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Constitutional Law - Equal Protection - Duplication of Unemployment and Workmen's Compensation Benefits - Fox v. Michigan Employment Security Commission, 153 N.W. 2d 644 (Mich. 1967)

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CURRENT DECISIONS

Constitutional Law—EQUAL PROTECTION—DUPLICATION OF UNEMPLOYMENT AND WORKMEN'S COMPENSATION BENEFITS. In *Fox v. Michigan Employment Security Commission*,¹ the claimant sought recovery of unemployment insurance subsequent to an award under the Workmen's Compensation Act. In 1955, Fox had suffered a knee injury for which he was awarded \$34 a week for 500 weeks under the workmen's compensation statute for permanent and partial disability.² Some nine years later, after developing new skills and finding other work, he was laid off, and thereafter applied for unemployment insurance. Fox was awarded \$37 a week for nineteen weeks, but pursuant to section 27(n) of The Employment Securities Act,³ the allotment was reduced by the amount of workmen's compensation benefits he was then receiving.⁴ The resultant reduction to \$3 a week was upheld by the referee, the appeal board of the Michigan employment security commission, and the state circuit court. On appeal, the Michigan Supreme Court reversed the decision on the grounds that section 27(n), by excluding from its application those who received lump sum settlements, created an unreasonable classification⁵ in violation of the equal protection clause of the fourteenth amendment.⁶

1. 379 Mich. 579, 153 N.W. 2d 644 (1967).

2. MICH. COMPILED LAWS ANN. §§ 411-417 (1966).

3. *Id.* at § 421.

4. *Id.* at § 421.27(m), replacing § 421.27(n), states in part:

If an individual claims and is otherwise eligible for weekly benefits under this act for a week with respect to which he has received weekly benefits . . . under workman's compensation . . . the individual's weekly benefits otherwise payable under this act for such week shall be reduced [by the amount of such benefits received].

5. A reasonable classification has been defined as "one which includes all persons who are similarly situated with respect to the purpose of the law." Tussman & tenBroek, *The Equal Protection of the Laws*, 37 CALIF. L. REV. 341, 346 (1949); See Wilson, *The Merging Concepts of Liberty and Equality*, 12 WASH. & LEE L. REV. 182, 186-189 (1955).

Section 27(n) specifically prohibits payment for certain applicants seeking unemployment compensation who are receiving weekly workmen's compensation benefits. It does not, however, include in its restrictions those persons not receiving weekly workmen's compensation benefits solely because their award under that act has been commuted to a lump sum payment. The lump sum statute, MICH. COMPILED LAWS ANN. § 412.22, requires that:

Whenever any weekly payment has been continued for not less than 6 months, the liability therefor may be redeemed by payment of a lump sum by agreement of the parties, subject to the approval of the compen-

Unemployment compensation acts generally define certain types of income other than wages as "disqualifying income."⁷ Paramount among these types are unemployment benefits received in conjunction with a federal unemployment program or a similar program of another state.⁸ About one-half of the states list workmen's compensation benefits, received under any state or federal law, as "disqualifying income,"⁹ though many of these states include only benefits arising from certain disabilities.¹⁰ Finally, there are many states whose statutes are silent on the issue of workmen's compensation as a bar to recovery of unemployment insurance.¹¹ It should be noted that in all of these situations the particular workmen's compensation act includes provisions for commuting the weekly benefits to a lump sum payment.¹²

Under the rationale in *Fox*, statutes which specifically include all workmen's compensation as "disqualifying income," but are limited to applicants presently receiving such benefits, could be held to create an

sation commission, and said compensation commission may at any time direct [redemption] in any case. . . .

6. The equal protection clause of the Michigan Constitution which provides that: "No person shall be denied the equal protection of the laws;" MICH. CONST. art. 1 § 2 is identical to the equal protection clause of the United States Constitution, U.S. CONST. amend. XIV, § 1.

7. For a short survey of the disqualifications in the individual states, See, *Disqualifications—Period*, 1B C.C.H. EMPLOYMENT INSURANCE REPORTS, ¶¶ 3011-4936.

8. This is supported by the recognition that each unemployment compensation act is designed to effect the same purpose so that collection under one should preclude collection under the other.

9. See 1B C.C.H. EMPLOYMENT INSURANCE REPORTER, ¶ 1995. Two states, ranking high in the amount of benefits paid under unemployment compensation programs and adopting this view of disqualifying income, are New York, LABOR LAW, § 592, WORKMAN'S COMPENSATION LAW, § 206(b) (McKinney 1954), and Texas, TEX. CIV. STAT. ANN. art. 5221b-3(e) (1962).

10. Michigan is representative of this type of provision in that workmen's compensation benefits serve as a bar to recovery of unemployment insurance except where they arise under death benefits or scheduled benefits for a specific loss. MICH. COMPILED LAWS ANN., *supra* note 4.

11. Interpretation of the courts in states where statutes do not mention workmen's compensation as a disqualifying income could follow either of two contrary positions. On the one hand, as workmen's compensation is not available for the same purposes as unemployment compensation, the receipt of benefits under one should not preclude recovery under the other. This is opposed by the position that as the employer is ultimately liable in either event for benefits paid his employee, recovery under one should preclude recovery under the other.

12. See, e.g., *Bailey v. United States Fidelity & Guaranty Co.*, 99 Neb. 109, 155 N.W. 237 (1915).

arbitrary classification which is under-inclusive¹³ if, as is generally the case, these benefits could be commuted to a lump sum payment. Similarly, this argument would extend to statutes which include only certain disabilities under workmen's compensation as "disqualifying income." Indeed, it could be held in conjunction with *Fox*, that this further refinement of the class, based on a type of disability, is not reasonably related to the purpose of the duplicity-of-payment statutes.¹⁴

The holding of *Fox* does not answer the question of whether or not benefits under workmen's compensation should be awarded concurrently with benefits under unemployment insurance. Its significance lies in its recognition of the fact that statutes denying such duplicity may be held to create an unreasonable classification. As long as workmen's compensation statutes allow lump sum payments, but consider the benefits derived thereunder to be "disqualifying income" only when received during the week in which unemployment insurance is sought, this unreasonable classification will necessarily exist.

MICHAEL COLLINS

Agency—RIGHT OF REAL ESTATE BROKER TO COMMISSION FROM SELLER. In *Ellsworth Dobbs, Inc. v. Johnson*,¹ plaintiff, a real estate broker, sought to recover from his client, the seller,² a brokerage com-

13. See Tussman & tenBroek, *The Equal Protection of the Laws*, *supra* note 5, at 348-53.

14. The court pointed out that:

"[T]he classifications made in section 27(n) of the Employment Security Act between those partially and permanently disabled and those under the specific loss provisions of The Workmen's Compensation Act fail to treat all within the class equally, as section 27(n) allows benefits under both The Employment Security Act and The Workmen's Compensation Act for one suffering a specific loss and yet denies the same to one permanently and partially disabled." 379 Mich. 579 at —, 153 N.W.2d 644, 649 (1967).

1. 50 N.J. 528, 236 A.2d 843 (1967).

2. The seller impleaded the buyer, and the judgment in the trial court was against both. The jury found for plaintiff against the buyer on the basis of a breach of an implied promise on the part of the buyer to complete the purchase and thereby enable the broker to earn his commission. Ruling on this aspect of the case, the court held that where the buyer had solicited the help of the broker in finding land, and knew that the broker expected to get his commission from the seller on completion of the sale, the buyer was liable to the broker for the commission he would have earned. See *Eells Bros. v. Parsons*, 132 Iowa 543, 109 N.W. 1098 (1906); *Tanner v. Ciraldo*, 33 N.J. 51, 161 A.2d 725 (1960).