

STATE OF MICHIGAN
OAKLAND COUNTY CIRCUIT COURT

173164
STATE OF MICHIGAN,
DEPT. OF LABOR & ECONOMIC GROWTH
UNEMPLOYMENT INSURANCE AGENCY,

Appellant

Case No. 04-059568-AE

v

HON. GENE SCHNELZ

YVONNE DARDEN &
MASTANUONO & ASSO., INC.,

Appellees

Defendant(s).

Yvonne Darden
In Pro Per
16590 Birwood
Detroit, MI 48221

Mastanuono & Asso.
20700 Civic Center Dr., #150
Southfield, MI 48076

Martin Vittands (P26292)
Michigan Attorney General
3030 W. Grand Blvd., Ste. 9-600
Detroit, MI 48202

OPINION AND ORDER

This is an appeal of by Department of Labor & Economic Growth and Unemployment Insurance Agency (Appellant) of the decision by the Employment Security Board of Review.

This central issue on appeal is whether the 3-year limitation of MCL 421.62(a) is applicable to the Unemployment Insurance Agency's establishment of restitution.

Standard

A Circuit Court may reverse a final order of decision by the Employment Security Board of Review only if the court finds that the order is contrary to law, or is not supported by competent, material and substantial evidence on the whole record. MCL 421.38(1). In reviewing the decision of a referee, the Court may reverse a question of fact when it finds that the decision was contrary to the great weight of the evidence. Williams v Lakeland Convalescent Center, Inc, 145 NW 2d 272 (Mich App 1966).

Facts

On November 25, 2003, in a redetermination, the Unemployment Insurance Agency found that Appellee Yvonne Darden had received unemployment benefits for five weeks ending in November 2002, but had also failed to report earnings for those weeks and owed \$1349 in restitution. The referee found that Darden had earnings and was ineligible for four weeks in November '02 and modified the restitution to \$1084. Darden appealed, feeling that she did not intend to be dishonest. The Board of Review, on its own, found that the Unemployment Insurance Agency had no jurisdiction to issue a restitution decision on November 25, 2003 because this was more than one year after the unemployment checks were issued and no fraud on the part of the claimant was found. The Unemployment Insurance Agency is appealing this decision by the Board of Review.

Arguments

The Unemployment Insurance Agency argues that the decision that MCL 421.62(a) is inapplicable absent a finding of deliberate fraud is unsupported by the law. The Agency argues that in the matter before the Board, it invoke MCL 421.62(a), which states that:

If the commission determines that a person has obtained benefits to which that person is not entitled, the commission may recover a sum equal to the amount received by 1 or more of the following methods: (1) deduction from benefits payable to the individual, (2) payment by the individual to the commission in cash, or (3) deduction

from a tax refund payable to the individual as provided under section 30a of Act No. 122 of the Public Acts of 1941, being section 205.30a of the Michigan Compiled Laws. Deduction from benefits payable to the individual shall be limited to not more than 20% of each weekly benefit check due the claimant. The commission shall not recover improperly paid benefits from an individual more than 3 years, or more than 6 years in the case of a violation of section 54(a) or (b) [FN1] or sections 54a to 54c, [FN2] after the date of receipt of the improperly paid benefits unless: (1) a civil action is filed in a court by the commission within the 3-year or 6-year period, (2) the individual made an intentional false statement, misrepresentation, or concealment of material information to obtain the benefits, or (3) the commission issued a determination requiring restitution within the 3-year or 6-year period. Furthermore, except in a case of an intentional false statement, misrepresentation, or concealment of material information, the commission may waive recovery of an improperly paid benefit if the payment was not the fault of the individual and if repayment would be contrary to equity and good conscience.

However, the Board of Review, on its own applied MCL 32a(2), which states that:

The commission may, for good cause, including any administrative clerical error, reconsider a prior determination or redetermination after the 30-day period has expired and after reconsideration issue a redetermination affirming, modifying, or reversing the prior determination or redetermination, or transfer the matter to a referee for a hearing. A reconsideration shall not be made unless the request is filed with the commission, or reconsideration is initiated by the commission with notice to the interested parties, within 1 year from the date of mailing or personal service of the original determination on the disputed issue.

The Agency states that when two statutes cover the same general subject matter, the more specific statute must prevail over the more general. MESC v Westphal, 214 Mich App 261 (1995). The Agency contends that the 3-year provision of MCL 421.62(a) takes precedence over the 1-year provision of MCL 32a(2) because 421.62(a) is more specific. The Agency also argues that the Board of Review's decision that the Agency was without jurisdiction on November 25, 2003 is not only incorrect legally because of the benefits have their own limitation period, as discussed above, but also the record is silent as to when the benefit checks were issued. The Agency contends that there is no support for the Board's assumption that the benefit checks are issued so prompt at the close of the benefit weeks.

Appellees have failed to respond to this Appeal.

WHEREFORE, this Court finds that in conjunction with MESC v Westphal, supra, the Board should have applied the 3-year provision of MCL 421.62(a) which takes precedence over the 1-year provision of MCL 32a(2) because 421.62(a) is more specific.

THEREFORE, IT IS HERERBY ORDERED that this matter is REVERSED, and the decision of the referee be reinstated.

GENE SCHNELZ
Circuit Judge

HON. GENE SCHNELZ
Circuit Court Judge

Dated: **OCT 22 2004**

A TRUE COPY
G. WILLIAM CADDELL
Oakland County Clerk-Register of Deeds
By *C. Antea*
Deputy