

PRESERVATION OF CREDIT WEEKS

Section 28a

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PRESERVATION OF CREDIT WEEKS, Medical leave

CITE AS: Flier v White Consolidated Industries, Inc., No. 74623 (Mich App, October 19, 1984).

Appeal pending: No

Claimant: Louise J. Flier
Employer: White Consolidated Industries, Inc.
Docket No: B82 13685 RO1 88611W

COURT OF APPEALS HOLDING: Where an individual fails to comply with the specific requirements of Section 28a the individual is ineligible to preserve credit weeks.

FACTS: Claimant was employed in February, 1981, when she was injured at work. She was unable to work until June, 1981, at which time she was released by her doctor to return to work. After working for three weeks, claimant was again forced to leave work due to illness. She was not permitted to return to work until June, 1982. Immediately after her return to work, claimant was laid off. During claimant's absence from work, she did not apply for unemployment benefits because she had been told by her employer that she could not receive both worker's compensation and unemployment benefits.

DECISION: The claimant is ineligible to preserve her credit weeks.

RATIONALE: "After having reviewed the record and the Board of Review's decision ... we conclude that decision properly applied the specific requirements of the statute, MCL 421.28a; MSA 17.530 (1), as it read at the time of the decision. We therefore conclude that the Board of Review's decision was not contrary to law."

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PRESERVATION OF CREDIT WEEKS, Medical leave, Disability payments

CITE AS: Kempf v Michigan Bell Telephone Co., 137 Mich App 574 (1984); lv den, 424 Mich 857 (1985).

Appeal pending: No

Claimant: Maureen Kempf
Employer: Michigan Bell Telephone Co.
Docket No: B81 03615 77481

COURT OF APPEALS HOLDING: The purpose of Section 28(a) is to prevent a person from being penalized when the sole cause of the individual's inability to establish a benefit year is due to a period of continuous disability.

FACTS: Claimant was on a medical leave of absence from December 21, 1979, until December 25, 1980. On December 26, 1980, claimant's doctor released her to return to work. Three days later, she was dismissed from her job. Claimant was denied unemployment benefits due to insufficient credit weeks.

DECISION: The claimant is eligible to have her credit weeks preserved.

RATIONALE: Since "it was the legislature's intent to allow a person in plaintiff's position to come within the purview of section 28a(6), it must be assumed that Section 48's provision, which deems a person on a leave of absence not unemployed, was not intended to qualify the terms 'unemployed' or 'unemployment' as used in subsection 6. Rather, it is the conclusion of this Court that subsection 6's reference to section 48 was intended to refer only to section 48's general provision which deems a person 'unemployed' with respect to any week during which he performs services and with respect to which no remuneration is payable to him. According to this provision, plaintiff was 'unemployed' while on disability leave.

"This provision requires that plaintiff file her request for preservation of credit weeks 'within 45 days after the commencement of the unemployment' unless she is medically unable to, which is not the case here. ... When plaintiff went on disability leave she expected to return to work when she was well. Until she lost her job she would have no reason to inquire about or take action under the Michigan Employment Security Act.

"[T]his Court holds that plaintiff has 45 days after her job loss to file her request for preservation of credit weeks. Since plaintiff complied with this requirement, she is entitled to have her credit weeks preserved."

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PRESERVATION OF CREDIT WEEKS, Substantial compliance, Medical disability, Inability

CITE AS: Michigan Overhead Door Sales and Service, Inc., v Gowen, No. 84-419470-AE Wayne Circuit Court (November 8, 1984).

Appeal pending: No

Claimant: Charles Gowen
Employer: Michigan Overhead Door Sales and Service, Inc.
Docket No: B83 04091 89560

CIRCUIT COURT HOLDING: The clear language of the statute requires that one disabled file with the Commission within 45 days of the commencement of the disability except when a medical inability exists.

FACTS: The claimant last worked on July 1, 1981, when he incurred work related injuries. He was hospitalized for 12 days thereafter and received Worker's Compensation benefits until November 22, 1982. On January 6, 1983, exactly 45 days after he received his last Worker's Compensation payment, claimant filed for preservation of credit weeks. On that date, he was given a physician's statement, which was subsequently signed by his physician on January 10, 1983 and returned to the Commission on January 14, 1983. The statement indicated that the claimant's disability was terminated on September 20, 1982.

DECISION: The claimant is ineligible to preserve his credit weeks.

RATIONALE: 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 claimant's 12 day hospitalization was clearly a medical inability. While the medical disability continued at least until September 20, 1982, at which time the claimant's physician released him to return to work, there is no evidence of a medical inability to comply with the statute.

The record clearly shows that following the claimant's hospitalization, he visited his physician and looked for work. "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."

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PRESERVATION OF CREDIT WEEKS, Disability, Constructive knowledge of statutes

CITE AS: Heath v CPG Products-Fundimensions, No. 83-3950 AE, Macomb Circuit Court (February 25, 1985).

Appeal pending: No

Claimant: Gloria J. Heath
Employer: CPG Products-Fundimensions
Docket No: B82 02335 82671

CIRCUIT COURT HOLDING: "The public is charged with constructive knowledge of the provisions of statutes of the State of Michigan."

FACTS: The claimant was disabled for nine months prior to her application for benefits and did not know that she was required to preserve her credit weeks pursuant to MCL 421.28(a) within 45 days of the end of her disability or layoff. The information booklet given at the time of her application for benefits failed to contain information regarding preservation of credit weeks.

DECISION: The claimant has insufficient credit weeks to establish a benefit year.

RATIONALE: "The record is clear that claimant had insufficient credit weeks to obtain benefits and failed to apply for preservation of the credit weeks as required by the act. The court cannot say the MESC erred when it merely applied the plain and unambiguous language of the statute in effect at the time of claimant's application for benefits. The excuse for her failure to act that claimant advances on appeal are raised for the first time on appeal and do not state legally sufficient excuses for not complying with the act. The MESC had no duty to inform claimant of the requirement that she preserve her credit weeks. Further, the public is charged with constructive knowledge of the provisions of statutes of the State of Michigan. The failure of the MESC to insert this information in the booklet given to claimant during the time in question does not relieve claimant from constructive notice of the provisions."

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PRESERVATION OF CREDIT WEEKS, Estoppel, Misled by Commission employees

CITE AS: Michigan Bell Telephone Co. v Wiersma, 156 Mich App 176 (1986).

Appeal pending: No

Claimant: Linda Wiersma
Employer: Michigan Bell Telephone
Docket No: B82 5578 84393

COURT OF APPEALS HOLDING: Even though claimant failed to request to preserve credit weeks within 45 days, she made diligent attempts to file and was misled by the MESC. As such the MESC is estopped from denying her entitlement to preserve credit weeks.

FACTS: On 1-26-81 claimant was placed on an approved disability leave for back problems until 4-4-81. Claimant was then on 3 weeks vacation and subsequently began a pregnancy related disability leave. While on leave, claimant was told the employer was closing the office where she had worked. Claimant contacted the MESC by phone and twice in person and was informed she needed to be willing and able to work and be unemployed; and 10-1-81 was the last day she could file for benefits. Her child was born 9-27-81 and she was released to return to work 12-3-81. When claimant applied for benefits she was denied because of insufficient credit weeks. Despite opportunities before and after she applied, the MESC never explained to her about preservation of credit weeks.

DECISION: Claimant is entitled to preserve credit weeks under Section 28a.

RATIONALE: Claimant diligently sought to preserve her rights, but she was affirmatively misled by the MESC. "We hold, under the circumstances of this case, that the MESC cannot misinform a claimant in regard to her rights or the appropriate procedures to take and then deny her benefits because she did not know her rights or because she took inappropriate procedural steps. Second, the MESC may be equitably estopped in this case. An equitable estoppel arises where: (1) a party by representations, admissions or silence induces another party to believe facts; (2) the other party detrimentally relies and acts on this belief; and (3) the other party will be prejudiced if the first party is allowed to deny the existence of the facts.... Information regarding a claimant's ability to obtain benefits may well be considered a "fact" in this context where the bureaucracy of an administrative agency is involved."

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PRESERVATION OF CREDIT WEEKS, Benefit year

CITE AS: Gentris v City of Detroit, Wayne Circuit Court No. 91-129268-AE (September 1, 1992).

Appeal pending: No

Claimant: Ellis Gene G. Gentris
Employer: City of Detroit
Docket No. B90-09803- 116335W

CIRCUIT COURT HOLDING: A benefit year for a claimant who has preserved credit weeks begins the date the individual is both disabled and unemployed, not the date they file for benefits. Benefits cannot be paid for any week more than 156 weeks after the beginning of the benefit year.

FACTS: Claimant last worked for the employer in January, 1985. Later she was on a disability leave. She was dismissed March 25, 1986. Claimant filed for benefits June 4, 1986, but was denied due to insufficient credit weeks. Claimant filed again on October 27, 1986 and was allowed to preserve credit weeks. Pursuant to Section 28a(6) the claimant's Benefit Year began January 13, 1985. On May 22, 1989, the date she was released by her doctor, claimant sought to collect benefits. She was found ineligible pursuant to Section 28a(4) which prohibits payment of benefits for preserved credit weeks more than 156 weeks after the first week of the benefit year.

Claimant argued it was error for her benefit year to start January 13, 1985. She asserted her benefit year should start the week of filing in May, 1989 as Section 46 provides a benefit year commences the week the application for benefits is filed. Claimant argued Sections 46 and 28a(6) were inconsistent and Section 46, not Section 28a, should prevail.

DECISION: Claimant is ineligible for benefits under Section 28a.

RATIONALE: The Board and the Referee found Section 28a(6) was a specific exception to Section 46. The Board noted the preservation of credit weeks is a specific provision of the statute which allows a person who is unable to establish a benefit year in the normal course because she is unemployed and unable to work for medical reasons to establish a benefit year and preserve credit weeks until she is eligible to draw benefits. Here that date should have been March 25, 1986, not January 13, 1985, but nevertheless more than 156 weeks before May, 1989. The Board and Referee found that when the legislature amended the Act by adding Section 28a, it intended specific exceptions to any provisions of the Act which conflicted with Section 28a. The Board cited Kempf v Michigan Bell Telephone Co., 137 Mich App 574 (1984).

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PRESERVATION OF CREDIT WEEKS, Continuous disability, Pre-existing condition

CITE AS: Bowman v MESC, Macomb Circuit Court No. 93-1482 AZ (July 7, 1994).

Appeal pending: No

Claimant: Ronald V. Bowman
Employer: Eastern Airlines
Docket No. B92-0388-122358W

CIRCUIT COURT HOLDING: Two separate disabilities may be aggregated so as to establish one single "continuous disability" where the second was a pre-existing condition.

FACTS: Claimant was employed by Eastern Airlines. He was placed on a medical leave of absence in May, 1987. The leave ended on July 11, 1988. On November 12, 1988 the claimant underwent surgery for hernia repair. The period of disability for the hernia extended from September 29, 1988 through January 12, 1989. The claimant returned to work in January, 1989 and on March 2, 1989 the claimant found himself without work. He sought unemployment benefits on March 23, 1989.

DECISION: The claimant could preserve credit weeks.

RATIONALE: In order to have sufficient credit weeks to establish a claim, claimant needed those credit weeks earned prior to his original disability which commenced in May, 1987. Credit weeks may be preserved under Section 28a so long as the claimant has a "continuous disability." In the instant matter, there was a gap in disability; specifically, between July 11, 1988 and September 29, 1988, a period of 79 days. The court observed that the claimant's hernia condition did not arise on September 29, 1989, but rather pre-existed. Because it pre-existed, the two medical conditions were at one time contemporaneous. Therefore, there was a continuous disability sufficient to satisfy Section 28a.

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PRESERVATION OF CREDIT WEEKS, Time limits

CITE AS: Gary v Eaton Corp, Kalamazoo Circuit Court, No. B98-3371-AE
(January 4, 2001)

Appeal pending: No

Claimant: Stuart L. Gary
Employer: Eaton Corporation
Docket No. B1999-07363-R01-153433W

CIRCUIT COURT HOLDING: A claimant must apply for preservation of credit weeks within the mandatory 3-year period set out in Section 28a(10). Claimant's belief he would be returning to work and have any wage loss paid by employer does not excuse his failure to seek to preserve credit weeks within the 3-year period.

FACTS: In May 1989, claimant injured his right hand. In May 1993, he went on disability leave to have surgery. On November 1, 1993, his physician released him to return to work with restrictions, and suggested employer provide him with a new job because his past work fell outside those restrictions. The employer did not provide a new job to claimant but did not discharge him. In 1994, claimant filed suit against employer, which led to arbitration. Claimant's employment ended February 15, 1999 by way of the arbitrator's decision. From when claimant filed suit to the arbitration decision, claimant was on leave without pay but with benefits. Claimant filed for unemployment benefits 10 days after the arbitration decision as issued.

DECISION: Claimant is not entitled to preservation of credit weeks.

RATIONALE: Section 28a(4) provides specific time limitations as to when a claimant may seek to preserve work credits, and provides that "benefits shall not be payable . . . for any week that commences more than 156 weeks after the first week of the benefit year." Section 28a(10) provides that a "request for preservation of credit weeks must be made within 3 years after the date the disability began." The unemployment benefits the claimant sought were designed to remedy his situation in 1993. The claimant made a strategic decision not to apply for unemployment benefits because it might have weakened his lawsuit against his former employer. Having made that choice, he cannot obtain benefits several years after the deadline for preserving credit weeks.

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