

VOLUME NO. 40

OPINION NO. 63

EMPLOYMENT SECURITY - Unemployment benefits, disqualification for receipt of termination or separation allowance;
MONTANA CODE ANNOTATED - Sections 39-51-2306(1)(a), 39-51-2306(1)(b).

HELD: Under section 39-51-2306(1)(a), MCA, an individual who receives a severance allowance upon separation from employment is disqualified for unemployment benefits for the entire period of time that the allowance was intended to cover.

27 August 1984

David L. Hunter, Commissioner
Department of Labor and Industry
Lockey and Roberts
Helena MT 59620

Dear Mr. Hunter:

You have requested my opinion on the following question:

Under section 39-51-2306(1)(a), MCA, is an individual who receives a severance allowance

upon separation from employment disqualified for unemployment benefits only for the week in which the allowance was actually received, or is the individual disqualified for the entire period of time that the allowance was intended to cover?

Section 39-51-2306(1), MCA, provides in pertinent part:

Effective April 1, 1977, an individual shall be disqualified for benefits for any week with respect to which he is receiving or has received payment in the form of:

(a) wages in lieu of notice or separation or termination allowance;

....

Your inquiry may be illustrated by the following example. An employee receives \$250 a week in wages. Upon being laid off, the employee becomes eligible to receive \$1,000 a month severance pay for the first two months that he is unemployed. The individual receives the allowance in two monthly checks of \$1,000 each, and each check is received on the first of the month. Your question is whether receipt of a monthly check disqualifies the unemployed worker only for the week in which the check was actually received, or whether each check is to be viewed as approximately four weeks' worth of severance pay, disqualifying the individual for the entire four-week period following receipt of the check.

The Montana Supreme Court has not construed the particular subdivision of the statute which gives rise to your inquiry. However, the Court considered an analogous situation in Keller v. Reeder, 149 Mont. 322, 425 P.2d 830 (1967). In that case, an employee was injured in an industrial accident and was awarded a lump sum disability payment of \$5,600 under the workers' compensation law. Although paid in one lump sum, the award represented disability payment for 175 weeks at the rate of \$32 per week. The injured worker filed for unemployment benefits during the 175-week period, but was turned down by the Unemployment Compensation Commission, which notified the worker that he was disqualified for the entire 175-week period that the disability award covered. The worker's appeal eventually reached the Montana Supreme Court, and the

Court examined the statutory language that is presently contained in section 39-51-2306(1)(b), MCA. That section provides that an individual is "disqualified for benefits for any week with respect to which he is receiving or has received payment in the form of ... compensation for disability under the workers' compensation law." The Court agreed with the Commission's determination that the worker was disqualified for the entire 175-week period, notwithstanding the fact that the award was received in one lump sum:

Rendering to the statute just common sense and ordinary meaning, we point out not only the Commission but likewise the courts are limited by the statute. It is most apparent that the Commission could not legally allow the claim under the facts in this cause, and neither could the courts have sustained an award, had it been made as a matter of law.

Keller, 149 Mont. at 324, 425 P.2d at 831. In Keller, the terms of the lump sum settlement designated the award as payment at a fixed weekly rate over a specified period of time--\$32 per week for 175 weeks. I conclude that a severance allowance that can similarly be considered as payment covering a specific period of time following receipt of the allowance would also disqualify an individual for unemployment benefits for the entire period the severance allowance is intended to cover.

A basic rule of statutory construction is that language used in statutes must be reasonably and logically interpreted, giving words their usual and logical meaning. Matter of McCabe, 168 Mont. 334, 339, 544 P.2d 825, 828 (1975). Section 39-51-2306(1)(a), MCA, mandates that "an individual shall be disqualified for ... any week with respect to which he is receiving or has received ... [severance payments]." (Emphasis added.) An individual who, for example, receives a \$1,000 severance payment check on the first of the month, intended as a severance allowance for that entire month, must be disqualified for every week in the month with respect to which the severance payment was received and intended to cover. Those courts in other jurisdictions that have considered this issue have arrived at the same conclusion. See, e.g., West Jordan v. Dept. of Employment Security, 656 P.2d 411 (Utah 1982); Thornbrough v. Gage, 350 S.W.2d 306 (Ark. 1961);

Globe-Democrat Publishing v. Industrial Commission, 301
S.W.2d 846 (Mo Ct. App. 1957).

THEREFORE, IT IS MY OPINION:

Under section 39-51-2306(1)(a), MCA, an individual who receives a severance allowance upon separation from employment is disqualified for unemployment benefits for the entire period of time that the allowance was intended to cover.

Very truly yours,

MIKE GREELY
Attorney General