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EMPLOYER—ENTITLED TO RECEIVE NOTICE OF BENEFIT PAYMENTS—AN "INTERESTED PARTY"—SECTION 1346-4 G. C.—HAS RIGHT TO APPLY WITHIN TIME SPECIFIED FOR RECONSIDERATION—DETERMINATION BY ADMINISTRATOR OF BUREAU OF UNEMPLOYMENT COMPENSATION—BENEFITS FOR WEEK APPEARING ON NOTICE—SECTION 1345-4 (c) (4) (H) G. C.

SYLLABUS:

An employer who is entitled to receive notice of benefit payments under the provisions of Section 1345-4 (c) (4) (H), General Code, being an "interested party" within the meaning of Section 1346-4, General Code, has the right to apply, within the time provided therein, for a reconsideration of the determination by the Administrator of the Bureau of Unemployment Compensation with respect to the benefits for the week appearing on such notice.

Columbus, Ohio, March 13, 1952

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

Dear Sir:

Your request for my opinion reads as follows:

"I would greatly appreciate your opinion on the following question which now confronts me as Administrator with reference to the right of reconsideration or appeal of the Administrator's notice of a weekly benefit payment to the employer to be charged with such payment, for a designated week.

"Section 1346-4 in the third paragraph provides:

'The Administrator or his deputy shall also examine any claim for benefits filed, and on the basis of any facts found by him shall determine whether such claim for benefits shall be allowed. If such claim for benefits is disallowed the claimant shall be notified of such disallowance and the reasons therefor. Notice of determination of the first claim for benefits, as defined in section 1345-1(d)(3), filed in any benefit year, whether allowed or disallowed, shall be mailed or delivered to all interested parties; and a notice of determination of any additional claim, as defined in section 1345-1

(d)(4), or determination allowing waiting period or benefits for the first week following a previous disallowal during such benefit year, shall be mailed or delivered to all interested parties.'

"Paragraph six of the same section provides in part:

'Any interested party, or any person notified of a determination of an application for determination of benefit rights or a claim for benefits may within the time provided for filing an appeal apply in writing for or consent to a reconsideration of the administrator's or deputy's determination, and such application or consent shall stay proceedings on any appeal filed prior to the decision upon reconsideration. Unless an appeal is filed from such decision with the board within ten calendar days after such notification was delivered to such person or was mailed to the last known post office address of the appellant, such decision of the administrator or deputy shall be final and benefits shall be paid or denied in accordance therewith, * * *.'

"A 'claim for benefits' is defined in Section 1345-1 d.(3) as follows:

'"Claim for benefits" means a claim for waiting period or benefits for a designated week.'

" 'Interested party' is defined in Section 1345-1 g. as follows:

'"Interested party", with respect to any claim for benefits under sections 1345-1 et seq., and 1346-1 et seq., of the General Code means the claimant, his most recent employer, any employer in such claimant's base period and the administrator.'

"The recent legislature in Am. Sub. S. B. 149 in amending Section 1345-4 of the Unemployment Compensation Act added the following new provision as Paragraph (H). This provision which becomes effective January 1, 1952 under the terms of said bill reads as follows:

'(H) The Administrator shall promptly mail notice of such weekly benefit payment to the employer to be charged with such payment. Such notices of weekly benefits may consist of copies of the benefit checks to be charged to his account, and shall show the name and social security number of the claimant, the amount of weekly benefits paid, the date of payment, the week of total or partial unemployment for which the payment was made, the account number of the employer charged and such additional information as may be deemed pertinent.'

"Question: Does an employer who receives a notice pursuant to paragraph (H) of Section 1345-4(c)(4) quoted above, have the right under the law to apply in writing for a reconsideration of the benefit payment for the week appearing on that notice?

"We are in the process of formulating operating procedures under the new law. May we respectfully request your early consideration of the above question?"

The specific question which you present appears to be based on the assumption that unless an employer receives a notice of the Administrator's determination with respect to a particular benefit payment, he has no right of appeal under the sixth paragraph of Section 1346-4, General Code, as quoted in your inquiry. We may, therefore, first examine this point.

Prior to 1947, Section 1346-4, General Gode, provided only for the filing of "claims for benefits" and provided that if such claim were allowed, "all interested parties" should be notified and that "any person so notified may within the time provided for filing an appeal apply in writing for or consent to a reconsideration of the administrator's or deputy's determination." Then, as now, an employer in such claimant's base period was defined by Section 1345-1, General Code, as being an "interested party." In 1947 Section 1346-4, General Code, was amended, 122 Ohio Laws 713, by the addition of the requirement that notice be given to the last employer of a claimant filing "an original claim for benefits." The language limiting the right to apply for reconsideration to "any person so notified" was not changed.

From the foregoing language, it is obvious that under the statute prior to 1949, no person was afforded the right to apply for reconsideration or to appeal to the Board unless such person had been given a notice as provided in the language above quoted. In 1949, however, this section and other sections of the Unemployment Compensation Act were again amended (123 Ohio Laws 559). The requirement of an application for determination of benefit rights as a basis for the determination of maximum potential payments for a benefit year was added by amendments to Sections 1345-1 and 1346-4, General Code. Definitions for "benefit rights," "claim for benefits" and "additional claim" were inserted in Section 1345-1. The only requirement of notice contained in Section 1346-4 was as follows:

"When an unemployed individual files an application for determination of benefit rights a notice shall promptly be given in writing to the last employer of the individual that such filing has

been made, which notice shall request from the employer the reason for the individual's unemployment. Information as to reason for unemployment preceding an additional claim shall be obtained in the same manner. 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, the weekly benefits payable, and the maximum amount thereof. *The claimant, his most recent employer, and, if such application is valid, all interested parties shall promptly be notified* of the determination and the reasons therefor.

"The administrator or his deputy shall also examine any claim for benefits filed, and on the basis of any facts found by him shall determine whether such claim for benefits shall be allowed. If such claim for benefits is disallowed the claimant shall be notified of such disallowance and the reasons therefor. *Notice of determination of the first claim for benefits,* as defined in section 1345-1 (d) (3), filed in any benefit year, whether allowed or disallowed, *shall be mailed or delivered to all interested parties;* and provided further, that a *notice of determination of any additional claim,* as defined in section 1345-1 (d) (4), *shall be mailed or delivered to all interested parties* when unemployment results from any cause other than lack of work."

(Emphasis added.)

At the same time, the language relative to the filing of an application for reconsideration was amended to read:

"*Any interested party,* or any person notified of a determination of an application for determination of benefit rights *or a claim for benefits* may within the time provided for filing an appeal apply in writing for or consent to a reconsideration of the administrator's or deputy's determination, and such application or consent shall stay proceedings on any appeal filed prior to the decision upon reconsideration. * * *" (Emphasis added.)

The effect of such amendments seemingly created a rather anomalous situation. The statute required notice to "all interested parties" only (1) of applications for determination of benefit rights, (2) of determinations of the first claim for benefits, and (3) of determinations of "any additional claim." Since "additional claim" was defined by Section 1345-1 as meaning "the first claim for benefits filed following any separation from employment during a benefit year," an employer in a base period, as an "interested party," was not entitled to notice of the determination of the weekly applications made periodically during a period of consecutive claims for

benefits. At the same time, it is clear that since "claim for benefits" was defined by Section 1345-1 as "a claim for waiting period or benefits for a designated week," each week required a separate "claim for benefits." Section 1346-4 also provided that the Administrator or his deputy was required to examine "any claim for benefits filed" and to determine whether such claim for benefits should be allowed. Thus, it must be concluded that, at the time of the determination of each of such weekly claims for benefits or upon payment thereof, the Administrator, under such state of the law, was not required to notify the employer.

Turning, however, to the provision relating to applying for reconsideration, it will be observed that the right to so apply under the 1949 amendment was not, as before, limited to persons "so notified," but was extended to include "any interested party" and since, by the terms of Section 1345-1 an "interested party" is defined as including "the claimant's most recent employer" and "any employer in said claimant's base period," it must follow that such an employer was an "interested party" within the meaning of Section 1346-4. Furthermore, this right to apply for reconsideration was not limited to determinations for "first claim for benefits" or to an "additional claim," but was extended to the determination of "a claim for benefits." By the statutory definition of a "claim for benefits," heretofore mentioned, it would seem to follow that an employer within a base period would, as an "interested party," be entitled to apply for reconsideration of the determination by the Administrator of *any* "claim for benefits," although no provision for notification to such employer was contained in the existing statutes.

Since it has been argued by some that there is no "determination" by the Administrator except as to (1) applications for determination of benefit rights, (2) a first claim for benefits, or (3) an "additional claim for benefits," it might be well to again point out the requirement of the statute that the Administrator or his deputy examine "any claim for benefits filed" and "determine whether such claim for benefits shall be allowed."

I have stated that the amendments of 1949 seemingly created an anomalous situation. The provisions of the statute previously discussed appear, by clear and unequivocal language, to give to the employer such right to apply for reconsideration. At the same time, however, it was provided that such application should be made "within the time provided

for filling an appeal." The only provision with reference to the time for filing an appeal was contained in the next sentence permitting the filing of such appeal "within ten calendar days after such notification was delivered to such person or was mailed to the last known post office address of the appellant." Thus, the clear language of the statute which specifically granted a right to apply for reconsideration was, in practical operative effect, nullified by a "missing link" in that the *time* for filing such application was keyed to the receipt of a notice, which notice, under certain circumstances, was not provided for by law.

With this background, I now turn to the consideration of the effect, if any, of the 1951 amendments enacted in Amended Substitute Senate Bill No. 149. The provisions of Section 1346-4 heretofore discussed relative to the right to file an application for reconsideration were not changed. The section was amended by adding the provision that all interested parties should be notified of a "determination allowing waiting period or benefits for the first week following a previous disallowal during such benefit year."

As pointed out in your letter, Section 1345-4 was amended by the addition of (c)(4)(H) requiring the Administrator to promptly mail notice of weekly benefit payments to the employer to be charged with such payment. Such employer, of course, would be within the base period of the claimant and, thus, would be an "interested party" as defined by Section 1345-1 and would fall within the class upon whom Section 1346-4 had conferred the right to apply for reconsideration. Here, I believe, the "missing link" of notice has been supplied and that, for the first time, practical operative effect can be given to the clear language of Section 1346-4 which authorizes any "interested party" to file an application for reconsideration from the determination of the Administrator of a "claim for benefits." It is true that such language might perhaps more properly have been inserted in Section 1346-4 instead of in Section 1345-4, but since the employer must file application in order to protect his own merit rating, its placing does not assume undue importance. In the last analysis, the rate of payment by the employer is made dependent upon the finality of the Administrator's determination as to the allowance or disallowance of a claim for benefits of a designated week. Under Rule 422.2, adopted by the Administrator pursuant to the authority of Section 1345-13(a)(1), this fact is made clear. This rule provides:

> "Protest against the determination of a claim (Section 1346-4, General Code) will not be considered as a part of an exception against a charge made to an employer's account except when a protest against such determination has been made within the time limits prescribed by Law for filing such protest, and such protest was determined in favor of the employer or no decision has been issued on such protest. 1345-13-(a)-(1), 1346-4."

It is argued by some that this notice of payment is not a notice of "determination" and that the Administrator, by such notice of payment, has not made a "determination" of a "claim for benefits." The simple answer to this is that, as heretofore pointed out, Section 1346-4 requires the Administrator or his deputy to "examine any claim for benefits" and "determine" whether it should be allowed. Obviously, such allowance or disallowance must be determined before or at the same time any such payment is made. It would follow, therefore, that notice of "payment" would include notice of the fact that a "determination" had been made to allow the claim for the designated week in question.

One other matter requires discussion in this opinion. In addition to the language adopted as paragraph (c)(4)(H) of Section 1345-4, Senate Bill No. 149, as originally introduced, proposed to amend Section 1346-4 by the insertion of the following language:

> "Each benefit check, when issued shall be considered a determination by the administrator that the claimant in whose favor the check is drawn, was, during the compensable period covered thereby, eligible and qualified for benefits; and when notice thereof is mailed to an employer shall constitute notice that such a determination has been made. An employer, within ten days from date of mailing of such notice of weekly benefits, as provided in subsection (H) of section 1345-4(c)(4), may protest such eligibility and qualification as to *benefits still unpaid*, and *no additional benefits shall be paid until the right to further benefits is finally adjudicated.*" (Emphasis added.)

After reference to committee, Substitute Senate Bill No. 149, which evolved therefrom, omitted the above quoted language. It is argued that such omission indicates a legislative intent not to allow such reconsideration under the facts under consideration. I am not in accord with such view. It is quite impossible, as a matter of law, to ascertain whether such language was omitted due to an intention not to approve the basic provisions thereof, or whether such was omitted due to the belief that other

language of the proposed bill would accomplish the same basic purpose. See Horack's Sutherland on Statutory Construction, Third Edition, Volume 2, page 506.

The first sentence of such omitted matter provided that each benefit check, when issued, should be considered a determination by the Administrator that the claimant was eligible and qualified for benefits during the compensable period covered thereby. Since other provisions of Section 1346-4 require that such a determination be made by the Administrator, it would necessarily follow that the act of determination by the Administrator, followed by the issuance of a benefit check, would constitute a determination whether specifically so stated or not. This same sentence then provided that the notice of the payment to the employer should constitute notice that such a determination had been made. It would seem that since the Administrator is required to make such determination before payment, notice of such payment would, whether specifically so stated or not, constitute notice that such determination had, in fact, been made.

The second sentence of the above quoted language would not have permitted a protest to the payment for the designated week in question, but only as to "benefits still unpaid," a provision entirely inconsistent with the principle of the Unemployment Compensation Act that each week is subject to a separate "claim for benefits" for a designated week. Furthermore, such proposed language provided in case of such protest "that no additional benefits shall be paid until the right to further benefits is finally adjudicated." Here, again, the basic principle of separate claims for separate weeks would have been ignored and a claimant would have been denied compensation for all future weeks, based upon any type of ineligibility for the week covered by the payment in question. Such objections, therefore, may well have been the basis for the deletion of the language under consideration.

Under my interpretation of the existing law, an application for reconsideration places in issue only the determination of the Administrator or his deputy to pay a claimant for the designated week in question and the filing of such application for reconsideration by an employer would not have the effect of putting into issue payments made for subsequent weeks or have the effect of *compelling* the Administrator to withhold payments for such future weeks pending such reconsideration.

Accordingly, in specific answer to your inquiry, it is my opinion that an employer who is entitled to receive notice of benefit payments under the provisions of Section 1345-4(c)(4)(H), General Code, being an "interested party" within the meaning of Section 1346-4, General Code, has the right to apply, within the time provided therein, for a reconsideration of the determination by the Administrator of the Bureau of Unemployment Compensation with respect to the benefits for the week appearing on such notice.

Respectfully,

C. WILLIAM O'NEILL
Attorney General