OFFICIAL OPINION NO. 57

June 10, 1946.

Hon. Noble R. Shaw, Director,
Indiana Employment Security Division,
141 South Meridian Street,
Indianapolis 12, Indiana.

Dear Sir:

I am in receipt of your letter of May 13th as follows:

"I am writing to ask your official opinion concerning the proper interpretation of the Indiana Employment Security Act with respect to an individual who has filed a claim for benefits but on whose claim an appeal is pending.

"Section 8 (b) (1) of the Act reads as follows:

""(b) Initial Determination. (1) Except as otherwise provided in paragraph 2 of this subsection, an employee of the division, designated by the director and hereinafter referred to as the deputy, shall promptly examine the claim and, on the basis of the facts found by him, may determine whether or not such claim is valid, and if valid, the week with respect to which benefits shall commence, and the weekly benefit amount payable and the maximum duration thereof, or may refer such claim to a referee who shall make the same determination with respect thereto, in accordance with the procedure in subsection (c) of this section. The deputy shall promptly notify the claimant and the employer or employers against whose account benefits, if awarded, will be charged, and the employer from whose employment the claimant was last separated, of the decision and the reasons therefor. Unless the claimant or such employer, within five (5) calendar days after the delivery of such notification or within seven (7) calendar days after such notification was mailed to his last known address, asks a hearing before a referee, such decision shall be final and benefits shall be paid or denied in accordance therewith. If such hearing is desired, the request therefor shall be
in writing and shall be on such forms as the board may
prescribe. In the event that a hearing is requested, the
payment of any disputed benefits with respect to the
period prior to the final determination of the review
board shall be made only after such determination.’
(Sec. 52-1508, Burns’ 1945 Supp.)

“If a protest is filed and an appeal is taken either
by an employer or employee to the initial determination
of a local office deputy, the matter is then referred for
hearing. A question then arises as to what constitutes
‘disputed benefits’ with respect to the period prior to
the final determination of the Review Board within the
meaning and intent of the last sentence of the above-
cited subsection. It is pointed out that the deputy’s
determination may have been that the claimant was
only ineligible for benefits for six weeks with an accom-
panying reduction of six times the weekly benefit
amount, pursuant to section 7 (f) of the Act, while
the final determination of the Review Board may be
that the claimant should be deprived of all benefit
rights, under section 7 (g) or 7 (h) of the Act.”

An answer to your question requires a construction of the
legislative intent as to what is meant by “disputed benefits.”
The word “disputed” has been construed by the courts, and
it appears to be the concensus of opinion that where used in
the context of reference to legal proceedings, a dispute exists
where there is a matter of either law or fact asserted on one
side and denied on the other.

In re: Robinette (1941), 211 Minn. 223, 300
N. W. 798;


Section 8 (c), (Sec. 52-1508, Burns’ 1945 Supp.), of the
Employment Security Act is as follows:

“(c) Hearing. Unless such request for hearing is
withdrawn, a referee after affording the parties a
reasonable opportunity for fair hearing, shall affirm
or modify the findings of fact and decision of the
deputy. The parties shall be duly notified of such
decision and the reasons therefor, which shall be deemed to be the final decision of the review board, unless within fifteen (15) days after the date of notification or mailing of such decision, an appeal is taken to the review board."

By providing that the referee's jurisdiction is to affirm or modify the findings of fact and decision of the deputy, the law clearly contemplates that it is the decision of the deputy which is in dispute. In other words, that there is an assertion on the one side that the decision of the deputy is erroneous and upon the other side that such decision is correct. Unless and until further issues are made this is the only dispute in the case and all opinions not covered by the deputy's adverse decision are not in dispute.

Therefore, where the deputy merely determines that the employee is ineligible for benefits for the six weeks penalty period, those are the only benefits which are to be withheld pending the proceedings unless and until a broader issue is legally tendered.

Having determined that such payments should be made, it remains to ascertain the fund to which such payments should be charged. Section 4 (c) 2, (Sec. 52-1504, Burns' 1945 Supp.), provides for the establishment of a pooled account in the fund and contains the provision "There shall be charged thereto all losses of the fund and benefits improperly paid and not recovered."

Therefore, if the review board finally determines that the claimant is wholly ineligible for benefits by reason of the provisions of 7 (g) or 7 (h) of the Act, (Sec. 52-1507, Burns' 1945 Supp.), and you have paid those benefits not in dispute, such payments should be credited to the employers' reserve or experience account and charged against the pooled account. Any payments which are finally determined to be due the claimant, of course, will be charged in the usual manner, as all other payments.

I am, therefore, of the opinion that where the deputy makes an initial determination that the claimant is subject to the six weeks penalty period, and an appeal is taken to the referee, from that decision any payments not included within such penalty period and not otherwise put in dispute or issue should
be paid to the claimant when due and should be charged to the employer's experience account, but that if upon issue properly tendered it is thereafter determined that such claimant was ineligible to receive such payments they should be credited to the employer's experience fund account as improper payments.

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OFFICIAL OPINION NO. 58

June 14, 1946.

Hon. John R. Donaldson,
Director of Railroad Department,
Public Service Commission of Indiana,
State House,
Indianapolis, Indiana.

Dear Sir:

This is in answer to the request of the Public Service Commission of Indiana dated June 1, 1946, for an opinion as to whether there has been a violation of law as charged in a complaint lodged with the Commission by the state representatives of the Brotherhoods of Railroad Trainmen and of the Locomotive Engineers.

It is charged by the two brotherhoods that the Pennsylvania Railroad on May 18th and 20th, the Baltimore and Ohio Railroad on May 24th, the New York Central Railroad on May 24th, and the Chicago, Indianapolis, and Louisville Railroad on May 24th, all in this year violated Chapter 232 of the Acts of 1913 found in Burns' Indiana Statutes Annotated, 1933, Sections 55-1321 to 1323. The Act is sometimes called the regular employees' law and is as follows:

"It shall be unlawful for any railroad company doing business in the state of Indiana that operates trains over its road to allow any person to fill the position of an engineer, fireman, conductor, baggagemaster, brakeman or flagman unless regularly employed as such: Provided, That nothing in this act shall prevent any railroad company using any person in case of injury or sickness occurring between terminals to any engineer,