

3917

OLD AGE AND SURVIVOR'S INSURANCE PAYMENTS — SECTION 1345-7 G.C. LIMITS WEEKLY AMOUNT OF BENEFITS — DOES NOT LIMIT OR REDUCE TOTAL AMOUNT INDIVIDUAL ENTITLED TO RECEIVE WITHIN BENEFIT YEAR.

SYLLABUS:

Section 1345-7, General Code, limits the weekly amount of benefits which an individual may receive, but does not limit or reduce the total amount of benefits an individual is entitled to receive within his benefit year, providing he is otherwise eligible.

Columbus, Ohio, June 26, 1941.

Hon. H. C. Atkinson,
Administrator, Bureau of Unemployment Compensation,
Columbus, Ohio.

Dear Sir:

Your recent request for my opinion reads as follows:

"Section 1345-7 of the General Code provides that no benefits shall be paid an individual for any week in which he is receiving, or has received, Old Age and Survivor's Insurance payments under the provisions of the Social Security Act. Provision is made, however, that if such payments are less than his unemployment benefits, he shall be entitled to receive for such week his unemployment benefits reduced by the amount of such Old Age and Survivor's Insurance payments.

Old Age and Survivor's Insurance payments are made on a monthly basis and our Bureau has required that claimants for unemployment benefits report payments under the Federal program.

The question which confronts us involves whether the maximum benefits payable in an individual's benefit year shall be reduced by the amount of Old Age and Survivor's Insurance paid the individual during his benefit year, or does Section 1345-7 provide only for a reduction in the weekly benefit amount.

Your opinion, therefore, is respectfully requested on the following statement of facts:

The Bureau, having determined the average weekly wage for a claimant (eligible under Section 1345-6, Ohio General Code) to be \$20.00, he is awarded benefits of \$10.00 a week for total unemployment. This claimant receives \$5.00 a week in Old Age and Survivor's Insurance benefits under title II of the Social Security Act, as amended. What is the total amount of benefits under Sections 1345 and 1346, Ohio General Code, this claimant may receive throughout his benefit year?"

The part of Section 1345-7, General Code, which is pertinent to the question reads as follows:

"a. No benefits shall be paid for any week with respect to which an individual is receiving or has received remuneration in the form of * * *

(3) Old-age benefits under title II of the social security act, as amended, or similar payments under any act of congress; provided, that if such remuneration is less than the benefits which would otherwise be due under this act, he shall be entitled to receive for such week, if otherwise eligible, benefits reduced by the amount of such remuneration."

The definitions contained in the act which have a bearing upon the question are found in Section 1345-1, General Code, and they are as follows:

" * * * d. 'Benefits' mean money payments payable to an individual, as provided in this act, for loss of remuneration due to his unemployment. * * *

k. An individual shall be deemed 'totally unemployed' in any week during which he performs no services and with respect to which no remuneration is payable to him.

l. An individual shall be deemed 'partially unemployed' in any week of less than full time work if the total remuneration payable to him for such week is less than 60% of his average weekly wages. * * *

n. An individual's 'weekly benefit amount' means the amount of benefits he would be entitled to receive for one week of total unemployment."

Section 1345-6, General Code, states that an individual to be eligible for benefits must be capable and available for work; unable to obtain work in his usual trade or occupation; has registered and given notice of unemployment as provided by the act and has been employed by an employer subject to the unemployment compensation act in at least twenty weeks within one year immediately preceding his application for benefits. This section also provides certain limitations on payment of benefits and further provides as follows:

" * * * d. An individual suffering total unemployment shall be eligible for benefits for unemployment occurring subsequent to a waiting period of three weeks and no benefits shall be or become payable during this required waiting period; * * * .

An individual suffering partial unemployment shall be eligible for benefits for each week of such partial unemployment after a waiting period such that the loss of remuneration in such partial unemployment is equal to three weeks of total unemployment. * * *

An individual's maximum weeks of benefits per year shall be reduced by three weeks in the event his unemployment results from voluntary resignation from work without good cause or dismissal for misconduct, as determined by the administrator."

The above subsection d. provides that for total unemployment the individual shall be eligible for benefits occurring subsequent to a waiting period of three weeks and for partial unemployment an individual shall be eligible for benefits for each week of such partial unemployment after a stated waiting period. Thus only the starting point for the payment of benefits is fixed by said section. No limitation as to length of the period of the payments or as to the total amount of benefit payments is contained therein, except the provision reducing the benefits by three weeks in cases of resignation without good cause or dismissal for misconduct.

The amount of the benefits per week, as well as the total amount which may be paid, is limited by the provisions of Section 1345-8, General Code, sub-section b., which reads as follows:

"b. Benefits shall be payable on account of each week of total unemployment after the specified waiting period at the rate of 50% of the individual's average weekly wages, but not to exceed a maximum of fifteen dollars per week. In cases of partial unemployment where by reason of less than full time work in any week, an individual's total remuneration payable with respect to such week is less than 60% of his average weekly wages, benefits shall be paid as in case of total unemployment, except that the amount of such benefits shall be as follows:

Where the total remuneration payable to an individual for any week of less than full time work is less than 60% but more than 45% of his average weekly wages, benefits shall be 10% of his average weekly wages; 45% or less, but more than 30%, benefits shall be 20% of average weekly wages; 30% or less, but more than 15%, benefits shall be 30% of average weekly wages; 15% or less, benefits shall be 40% of average weekly wages.

In cases where average weekly wages amount to more than \$30.00 per week these per cents shall be calculated on the basis of \$30.00.

The total benefits to which an individual shall be entitled in any consecutive twelve months, whether for partial unemployment or total unemployment, or partial and total unemployment, shall not exceed sixteen times his benefit for one week of total unemployment. In the event of general and extended unemployment, such that the commission believes that the fund is in

danger of becoming insolvent, it shall have authority to declare an emergency, and to adjust the benefits either in their weekly amount or in the length of time for which they should be paid, until such time as the fund is restored to a sound actuarial basis.”

This section provides that the benefits payable each week for total unemployment shall be 50% of the individual's average weekly wage but not to exceed \$15.00, and provides the formula for determining the amount of benefits for partial unemployment, and then places the limitation on the total benefits which an individual may receive in any consecutive twelve months (which is a benefit year) for partial unemployment, total unemployment or partial and total unemployment, in the following language:

“The total benefits * * * shall not exceed sixteen times his benefits for one week of total unemployment.”

There is no limitation of payment of benefits for any given number of weeks — sixteen or any other number of weeks — except that the payments must be within the benefit year and the reduction of three weeks in case of voluntary resignation from work without good cause or dismissal for misconduct.

The act provides the formula for determining the amount of the weekly payment, the date for the beginning of making payments and then fixes the length or termination of the payments if the unemployment continues, by limiting the total amount of benefits to sixteen times the individual benefit for one week of total unemployment within the benefit year.

The total amount of benefits which an individual may receive within his benefit year is the same for total unemployment, for partial unemployment and for partial and total unemployment. The total benefits for each is not to exceed sixteen times his benefits for one week of total unemployment. There is no justification for construing the clause “The total benefits to which an individual shall be entitled in any consecutive twelve months, whether for partial unemployment or total unemployment, or partial and total unemployment, shall not exceed sixteen times his benefits for one week of total unemployment,” as meaning payments are limited to sixteen weeks. It is true that an individual totally unemployed for sixteen weeks will be paid his total

benefits in sixteen payments or sixteen weeks, but this is the result of the effect of the above part of the statute, not a basis for construing the statute as limiting payments to sixteen weeks. The construction placed upon this part of the statute must apply alike to total unemployment, partial unemployment and to total and partial unemployment. An individual partially unemployed can not be paid all he is entitled to in sixteen payments or sixteen weeks. He is entitled to receive a maximum of sixteen times his benefits for one week of total unemployment and, as his payment for one week of partial unemployment is less than the amount of his benefits for one week of total unemployment, it necessarily follows that his total benefits, to which he is entitled as long as he is eligible, can not be paid in sixteen payments or sixteen weeks.

From the above I conclude that the only limitation on the number of payments and the total amount an individual may receive in benefits within his benefit year is sixteen times the amount of benefits for one week of total unemployment.

There are two references in the statute which, taken by themselves, seem to indicate that the payment of benefits is limited by weeks, namely, Sections 1345-6d and 1345-10, General Code. The former section reads as follows:

“An individual’s maximum weeks of benefits per year shall be reduced by three weeks in the event his unemployment results from voluntary resignation from work without good cause or dismissal for misconduct, as determined by the administrator.”

Section 1345-10, General Code, provides that when the administrator determines that a certain employment is seasonal, he shall also fix “the proportionate number of weeks for which benefits may be paid.”

But these two references, in themselves, can not justify an interpretation of the statute as fixing benefit payments for any definite number of weeks, sixteen or otherwise, when, in fact, there is no other reference in the statute to the paying of benefits for any given number of weeks, except as those weeks are calculated from the limitations in the act, as fixing the starting point of payment of benefits and the limitation that the benefits payable shall not exceed sixteen times the benefits for one week of total unemployment payable within the benefit year.

Section 1345-8b definitely fixes the amount of benefits payable to an individual for one week of total unemployment at 50% of the individual's average weekly wage but not to exceed the maximum of \$15.00 per week.

The individual mentioned in your inquiry had a weekly wage of \$20.00 and was awarded 50% thereof, to-wit, \$10.00 a week for total unemployment. Under the law the total amount he may receive within his benefit year shall not exceed sixteen times his weekly benefit, to-wit, \$160.00. This is the only limitation upon the total amount he may receive as benefits within his benefit year.

We now come to a determination of the effect of Section 1345-7, General Code, upon the amount of benefits the individual mentioned in your inquiry is entitled to receive. The pertinent part of said section, which has heretofore been quoted, provides that no benefits shall be paid for *any week* with respect to which an individual receives remuneration in the form of old age benefits under Title II of the Social Security Act, except that if such remuneration is less than the benefits which would otherwise be due under this act, he shall be entitled to receive for *such week*, if otherwise eligible, benefits reduced by the amount of such remuneration. This limitation applies clearly to the amount which may be paid him in any one week and not to the total amount which he is entitled to receive within his benefit year.

In answer to your specific question, it is my opinion that the individual referred to in your letter is entitled to receive benefits from the Unemployment Compensation Fund in the total amount of \$160.00, payable \$5.00 per week, within the benefit year provided he continues to be otherwise eligible.

Respectfully,

THOMAS J. HERBERT,

Attorney General.