

only lose 2 wks.  
if fail to report?

STATE OF MICHIGAN  
EMPLOYMENT SECURITY BOARD OF REVIEW

In the Matter of the Claim of

MARGIE M. WAMBAUGH,

Appeal Docket No. B79-06575-68029

Claimant

Social Security No. [REDACTED]

HARVEY HOME,

Employer

DECISION OF BOARD OF REVIEW

In this case, the referee affirmed a Commission redetermination which found the claimant ineligible for benefits in the four-week period from January 7, 1979 through February 3, 1979 under Commission Regulation 210 and Section 28(1)(a) of the MES Act. For the reasons which follow, the decision of the referee is reversed.

The record shows that the claimant reported as required on January 9, 1979 and was given a next appointment on January 23, 1979. For various reasons, including the fact that she was then working (T, p 6), the claimant did not report on her January 23rd reporting date and next appeared at the Commission for this purpose on February 9, 1979 (T, p 7).

1. A recurrent problem under the bi-weekly reporting system established by the Commission is the number of weeks of benefits which a claimant is to lose if he misses one bi-weekly reporting appointment. The act of reporting is an integral part of the system and serves the function of obtaining a certification by a claimant that he has satisfied all of the requirements of the Act in order to be eligible for benefits in the two-week period prior to the filing of his new or continued claim. The problem here is that the Commission has prepared rules which bar one from receiving benefits for four weeks where he has merely missed one reporting date.

Here, the branch office did this to the claimant. We think that where one misses a bi-weekly reporting date without good cause the most that he should lose would be the two weeks preceding such appointment date. Nevertheless, Rule 210(9) promulgated by the Commission (formerly Regulation 210 3 G) provides as follows:

"An individual shall file a continued claim on his reporting day on a weekly basis or on such other basis as prescribed by the commission in order to receive benefits for

a completed week or weeks of unemployment and to establish the effective date of the next succeeding benefit period, if otherwise eligible and qualified."

The rule, as enunciated by the Commission, is arbitrary and capricious. It prescribes that the act of reporting shall serve the double function of establishing the end of one period, that is the "completed week or weeks of unemployment," and, at the same time, establish the beginning of another period, that is "the effective date of the next succeeding benefit period." The second function, that of establishment of the effective date of the next succeeding benefit period as a condition to the entitlement for benefits for such succeeding period, is meaningless. For example, the elements of eligibility for benefits can always (and only) be established at the conclusion of the week or weeks in question. Therefore, we hold that an individual who misses a bi-weekly reporting date without good cause shall forfeit only his entitlement to the prior two weeks of benefits, that is "the completed week or weeks of unemployment" referred to in Rule 210(9).

2. In the present case, the claimant missed her bi-weekly reporting date on Tuesday, January 23, 1979. Her next bi-weekly reporting date would have fallen on Tuesday, February 6, 1979. She actually reported on Friday, February 9, 1979. The Commission Rules (see Rule 210(9)(b)(i)) provide that "good cause" may excuse a reporting which is late by as much as 14 days. The first question presented here is whether the fact that the claimant was 17 days late, rather than 14 days late, should bar the claimant from entitlement (assuming good cause for the late reporting). The Board notes that it appears to be a regular Commission practice, where an individual reports in the week containing the 14th day, to consider that such reporting is timely and satisfies the requirement. Even if this were not Commission practice, we would include in the period covered by good cause at least those instances in which reporting occurred in the week in which the 14th day fell. In the present case, it should be noted that the claimant did, in fact, report in the week containing the 14th day. Therefore, provided she can establish good cause, it is unnecessary for us to decide whether the Commission's 14-day limit on good cause as set forth in the rule is capricious and therefore void (compare Dow v Pagnier, Ingham County Cir Ct, 75-17822-AE (1976) where the court held that the Commission's 10-day limit on concurrent employment for the purpose of asserting a Section 29(5) defense to a voluntary leaving disqualification was unduly limiting, uncalled for by the Act, and therefore void).

3. The final question presented by this record is whether or not the claimant here had "good cause" for her late reporting. Under Commission regulations, "working" is a recognized good cause. See Commission Rule 210(2)(b)(ii). Claimant's testimony shows that a reason for her failure to report as scheduled on January 23, 1979, was that she was working. Therefore, good cause for her late reporting is established.

For the foregoing reasons, the decision of the referee is reversed.

It is held that the claimant is not ineligible for benefits in the period from January 7, 1979 through February 3, 1979 because of late reporting. She may

receive benefits chargeable to the rating account of the named employer in such period if otherwise eligible and qualified.

*Thomas L. Gravelle*

Thomas L. Gravelle, Member

*Jeanne C. Harbour*

Jeanne C. Harbour, Chairperson

JAMES VIVENTI (MEMBER) DISSENTING:

I do not agree with the conclusions reached by the majority of the panel in this matter. It is my opinion that the decision of the referee represents a proper application of the law to the facts of this matter and I would, therefore, affirm the referee's decision.

*James Viventi*

James Viventi, Member

MAILED AT DETROIT, MICHIGAN September 29, 1980

This decision will become final unless a written request for rehearing or appeal to the appropriate circuit court is RECEIVED on or before

October 20, 1980

TO PROTECT YOUR RIGHTS YOU MUST BE ON TIME.

*Salso as r 02/11 - adopt Lambrough in Hoffman # 72225 12/15/81*