CCH, page 38,877, Section 8476; Opinion No. 6210, Opinions of the Attorney General for 1956, page 80; *Stough v. Industrial Commission of Ohio*, 142 Ohio St., 142 Ohio St., 446).

As noted earlier, Section 3 of House Bill No. 1130, *supra*, provides that any individual who has a *pending benefit year* shall have his *eligibility* to receive benefits after October 16, 1959, *determined* in accordance with Sections 4141.01 to 4141.46, inclusive, Revised Code, as effective October 16, 1959. Said Section 3, however, refers only to weeks of unemployment beginning *on or after* October 16, 1959. Thus, House Bill No. 1130, *supra*, does not expressly provide that the new procedure should apply to claims filed prior to October 16, 1959, for weeks occurring before that date, and, therefore, under Section 1.20, Revised Code, the procedure provided by Section 4141.28, Revised Code, as existing prior to October 16, 1959, would govern appeals on such claims.

Coming to your second question, Section 4141.29, Revised Code, as relating to pregnancy, read prior to October 16, 1959:

“* * *

“(C) Notwithstanding division (A) of this section, no individual may serve a waiting period or be paid benefits for the duration of any period of unemployment with respect to which the administrator finds that such individual:

“* * *

“(9) Quit work to marry or because of mental, parental, filial, or other domestic obligation, or became unemployed because of pregnancy;

“* * *

Effective October 16, 1959, division (A) (4) (a) of Section 4141.29, Revised Code, relating to pregnancy, reads:

“No pregnant individual may serve a waiting period or be paid benefits for any week falling wholly or partly within the eight weeks immediately prior to the expected date of confinement and within the eight weeks after the actual birth of her child, unless within such eight weeks after childbirth she furnishes medical evidence that she is fully able to work.”

Regarding which provision should apply, in the fact situation of question (2) the claimant has a benefit year beginning on September 20, 1959, becomes re-employed on October 5, 1959, becomes unemployed due to pregnancy on October 20, 1959, and claims benefits for the week ending October 31, 1959. Thus, the claimant is in a pending benefit year within the purview of Section 3 of House Bill No. 1130, *supra*, and her eligibility to receive benefits for weeks of unemployment beginning on or after October 16, 1959, is determined in accordance with the provisions of Sections 4141.01 to 4141.46, inclusive, Revised Code, as effective on that date. Answering your second question, therefore, the provisions of division (A) (4) (a) of Section 4141.29, Revised Code, as amended by House Bill No. 1130, *supra*, effective October 16, 1959, would govern the allowance of benefits in the fact situation of question (2).

Your third question also concerns an instance where the claimant has an existing benefit year prior to October 16, 1959, and files an additional claim for benefits for the week ending October 31, 1959. You ask which procedure governs appeals from a decision on such claim.

Here, again, the case comes within the purview of Section 3 of House Bill No. 1130, *supra*, which definitely provides that the procedure of Sections 4141.01 to 4141.46, inclusive, Revised Code, as amended by said bill, shall govern the determination of benefits for weeks of unemployment beginning on or after October 16, 1959. Answering question (3), therefore, the provisions of Section 4141.28, Revised Code, as effective October 16, 1959, would govern the appeal in the fact situation of such question.

Accordingly, it is my opinion and you are advised:

1. By reason of the provisions of Section 1.20, Revised Code, relative to "pending proceedings," the provisions of House Bill No. 1130 of the 103rd General Assembly, effective October 16, 1959, relative to unemployment compensation, do not apply to an appeal from a decision of the administrator of the bureau of unemployment compensation on a claim for benefits for a week of unemployment occurring before October 16, 1959.

2. Pursuant to Section 3 of House Bill No. 1130 of the 103rd General Assembly, relative to unemployment compensation, effective October 16, 1959, benefit rights with respect to weeks of unemployment begin-

ning on and after October 16, 1959, are to be determined in accordance with the provisions of Sections 4141.01 to 4141.46, inclusive, Revised Code, as effective October 16, 1959.

Respectfully,
MARK McELROY
Attorney General