

Order

Entered: April 29, 1996

James H. Brickley
Chief Justice

Charles L. Levin
Michael F. Cavanagh
Patricia J. Boyle
Dorothy Comstock Riley
Conrad L. Mallett, Jr.
Elizabeth A. Weaver
Justices

103801

MICHIGAN EMPLOYMENT SECURITY
COMMISSION,

Plaintiff-Appellant,

v

SC: 103801
COA: 184836
LC: 94-004703-AE

JANE D. WORTH AND STATE OF
MICHIGAN, DEPARTMENT OF STATE,

Defendants-Appellees.

On order of the Court, the application for leave to appeal is considered, and it is DENIED, because we are not persuaded that the questions presented should be reviewed by this Court.

STATE OF MICHIGAN
COUNTY OF OCEANA
'96 MAY 1 PM 11:26
PHYLLIS J. SCHLEE
OCEANA COUNTY CLERK

HEREBY CERTIFY this to be a true and correct copy of the original on file with the OCEANA COUNTY CIRCUIT COURT
This Certified Copy VALID Only When SEAL and RED SIGNATURE Are Affixed.

Phyllis J. Schlee
Oceana County Clerk 5-2-96

40423



I, CORBIN R. DAVIS, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

April 29, 19 96 Corbin R. Davis

Clerk

ORDER

MESC v Jane D Worth

Docket # 184836

L.C. # 94 004703 AE

Michael R. Smolenski
Presiding Judge

Richard Allen Griffi:
Marilyn Kelly
Judges

The Court orders that the application for leave to appeal is DENIED for lack of merit in the grounds presented.



A true copy entered and certified by Ella Williams, Chief Clerk, on

July 7, 1995
Date

Ella Williams
Chief Clerk

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

MICHIGAN EMPLOYMENT SECURITY
COMMISSION,

Appellant,

File # 94 4703 AE

-vs-

Board of Review Appeal
No. B92-27803-124350W

JANE D. WORTH and STATE OF
MICHIGAN, DEPARTMENT OF STATE,

Appellees.

This is an appeal by the Michigan Employment Security Commission from a decision and order of the Board of Review that determined sick pay was to be included in the determination of "wages" to be utilized in establishing claimant's average weekly wages under the Act.

Claimant, Jane D. Worth, formerly an employee of the Department of State, State of Michigan, asserts that sick pay ought to be included to establish her average weekly wages pursuant to MCL 421.44(5)(c); MSA 17.548(5)(c) for the reason that the sick pay she received was within 6 months following the last month in which she worked for the Department of State.

Appellant argues that subsection (c) ought to be read in conjunction with MCL 421.44(5)(a); MSA 17.548(5)(a) which excludes the amount of a payment made to an employee for sickness and accident disability from the term "wages" as the term is used to establish claimant's average weekly wages

under the Act.

In salient part, MCL 421.44(5); MSA 17.548(5) reads as follows:

"(5) For the purposes of this act, the term "wages" shall not include:

(a) The amount of a payment, including and amount paid by an employer for insurance or annuities or into a fund, to provide for such payment, made to, or on behalf of, an employee or any of the employee's dependents under a plan or system established by an employer which makes provision for the employer's employees generally, or for the employer's employees generally and their dependants, or for a class or classes of the employer's employees, or for a class or classes of the employer's employees and their dependants, on account of retirement, sickness or accident disability, medical or hospitalization expenses in connection with sickness or accident disability, or death.

(b) A payment made to an employee, including an amount paid by an employer for insurance or annuities, or into a fund, to provide for such a payment, on account of retirement.

(c) A payment on account of sickness or accident disability, or medical or hospitalization expenses in connection with sickness or accident disability, made by an employer to, or on behalf of, an employee after the expiration of 6 calendar months following the last calendar month in which the employee worked for the employer.

(g) A payment, other than vacation or sick pay, made to an employee after the month in which the employee attains the age of 65, if the employee did not work for the employer in the period for which the payment is made."

This court agrees with the decision of the Board of Review. This section of the act does not apply to regular sick time paid by an employer. Rather, it applies to payments made from insurance, annuities or a fund on account of sickness or accident disability. Such sickness disability payments are not remuneration and are not to be considered


wages under the Act any more than an accident, retirement or death benefit would be considered a wage. Sickness disability payments are either insurance benefit payments or a form thereof; they are not wage payments.

On the other hand, sick pay amounts to no more than the decision of an employer to pay the day wage to an employee when an employee does not report to work on a specific day due to illness. Usually, the number of day the employer will continue the wage when the employee does not work because of sickness is limited in number within a specific period. When the specific number of days is exhausted, no wages are paid. In the absence of an insurance policy, annuity or fund established by the employer to pay a sickness disability benefit, in lieu of wage, the employee has no income from his or her employment.

The court also notes that Section 5(g) excepts vacation or sick pay in that circumstance from the exclusionary language of Section 5 of the Act. This further highlights the difference between sick pay and a payment made under a plan established to provide a sickness disability benefit in lieu of wages.

The decision and order of the Board of Review is affirmed.

Dated: February 13, 1995.


Terrence R. Thomas, Circuit Judge