

STATE OF MICHIGAN
IN THE COURT OF APPEALS

CONTEMPORARY LIFE SERVICE,

Appellant,

v

MICHIGAN EMPLOYMENT SECURITY
COMMISSION,

Appellee.

UNPUBLISHED

Case No. 151027

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OPINION

STATE OF MICHIGAN
COURT OF APPEALS

CONTEMPORARY LIFE SERVICES, INC.,

Plaintiff-Appellant,

v

MICHIGAN EMPLOYMENT SECURITY COMMISSION,

Defendant-Appellee.

May 24, 1994

No. 151027

LC No. 91-2081-AA

Before: Holbrook, Jr., P.J., and Sawyer and Neff, JJ.

PER CURIAM.

Plaintiff appeals as of right the March 19, 1992 Berrien Circuit Court order affirming the May 21, 1991 decision of the Michigan Employment Security Board of Review. We affirm.

Plaintiff is a Michigan nonprofit charitable corporation organized under 26 USC 501(c)(3) to provide a residential care program for the elderly, the mentally retarded, and for otherwise developmentally disabled persons. On November 12, 1985, the plaintiff's agent Alan N. Nichols completed the Michigan Employment Security Commission (MESC) form 1010. Defendant uses form 1010 to determine the liability of nonprofit organizations to the MESC. Nichols checked the "yes" box of question 3, attesting that the plaintiff was a tax-exempt organization pursuant to 26 USC 501(a). However, Nichols failed to answer question 7, which specifically stated that the failure to answer the question would result in the establishment of liability as a contributing employer. Accordingly, the defendant classified the plaintiff as a contributing employer instead of a reimbursing employer. The difference between the two designations was financially significant for the plaintiff because a contributing employer pays unemployment taxes quarterly on the taxable wages of its employees. Comparatively, a reimbursing employer is obligated only to reimburse the MESC for unemployment benefits actually paid to former employees.

On January 31, 1986, the defendant mailed its notice of determination of employer status to the plaintiff, stating the defendant's finding that the plaintiff was an employer subject to the provisions of MCL 421.41; MSA 17.543 of the Michigan Employment Security Act. The notice stated that the plaintiff was required to file quarterly contribution reports from January 1986 forward.

Following a telephone call from the plaintiff's accounting service asking the MESC why the plaintiff was receiving quarterly forms from the defendant that were applicable only to contributing employers, the defendant on March 8, 1989 mailed the plaintiff a notice stating that it had not filed its quarterly contribution reports for some of 1985 through 1988. On March 16, 1989, the plaintiff wrote the defendant requesting reclassification from its contributing employer status to a reimbursing employment designation. Defendant reclassified the plaintiff to a reimbursing employer effective January 1, 1989.

The dispute in this case arises from the fact that the plaintiff accumulated an arrearage of unpaid unemployment payroll taxes during the period from 1985 to 1988. Defendant treated the plaintiff's March 16, 1989 letter as a protest of the defendant's January 31, 1986 determination that the plaintiff was a contributory employer. Defendant maintained that the plaintiff's challenge to the original determination was untimely under MCL 421.32a(2); MSA 17.534(1)(2), which provides:

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

thereafter 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.

Plaintiff appealed the MESC's redetermination and recognized that the one-year time limit imposed by the statute, but pleaded for an extension of the time limit on equitable grounds. The hearing referee found that Nichols' failure to complete question 7 on form 1010 properly resulted in the defendant's designation of the plaintiff as a contributing employer and that the record did not establish good cause for a late protest. The hearing referee further found that even in cases where good cause is permitted, that possibility was extinguished by the expiration of the one-year limitation period.

After the hearing referee denied the plaintiff's application for a rehearing, the plaintiff appealed to the Michigan Employment Security Board of Review, which affirmed the referee's decision on May 21, 1991. Plaintiff then appealed to the circuit court. The circuit court, relying on the statutory one-year time limit, concluded that the board's decision was both legally correct and supported by competent, material and substantial evidence on the whole record.

On appeal, the plaintiff argues that the statutory one-year time limit should not commence until the defendant specifically informed it by the March 8, 1989 letter that the plaintiff was behind in filing the quarterly reports required for contributing employers. Plaintiff also claims that it did not receive the January 31, 1986 notice of determination of employer status. However, it is questionable whether the plaintiff preserved these issues for our review. Plaintiff admitted during the MESC hearings that the one-year period had run, but pleaded on equitable grounds for an extension of time. Plaintiff also did not raise the argument that it failed to receive notice of the determination of employer status. Consequently, it is unnecessary for us to decide the issues. Town & Country Dodge, Inc v Dep't of Treasury, 420 Mich 226, 228-229 n 1; 362 NW2d 618 (1984).

In any event, we find that the MESC's refusal to entertain the plaintiff's tardy request for a redetermination is not contrary to law and is supported by competent, material, and substantial evidence on the whole record. MCL 421.38(1); MSA 17.540(1); Schultz v Oakland Co, 187 Mich App 96, 102; 466 NW2d 374 (1991). Plaintiff's March 16, 1989 letter requesting a redetermination of its classification was not filed within one year of the defendant's January 31, 1986 determination that the plaintiff was a contributory employer. MCL 421.32a(2); MSA 17.534(1)(2).

Moreover, we find that the plaintiff is not entitled to equitable relief. Plaintiff was ultimately responsible for its classification as a contributory employer because its agent Nichols failed to answer question 7 on form 1010. Plaintiff received quarterly report forms from the defendant that were applicable only to contributing employers. Plaintiff is presumed to know the law as it relates to the operation of its business. American Way Service Corp v Comm'r of Ins, 113 Mich App 423, 433; 317 NW2d 870 (1982).

Affirmed.

/s/ Donald E. Holbrook, Jr.
/s/ David H. Sawyer
/s/ Janet T. Neff