

STATE OF MICHIGAN  
IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

MICHIGAN OVERHEAD DOOR SALES AND  
SERVICE, INC.,

Employer-Appellant,

v

MICHIGAN EMPLOYMENT SECURITY  
COMMISSION AND CHARLES GOWEN,

Appellees.

No. 84-419470-AE

Hon. Richard C. Kaufman

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OPINION

This is an appeal from a Michigan Employment Security Commission (MESC) Board of Review ruling that affirmed a referee's decision finding claimant-appellee Gowen, eligible for unemployment insurance benefits.

Claimant-appellee Charles Gowen was employed by the appellant Michigan Overhead Door Sales and Service, Inc., as a carpenter from November 1, 1978 through July 1, 1981, when he suffered a disabling injury while in the course of his employment, as a result of a fall from a ladder. Immediately following the fall, Gowen was hospitalized for 12 days with injuries to his right elbow, left wrist and right knee.

After his release from the hospital Gowen was paid workers disability benefits through the appellant company's insurer. Eventually a settlement of disability benefits was negotiated with a final payment made on November 22, 1982.

On January 6, 1983, Gowen went to the Michigan Employment Security Commission to file for unemployment benefits. There he was informed that in order to preserve credit weeks he was required to make a written application and submit a form, completed by his physician, indicating that he was physically able to work. Gowen complied with this request, delivering the completed form to M.E.S.C. on January 10, 1983. This form stated that the appellee was able to work as of September 20, 1982.

M.E.S.C. found the appellee ineligible for benefits for the period 1/6/80 to 7/4/81 under MCLA 421.28a due to a failure to preserve credit weeks. The appellee appealed that decision to the referee division. The hearing referee modified the original determination and found that the claimant-appellee substantially complied with the requirements of MCLA 421.28a and did contact the Commission within 45 days of the date he was actually able to return to work, and, in fact, filed his application for benefits on the 45th day, and, thus, was timely and did preserve his credit weeks.

The M.E.S.C. Board of Review affirmed the referee's finding.

Appellant seeks reversal claiming the M.E.S.C. interpretation of MCLA 421.28a(6) is contrary to law in that the appellee did not file for benefits within the time limits set by statute, and thus was ineligible for benefits.

MCLA 421.28a(6) provides as follows:

"An unemployed individual who has been unable to establish a benefit year solely due to a period of continuous disability may preserve all credit weeks earned by the individual's week of unemployment, as defined in section 48, caused by the disability. However, credit weeks may be preserved if the commission receives a written request and a physician's statement, as described in subsections (1) and (2) within 45 days after the commencement of the unemployment, or if the individual is unable to submit the written statement and request due to a medical inability, within 45 days after the end of that medical inability. The individual's benefit year shall begin the first week the individual was both unemployed and disabled, and the benefit year shall be extended pursuant to subsection (4)." (emphasis added)

In order to comply with the statute, and thus preserve credit weeks, a person must submit a written request to preserve credit weeks and a physician's written statement concerning the disability, to the M.E.S.C. (1) within 45 days after the commencement of the disability or if medically unable to do this (2) within 45 days of the end of the medical inability.

exists. The use of the word inability, instead of disability, is important to an understanding of the statute. Inability means unable to file the application and submit the physician's statement, due to the medical disability. The appellee's 12 day hospitalization was clearly a medical inability. (July 1 - July 13, 1981). While the medical disability continued at least until September 22, 1982 at which time the appellee's physician released him to return to work (and referred him to a specialist for a wrist ailment claimed by the appellee, but unable to be substantiated by the attending physician). There is no evidence of a medical inability to comply with the statute. Further, there is substantial evidence to indicate that no medical "inability" exists. The record clearly shows that following the claimant-appellee's hospitalization, he visited the attending physician, Dr. Pickering, on occasions that he referred to as routine visits. He also stated that he "had been looking for several jobs along the line . . . ." It must be concluded that a patient who visits his physician while disabled, and seeks employment, is medically able to comply with the M.E.S.C. requirements of making written application and submitting a physician's statement within the time limits set by statute.

For these reasons the decision of the M.E.S.C. Board of Review is reversed.

Dated: NOV 8 - 1984

RICHARD C. KAUFMAN  
Circuit Court Judge