20.00

MISCELLANEOUS

Chapter 20 contains cases which do not fit comfortably into the categories addressed in the other chapters. Some of these are unemployment compensation cases which address issues and sections of the MES Act other than those specified for Chapters 1-18 or the federal issues in Chapter 19.

In addition, this chapter also contains cases which did not arise under the MES Act at all, but have had an impact on Unemployment Insurance (U.I.) decisions or reflect broad principles of law which are applicable in a variety of legal situations. Again, the reader is encouraged to consult the Subject Word Index.

20.00

MISCELLANEOUS

Case Name	Page
Askew v Macomber	20.05
C & L Leasing Company v State of Michigan, BW&UC	20.08
Henry v Ford Motor Co.	20.01
Krauseneck v Department of the Army	20.07
McKissic v Bodine.	20.04
Oak Park Education Association, MEA/NEA v Oak Park Board of Education.	20.02
Seligman & Associates v MESC	20.03
Waknin v Chamberlain	20.06

Section 28(1)(c)

WORKER'S COMPENSATION, Eligibility, Ability

CITE AS: Henry v Ford Motor Co., 291 Mich 535 (1939).

Appeal pending: No

Claimant: Lee Henry
Employer: Ford Motor Co
Docket No: NA

SUPREME COURT HOLDING: A finding of disability for purposes of worker's compensation does not necessarily mean a claimant is disabled and ineligible for U.I. under Section 28(1)(c).

FACTS: Claimant suffered a work related injury. He filed for and received worker's compensation. After some time he returned but could only perform favored work because of a restriction associated with the injury. Ultimately he was laid off and filed for unemployment benefits.

The employer contested the claimant's eligibility. It asserted that because the claimant had been found disabled by the worker's compensation board he couldn't be fully able and available and had to be found ineligible pursuant to Section 28(1)(c) of the Employment Security Act.

DECISION: A finding that an employee is totally disabled so far as returning to pre-injury work is not necessarily inconsistent with a finding that he is able to, and is available for, work within his restrictions.

RATIONALE: An employee permanently disabled to continue the work that he was engaged in when the accident occurred may nevertheless be able to do some light work of a different nature than that in which he was previously engaged.

Section 30 and 31

INALIENABILITY OF BENEFITS, Waiver of benefits, Public Employment Relations Act, Statutory construction

CITE AS: Oak Park Education Association, MEA/NEA v Oak Park Board of Education, 132 Mich App 680 (1984).

Appeal pending: No

Claimant: NA
Employer: Oak Park Board of Education
Docket No: NA

COURT OF APPEALS HOLDING: The Public Employment Relations Act is the dominant law regulating public employee labor relations and where there is a conflict between it and another statute the Public Employment Relations Act prevails diminishing the conflicting statute pro tanto.

FACTS: Oak Park Education Association and Oak Park School District negotiated a labor contract containing a salary provision which provided that the salary of a teacher recalled from summer layoff would be offset by the amount of unemployment benefits received during the summer layoff. When the district sought to enforce this provision, the Association sought to have the provision excised from the contract asserting that it was in violation of Section 30 of the MES Act which makes unemployment benefits inalienable by any assignment and Section 31 of the Act which makes invalid any agreement to waive, release, or commute an individual's right to benefits.

DECISION: The trial court's summary judgment for the District was affirmed.

RATIONALE: The Public Employment Relations Act requires parties to those contracts within its preview to bargain collectively with respect to wages. The provision in question concerns wages and was the subject of bargaining between the parties. The teachers were allowed to collect benefits when unemployed. The provision provides for a partial waiver of salary rather than a waiver of unemployment benefits. It did not require the teachers to waive, or in any way restrict, their rights under the MES Act.

20.03

Section 44(2)

WAGES, Compensation, Free lodging, Convenience of employer

CITE AS: Seligman & Associates v MESC, No. 85110 (Mich App May 6, 1987).

Appeal pending: No

Claimant: NA
Employer: Seligman & Associates
Docket No: NA

COURT OF APPEALS HOLDING: The value of lodging provided to resident caretakers for the convenience of the employer is not considered wages under the Act.

FACTS: The employer operates numerous apartment complexes. The employer provides rent-free apartments to the apartment caretakers and requires them to live on the premises to be available to handle tenant complaints that may arise.

DECISION: The employer is entitled to a refund of contributions paid based on inclusion of the value of the lodging in calculation of wages.

RATIONALE: The reasonable cash value of lodging is to be considered wages only if it is extended as full or partial remuneration for the services rendered. There is no showing that the lodging was intended as partial compensation for the employees.

"This interpretation of the definition of wages is consistent with the United States Supreme Court's interpretation of the definition of wages under the Federal Unemployment Tax Act (FUTA) in Rowan Co, Inc v United States, 452 US 247, 101 S Ct 2288, 68 L Ed 2d 814 (1981). In Rowan the Supreme Court held that for the purposes of FUTA wages do not include the value of meals and lodging provided for the convenience of the employer."

12/91
NA

Section 42

EMPLOYEE STATUS, Economic reality test, Independent contractor, Worker's Compensation

CITE AS: McKissic v Bodine, 42 Mich App 203 (1972); lv den 388 Mich 780 (1972).

Appeal pending: No

Claimant: John S. McKissic
Employer: Harold Bodine
Docket No: NA (This case arose under the Worker's Comp Act.)

COURT OF APPEALS HOLDING: The test to determine whether an employee-employer relationship exists for purposes of the Worker's Compensation Act is the "economic reality test", and the factors used to apply the test are whether: (1) the employer will incur liability if the relationship terminates at will; (2) the work performed is an integral part of the employer's business; (3) the employee primarily depends upon the wages for living expenses; (4) the employee furnishes equipment and material; (5) the employee holds himself out to the public as able to perform certain tasks; (6) the work involved is customarily performed by an independent contractor. Along with (7) the factors of control, payment of wages, maintenance of discipline, and the right to engage or discharge employees; and (8) weighing those factors which will most favorably effectuate the purposes of the Act.
FACTS: Claimant worked full-time at a Fisher Body plant. During the period in issue he was off work recovering from an injury. He advertised as a handy man and painted a sign "McKissic Contracting" on his truck. He furnished his own materials, engaged his own workers and worked on his own schedule. He did repairs and general maintenance and while doing such work for Bodine claimant fell and injured himself.

DECISION: Claimant was primarily employed by Fisher Body, and his relationship to Bodine was one of an independent contractor.

RATIONALE: "The plaintiff was primarily employed by another. The doing of odd jobs was a method of securing extra cash for his own enjoyment. He furnished his own tools. He worked for Bodine only when he was available. He contracted each job for a given price, and held himself out to the public as a handyman.... If he desired protection while acting as an independent contractor, he could have made arrangements for accident insurance...."

Section 42

EMPLOYEE STATUS, Independent contractor, Economic reality test, Worker's Compensation

CITE AS: Askew v Macomber, 398 Mich 212 (1976)

Appeal pending: No

Claimant: Carrie Askew
Employer: Alicia Macomber
Docket No. N/A (This case arose under the Workers' Compensation Act.)

SUPREME COURT HOLDING: The test of whether a person or business is liable for workers' compensation benefits as the employer of a claimant is not a matter of terminology, oral or written, but of the realities of the work performed; control of the claimant is a factor, as is payment of wages, hiring and firing, and the responsibility for the maintenance of discipline, but the test of economic reality views these elements as a whole, assigning primacy to no single one.

FACTS: Carrie Askew claimed worker's compensation benefits against defendants M. Alicia Macomber, the Second National Bank of Saginaw, and Michigan Mutual Liability Company. Mrs. Macomber, because of her advanced age, had entered into an agency agreement with the bank for the management of her property which authorized the bank to pay for Mrs. Macomber's care. The bank hired the plaintiff as a practical nurse for Mrs. Macomber and the plaintiff was injured in the course of that employment.

DECISION: Alicia Macomber, not the bank, was the employer of Carrie Askew.

RATIONALE: The bank was operating pursuant to an express agency agreement. The employment of nurses was not an integral part of the bank's business. The bank was not operating as a labor broker. Although the bank drafted the check for Carrie Askew's wages, the funds came from the Macomber estate, a separate account. Although the bank discussed wages and hours with Carrie Askew and arranged the hiring of her for Mrs. Macomber, it took no part in the day-to-day control or supervision of Ms. Askew's duties. There was no evidence of any intent by the bank to supervise or discipline Ms. Askew. The bank's actions on behalf of Ms. Macomber were those of an agent on behalf of a principal.

7/99
N/A

Section N/A

Evidence, Guilty Plea

CITE AS: Waknin v Chamberlain, 467 Mich 329 (2002)

Appeal pending: No

Claimant: N/A
Employer: N/A
Docket No. N/A

SUPREME COURT HOLDING: A criminal conviction after trial is admissible as substantive evidence of conduct at issue in a civil case arising out of the same occurrence.

FACTS: Plaintiff Waknin brought a civil action against defendant Chamberlain for assault and battery. Defendant had been previously convicted of the assault and battery of plaintiff. The circuit court excluded evidence of defendant's criminal conviction from the civil case on the basis of Wheelock v Eyl, 393 Mich 74 (1974), and MRE 403.

DECISION: The trial court abused its discretion in barring the admission of evidence of the defendant's conviction by a jury.

RATIONALE: The rule of Wheelock, as it pertains to the use of evidence of a criminal conviction in subsequent civil cases, did not survive the adoption of the Michigan Rules of Evidence. MRE 403 provides that relevant evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice. Evidence is not inadmissible simply because it is prejudicial. * In every case, each party attempts to introduce evidence that causes prejudice to the other party. It is only when unfair prejudice substantially outweighs the probative value of the evidence that the evidence is excluded. In this case, defendant had an opportunity and an incentive to defend himself in the criminal proceeding. That the defendant was found guilty beyond a reasonable doubt, a standard of proof greater than the preponderance of the evidence in the civil case, is highly probative evidence. Accordingly, the probative value of the evidence of the defendant's conviction was not substantially outweighed by the danger of unfair prejudice.

The Court expressed no opinion regarding whether pleas of nolo contendere are admissible as substantive evidence in subsequent civil proceedings.

Editor's Note: Also see Section 14 of the MES Act which indicates, in part, that decisions of a court of record which have become final "may be introduced into any proceeding involving a claim for benefits and the facts therein found and the . . .decisions therein made shall be conclusive unless substantial evidence to the contrary is introduced by or on behalf of the claimant."

11/04

MILITARY PERSONNEL, Honorable discharge, Medically unfit

CITE AS: Krauseneck v Department of the Army, Tuscola Circuit Court, No. 03-21657-AE (February 3, 2004)

Appeal pending: No

Claimant: Kyle J. Krauseneck
Employer: Department of the Army
Docket No. B2002-15115-RO1-166448W

CIRCUIT COURT HOLDING: When a person is honorably discharged from military service before completing 365 days or more of continuous service, and that individual was discharged for being medically unfit, he or she is eligible for benefits. But if the reason for the honorable early discharge had been failure to meet physical standards, i.e. height, weight or physical fitness, then the person would be ineligible for benefits.

FACTS: Claimant was honorably discharged from the Army after serving six months of active duty. The Army discharged claimant for failing to meet "procurement medical fitness standards." Claimant filed for benefits.

DECISION: Claimant was discharged because of a medical disqualification pursuant to 20 CFR 614.2(2)(ii)(B).

RATIONALE: In cases involving individuals whose credit weeks are based on service in the military, the military determines who is and who is not eligible pursuant to Section 11(h). Pursuant to 20 CFR 614.2(2)(ii)(**D**) an honorably discharged service member is eligible for benefits for "inaptitude" if the service was continuous for 365 days or more. Pursuant to 20 CFR 614.2(2)(ii)(**B**), a service member discharged for completing his terms of active service because of "medical disqualification" is eligible for benefits without having to have served 365 days or more. In this case, the claimant underwent a medical examination by a physician, and the physician determined that claimant was medically unfit for further service under the Army's medical fitness standards. This case does not involve the claimant's failure to meet the Army's physical fitness standards or failing to meet the physical height and weight standards. The term 'Physical Standards' under 5 USC 8521(a)(1)(B)(ii)(IV) refers to the "basic height, weight and fully bodied entrance requirements plus the basic physical fitness requirements as measured by the Army's bi-annual APFT and not to the findings by Army medical personnel as to whether [a service member] is medically unfit for continued service."

11/04

Section 41

EMPLOYER, Employee leasing company, UA Rule 190

CITE AS: C & L Leasing Company v State of Michigan, BW&UC, Macomb Circuit Court, No. 02-4341-AE (March 11, 2003)

Appeal pending: No

Claimant: N/A
Employer: C & L Leasing Company
Docket No. L2001-00056-RO1-2795

CIRCUIT COURT HOLDING: An employer will not be considered to be an "employee leasing company" unless the employer satisfies **all** of the requirements of UA Rule 190.

FACTS: Employer's (C & L) secretary/treasurer testified that employer performed payroll services and provided employees to two other companies, Michigan Awning and Panel Laminations. Ownership of the three companies was intertwined among various family members and in-laws. Employer's business and Michigan Awning operated out of employer's secretary/treasurer's residence. Employer's secretary/treasurer's husband and his parents had supervisory control over the employees.

DECISION: Employer is not an employee leasing company. Payroll of workers at the "client" companies is reassigned to the individual companies.

RATIONALE: To be eligible for employee leasing company status, an employer must satisfy **all** of the requirements of Rule 190. Employer failed to show it met the requirements of Rule 190(2). Employer did not "in fact" hire, promote, reassign, discipline and terminate the leased employees, as required by Rule 190(2)(b). Employer did not hold itself out to the general public as available to provide leasing services, as required by Rule 190(2)(f). Employer's solicitation letter represented employer as in the business of providing payroll and administrative services.

11/04