

## Opinion No. 44-4577

September 16, 1944

**BY:** C. C. McCULLOH, Attorney General

**TO:** Mr. Ben D. Luchini, Executive Director, Employment Security Commission of New Mexico, Box 1301, Albuquerque, New Mexico

We are in receipt of your letter of September 13, 1944, in which you outline the following situation:

A person having earned \$ 7.00 during a particular week, in making his claim for compensation, misrepresents this fact and states that he earned nothing whatsoever. By virtue of Section 57-803 (B-3) of the 1941 Compilation such person would be entitled to a weekly benefit of \$ 10.00 less the amount he earned in excess of \$ 3.00 or the sum of \$ 6.00. As a result of the misrepresentation he would be paid \$ 10.00.

In view of this situation, you ask whether the Commission may recover back or deduct from future payments the total sum paid the claimant, that is, \$ 10.00, or only the amount above that to which the claimant would have been entitled, that is, the sum of \$ 4.00. (\$ 7.00 earned less \$ 3.00 statutory deduction equals \$ 4.00.) The decision on this question depends upon the construction of Section 57-819 (D) which provides as follows:

"Any person who, by reason of the nondisclosure or misrepresentation by him or by another, of a material fact (irrespective of whether such nondisclosure or misrepresentation was known or fraudulent) has received **any sum** as benefits under this act, while any conditions for the receipt of benefits imposed by this act were not fulfilled in his case, or while he was disqualified from receiving benefits, shall, in the discretion of the Commission, either be liable to have **such sum** deducted from any future benefits payable to him under this act or shall be liable to repay to the Commission for the unemployment compensation fund, a sum equal to the amount so received by him, and such sum shall be collectible in the manner provided in Section 14 (b) (Sec. 57-815 (b)) of this act for the collection of pastdue contributions."

The answer to this question depends upon the meaning of the words "such sum" underlined above. If these words mean the total sums paid, then the Commission should deduct the full sum of \$ 10.00 while if they mean sums to which the claimant was not entitled, then only \$ 4.00 should be deducted. It is noted that earlier in this section it is provided that if a person, due to misrepresentation has received **any** sums as benefits under the act, then such sums may be recovered or deducted. It would thus appear that the Legislature, in using the words "such sums", necessarily referred back to the same sums described as "any sums". Hence, it would appear that the Commission should deduct the total benefit received, that is, \$ 10.00. This construction is further borne out by Section 57-804 which provides in part as follows:

"Any unemployed individual shall be eligible to receive benefits with respect to any week only if the Commission finds that --: (A) He has made a claim for benefits with respect to such week in accordance with such regulations as the Commission may prescribe."

Thus, if a person made a claim not in accordance with the regulations of the Commission, he would be entitled to no benefits and, hence, under Section 57-819 (D) would have received benefits while the conditions for the receipt of benefits imposed by the act were not fulfilled in his case. Further, as suggested by you, the fraud in making the claim, failing to show the actual amount he received from private employment, might well vitiate the validity of the whole claim.

In view of the foregoing, it is my opinion that if a person makes a misrepresentation in making his claim, the Commission may recover back or deduct not only the sum above which the claimant would have been entitled, but may recover back or deduct the entire sum paid the claimant for such week.

By ROBERT W. WARD,

Asst. Atty. General