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**Daniel v. Costarell v. Florida Unemployment Appeals Commission**

HEAR YE.HEAR YE.HEAR YE.THE SUPREME COURT OF THEGREAT FAITHFUL IS -- OF THE GREAT STATE OF FLORIDA IS NOW IN SESSION. ALL WHO HAVE CAUSE TO PLEA , DRAW NEAR, GIVE ATTENTIONAND YOU SHALL BE HEARD. ALL WHO HAVE C AUSE TO PLEA , DRAW NEAR, GIVE ATTENTION AND YOU SHALL BE HEARD. GOD SAVE THE UNITED STATES, THE GREAT STATE OF FLORIDA AND THIS HONORA BLE COURT.

CHIEF JUSTICE: LAD IES AND GENTLEMEN, THE FLORIDASUPREME COURT.PLEASE BE SEATED.

CHIEF JUSTICE: GOOD MORNING , LADIES ANDGENTLEMEN, AND WELCOME TO THE FLORIDA SUPREME COURT. I WOULD LIKE TO WELC OME SEVERAL GROUPS O F PEOPLE IN THE AUDIENCE. FIRST OF ALL , SPONSORED BY THE GOVERNMENT LAW YERS , THE ANNUAL PRACTICING BE FORE THE SUPREME COURT, WELCOME TO YOU, AND THEN I KNO W SOMEWHERE IN THE A U DIENCE , A STUDENT -- STUDENTS F ROM PROFESSOR CANT ER O 'S DECISION-MAKING IN T HESUPREME COURT CLASS, SO WELCOME TO BOTH OF YOU AND WITH THAT , WE W ILL CALL THE FIRST CASE, WHICH IS COSTARELL VERSUS FLORIDA ENEMPLOYMENT AEALS COMMISSION.

GOOD MORNING. HARVEY SE PLER ON BE HALF OF MR. COSTARELL. THE ISSUE BEFORE YOU IS WHETHER THE 200 2 VERSION O F FLORIDA STATUTE 443.09-1 OR ANY OTHER CHAPTER IN -- ANY OTHER PROVISI ON IN 443 OR ANY OTHER CLAIMANT FILING UNDER THE 2002 STATUTES , MANY IN PROCEEDING S PRO SE , ADEQUATELY DIRECTED THEM TO CONTINUE FILING THEIR CLAI MS WHILE THEIR CASE WAS O N AEAL.

CHIEF JUSTICE: MR . SEPLER , WE UNDERSTAND THAT YOU DID NOT REPRESENT THE PETITIONER BELOW. BUT YOU STATE IN YOUR B RIEF , SEVERAL FA CTS THAT IMPLY THAT THE PETITIONER M AY HAVE BEEN CHILLED FROM FILING HIS , CONTINUING TO FILE HIS COMPLAINT FORMS, BECA USE OF CONCERNS ABOUT FR AUD. AND IT DOESN 'T A P PEAR THAT THOSE FACTS ARE IN THE SECOND DIST RICT DEC ISION.

YES.

CHIEF JUSTICE: ARE WE TO ACCEPT THAT TH OSE ARE NOT FACTS, OR ARE YOU GO ING TO ARGUE THAT SOMEHOW THE FACTS CREATE AN ESTO EL?

YOU ARE ABSOLUTELY CORRECT. THEY DO NOT AEAR IN THE SECOND DISTRICT DECISION. WHERE I GOT THOSE FACTS F ROM IS THE AEAL REFEREE 'S DECISION, W HICH IS IN THE RECORD ON AEAL.

CHIEF JUSTICE: IN OTHER WORDS , THAT SORT OF SETS UP AN ESTOEL OR A , SOME EQUITABLE ARGU MENTS . IT DO ESN'T AEAR TO HAVE BEEN RAISED BE LOW, SO ARE WE HERE, REALLY, ON A STRICT QUESTION OF STATUT OR Y CONSTRUCTION WITHOUT REGARD TO THE FACTS?

THE FIRST QUE STION THAT I KNOW YOU WILL AD DRESS IS STATUTORY CONSTRUCTION. BEYOND THAT, BECAUS E WE ARE TALKING ABOUT W HETHER THE STATUTE, THE STATU TORY SCHEME, PROVIDED ADE QUATE NOTICE. WE BELIEVE THAT THOSE FACTS ARE IMPORTANT , BECAUSE OVER AND ABOVE THE LIMITED BUT STRICT QUESTION OF STATUTORY CONSTRUCTION, WE , S TILL , NEED TO LOOK TO WH ETHER THE UNEMPLOYMENT COMPENSATION SCHEME PROVIDES FOR THE FILING OF THAT , AND I M AYADD , YOUR HONOR , THAT THE POSITION THAT THE AELLEE HAS TAKEN , ALSO RELI ES ON THINGS THAT ARE NOT IN THE SECOND DISTRICT DE CISION. WHICH I

WILL ADDRESS, BUT YOU ARE ABSOLUTELY RIGHT. THE FIRST QUESTION, I THINK, NEEDS TO BE ADDRESSED IS WHETHER THE STATUTES, THEMSELVES, OR ANY OF THE MATERIALS THAT ARE REFERENCED IN THE STATUTE, PROVIDES FOR THE FILING DURING THE AEALS PERIOD. OUR POSITION IS, FIRST OF ALL, THE STATUTE DOES NOT PROVIDE FOR THAT. WE ARE TALKING, AGAIN, ABOUT THE 2002 VERSION OF THE STATUTE. I AM SURE WE WILL ADDRESS --

THE STATUTE DOES REQUIRE A NEW ALI CATION OR SOMETHING ON A BIWEEKLY BASIS, CORRECT?

YES. THE STATUTE REQUIRES, WE ARE TALKING AT THIS POINT, ABOUT 443.091. THERE ARE OTHER STATUTES THAT PLAY INTO THAT, BUT UNDER 443.091, PARAGRAPH A THAT SAYS THAT ESSENTIALLY THE CLAIMANT NEEDS TO FILE CLAIMS IN ORDER, IT DOESN'T EVEN USE THE WORD ELIGIBLE BUT NEEDS TO FILE CLAIMS. B, THEN, SAYS THAT, IF YOU ARE GOING TO FILE CLAIMS, YOU HAVE GOT TO, FIRST, FILE IN PERSON, AND THEN AFTER YOU DO THAT, THEN YOU HAVE TO FILE BIWEEKLY REPORTS.

IT SAYS WHETHER THAT REMAINS TRUE ON AEAL OR NOT. LANGUAGE TO THAT EFFECT.

THAT'S CORRECT.

ARE THERE ANY FLORIDA ADMINISTRATIVE CODE PROVISIONS THAT WE SHOULD ADDRESS, FLORIDA STATUTE, TO GET TO CONSTRUCTION AS MAY BE CONTAINED IN THE ADMINISTRATIVE REQUIREMENTS?

THE TWO RULES FOR ADMINISTRATIVE PROCEDURE, UNDER THE FLORIDA ADMINISTRATIVE PROCEDURE ACT, WHICH ARE REFERENCED IN THE THREE CASES, THERE ARE ESSENTIALLY THREE CASES BEFORE YOU. THE RULES THAT ARE MENTIONED IN THE THREE CASES, WE ARE TALKING ABOUT COMES TALL RELY AND TWO OTHERS, ARE THE FLORIDA ADMINISTRATIVE PROCEDURE RULE 0.313 AND 0.315, WHICH OBVIOUSLY WE ARE TALKING ABOUT THAT. THAT, THE SAME AS THE 2002 VERSION, THERE IS NO MENTION ON WHAT HAS TO DO WITH CASES ON AEAL. WHAT WE HAVE HERE IS THAT --

IT DOES SAY THAT A CLAIMANT IS REQUIRED TO REPORT BY MAIL, BIWEEKLY.

YES. THAT'S CORRECT. THAT IS WHAT THE STATUTES AID.

IT DOESN'T SAY ANYTHING, PERIOD, I MEAN, THAT THERE IS ANY CONDITION TO THAT BEING THE REQUIREMENT.

IT, IF I UNDERSTAND YOUR QUESTION, YOUR HONOR, IT DOES NOT SAY ANYTHING ABOUT THE AEALS PERIOD. IT DOESN'T QUALIFY ANYTHING OTHER THAN YOU ARE TO REPORT BIWEEKLY.

THAT INSTRUCTION IS, ALSO, GIVEN TO CLAIMANTS IN WRITING.

THIS IS A PROBLEM, AND THIS IS A PROBLEM WITH THE RECORD THAT WE HAVE BEFORE YOU. THE RECORD DOES NOT SHOW THAT THIS CLAIMANT WAS ADVISED THAT HE WAS -- THIS CLAIMANT WAS ADVISED THAT HE WAS TO REPORT DURING THE AEALS PERIOD, UNTIL AFTER THE AEALS PERIOD HAD GONE BY FAR. THAT IS THE FIRST TIME THAT THE RECORD SHOWS THAT HE WAS ADVISED BY ANYTHING, BY ANY OTHER MATERIALS, THAT --

I THOUGHT THERE WAS INFORMATION IN THE RECORD THAT INDICATES YOU CAN GO ONLINE AND GET THESE FORMS, AND THAT THE FORM ACTUALLY SAYS THAT YOU ARE TO REPORT, EVEN DURING THE TIME WHEN THERE IS A DISPUTE AND THERE IS A AEAL PENDING. ONLINE.

MY READING OF THE RECORD, YOUR HONOR, IS THAT FIRST OF ALL WHAT HAS BEEN IS THAT MR.

COSTARELL INITIALLY WENT ONLINE. THERE IS NOTHING IN THE RECORD TO SAY WHAT THE FORMS ARE. HE APPARENTLY DOWNLOADED OR AT LEAST ACCESSED SOME FORMS ONLINE AND THEN, ONCE HE DID THAT, HE WAS, THEN, SEPTEMBER, AND THIS IS IN THE RECORD, THIS IS IN THE TRANSCRIPT BEFORE THE AEALS REFEREE, ONCE HE DID THAT, HE WAS, THEN, SEPTEMBER CHECKS INITIALLY, FOR, WITHOUT LOOKING I CAN'T REMEMBER THE NUMBER OF WEEKS. LIKE SIX WEEKS.

ARE YOU SAYING THAT THOSE FORMS DO NOT SAY THAT YOU HAVE TO CONTINUE TO FILE YOUR REQUEST DURING AN AEAL PERIOD?

TO BE QUITE HONEST WITH YOU, I DON'T KNOW THE ANSWER TO THAT. WHAT I DO KNOW IS THAT, WHAT WAS, I DO KNOW THAT MATERIALS THAT WERE CONSIDERED BY THE LOWER COURT AND BY THE UNEMPLOYMENT AEALS COMMISSION, THERE WAS NO REFERENCE AT ALL TO THE FORMS, OTHER THAN IN THE TRANSCRIPT BEFORE THE AEALS REFEREE. HE SAID, "I WAS ABLE TO GO AND ACCESS SOME FORMS." BUT, AGAIN, THE FORMS WERE NOT THE BASIS FOR THE SECOND DISTRICT DECISION.

CHIEF JUSTICE: LET'S GO BACK TO WHAT WAS THE BASIS. WE ARE HERE ON DECIDING WHETHER 443.091 PLAINLY REQUIRES THAT, IN ORDER TO BE ELIGIBLE, THAT THERE MUST BE A CLAIM MADE. IS THAT --

THAT IS THE INITIAL DETERMINATION.

CHIEF JUSTICE: SO AS I READ IT, IT IS HARD TO READ IT AS SAYING OTHER THAN THAT YOU SHALL BE ELIGIBLE TO RECEIVE ONLY IF THE DIVISION FINDS SHE OR HE HAS MADE A CLAIM FOR BENEFITS. I DON'T KNOW, THE THIRD DISTRICT SEEMS TO TAKE THAT AND PUT IT TO MAY, BUT TELL ME HOW THAT DOESN'T SQUARELY ADDRESS THE FACT THAT THEY DID THEIR DUE DILIGENCE OR NOT, SINCE WE ARE NOT HERE LOOKING AT THE FACTS. BUT THAT CLEARLY SHOWS THE LEGISLATIVE INTENT TO MEAN THAT IT IS TO BE FILED FOR WHATEVER PERIOD THAT THE PERSON IS CLAIMING UNEMPLOYMENT COMPENSATION.

LET ME REVIEW, FIRST OF ALL, THAT THE STATUTE IS A NOTIFICATION STATUTE. 443.091 IS A NOTIFICATION, SO WHETHER WE LOOK, IF I MAY ANSWER THIS, WHETHER WE LOOK TO THAT, I THINK WE ARE CONSTRUING WHETHER THIS STATUTE ADEQUATELY NOTIFIES THE PEOPLE THAT ARE GOING TO BE LOOKING AT THE STATUTE. THEN PROCEEDING PRO SE, WHETHER IT ADEQUATELY NOTIFIES THEM THAT YOU HAVE TO AEAL DURING THE AEALS PERIOD. THEN I THINK AT THAT POINT, WE LOOK AT WHAT THE WORDING OF 443.091 IS. 443.091 AND THE SAME THING WITH 111 AND THE SAME THING WITH 1A1, ALL SAY YOU HAVE TO -- 151, ALL SAY YOU HAVE TO REPORT, BUT AGAIN, THERE IS NO MENTION AFTER AEALS PERIOD, AND IRONICALLY, THE SECOND DISTRICT, THEN, CITED TO THE 2003 MAGISTRATE, WHICH SAID YOU HAVE TO ALY DURING THE AEALS PERIOD. IRONICALLY THAT WAS CITED BY THE SECOND DISTRICT AS SUPPORTING AUTHORITY THAT THIS WAS THE LEGISLATION, AND ON THE OTHER HAND, WHAT I BELIEVE IS THE CORRECT WAY OF LOOKING AT 2003 AMENDMENT, IS THAT THE LEGISLATURE REALIZED THAT IT HADN'T SUFFICIENTLY PUT IN THE 2002 VERSION OF THE STATUTE, ANYTHING ABOUT THE AEALS PERIOD!

CHIEF JUSTICE: IS THE, HOW LONG WAS THE LANGUAGE THAT WE ARE NOW INTERPRETING IN THE STATUTE?

THE, WELL, I KNOW THAT IN SAVAGE AND IN DIMES, IT GOES BACK TO THE 1996 VERSION.

CHIEF JUSTICE: IT IS IMPORTANT, BECAUSE YOU HAVE GOT A STATUTE, THEN, THAT HAS BEEN INTERPRETED SINCE 1999 AS SAYING IT IS NOT MANDATORY NOTIFICATION. YOU LOOK AT THE HARMLESS-ERROR ANALYSIS AND THE CHANGE IS NOT MADE BY THE LEGISLATURE, UNTIL 2003. SO AS FAR AS THE TIMING OF THIS, I WAS INTERESTED IN KNOWING HOW LONG THE STATUTE

HAD BEEN --

I DO KNOW THAT THERE IS , OF COURSE, A BODY OF LAW THAT SAYS , WHEN A STATUTE IS CHALLENGED AND THEN WHEN THE LEGISLATURE COMES BA CK IN THE NE XT SE SSION AND CHANGES THE STATUTE IN S OME WAY , THAT I T CAN BE LOO KED AT UNDER THE F I NY CASE AND OTHER CASES, THAT IT CAN BE LOOKED AT AS THE LEGISLATURE'S ORIG INAL INTENT WHEN EN ACTING T HESTATUTE.OF COURSE THIS ISN'T THE NEXT LEGISLATIVE SESSION. IT DOESN'T MUCH MA TTER , WITH ALL DUE RESPECT, BECAUSE I THINK THAT WHAT W E NE ED TO LOOK AT WHEN WE ARE INTERPRETING 443.091 AND T HESTATUTE, IS HOW IS THE REASONABLE CLAIMANT, MANY OF WHOM ARE PRO SE , HOW DO THEY INTERPRET THAT STATUTE IN THE LIGHT OF, DOES IT GIVE THEM ADEQUATE NOTICE?

LET ME ASK YOU A QUESTION. THE REASON ABLE PERSON SEEKING BENEFITS UNTIL THEY CAN BECOME REEMPLOYED. I THINK ANY BODY GOING IN THERE KNOWS THAT THIS IS A STOPGAP BENEFIT AND THAT IF YOU LOSE EMPLOYMENT , THATYOU HAVE A LI MITED ENTITLEMENT TO SOME BENEFITS , UNTIL YOU CAN GET REEMPLOYED. DO YOU A GREE WITH THAT?

YES.

AND DURING THAT PERIOD OF TIME, YOU HAVE TO CONT INUE TO SEEK EMPLOYMENT AND FILE THESE REGU LAR REPORTS A ND, AS SOON AS YOU GET EMPLOYED, THE BENEFIT ST OP. IS THAT RIGHT ? SO IF A PERSON IN THAT CIRCUMSTANCE COULD READ THE STATUTE AND IT SAYS AN UNEMPLOYED INDIVIDUAL SHALL BE AB LE TO REC EIVE BENEFITS WITH RESPECT TO WEEK TO WEEK ENTITLEMENT, ONLY IF THE DIVISION FINDS THEY HAVE MADE A CLAIM FOR THAT WEEK . HOW IS THAT UNAMBIGUOUS?

IT IS UNAMBI GUOUS , BECAUSE THIS, OF COURSE, TAKES US BACK TO WHAT W AS THE DI CTUM FIRS T IN THE SAVAGE CASE AND THEN BECA ME A HO Lding IN THE DI NES CASE, HOW DO WE INTERPRET T HAT PROVISION THAT SAYS YOU HAVE GOT TO REPORT E ACH WEEK, ONCE YOUR CLAIM HAS BEEN DENIED. WOULD THE REA SONABLE CLAIMANT IN THIS SITU ATION, MANY OF WHOM ARE PRO SAYS SAY, WOULD A REAS ONABLE -- PRO SE , WOU LD A REASONABLE CLAIMANT INTERPRET THAT ON AEAL, ONCE THE CLAIMS HAVE BEEN DENI ED? IF WE GO TO A ST RICT CONSTRUCTION OF THE STATUTE,IT DOES NOT SAY ANYT HING ABOUT CLAIMS, PERIOD. I UNDERSTAND IT HAS GOT GEN ERAL LANGUA GE IN T HERE BUT IN 2003 IN RESP ONSE TO THE DINES AND THE SA VAGE CASE, IT WAS INTERPRETED .

ONCE YOU HAVE MADE A CLAIM FOR A THREE-WEEK PERIOD, IT IS DENYING AN AEAL AND YOU ACCE PT THE CLAIM, THEN THERE IS NOTHING THAT PERSON NEEDS TO DO FOR THE NEXT NINE WEE KS , A S FAR AS FILING THE REG ULAR CLAIM , SEEKING EMPLOYMENT , AND FILING FOR EMPL OYMENT AND SEEKING EMPLOYM ENT. NOTHING ELSE . FILING A AEAL , BASICA LLY, ENTITLES HIM TO --

I THINK SO.I THINK , WHILE THE AEAL IS GOING FORWAR D AND T HE DEPARTMENT OR THE AGENCY FOR WORK FORCE INNO VATION KNOWS THAT THE AEAL IS GOING FORWARD , I THINK THE PRESUMPTION SHOULD BE THAT THIS INDIVI DUAL IS SE Eking BENEFITS, AND HIS STATUS HASN'T CHAN GED .

LET ME ASK A QUESTIO N THIS WAY, WHAT IF THE UNEMPLOYMENT AEALS COMMISSION HAD RU LED I N YOUR CLIENT'S FA VOR , AND THE STATE WAS AEAL ING THE DETERMINATION THAT YOUR CLIENT WAS ENTITLED TO UNEMPLOYMENT BENEFITS . WOULD YOU AR GUE THAT, IN THAT I NSTANCE THEN , YOUR CLIENT NEED NOT FILE A C LAIM , EVERY T WO WEEK S?

I THINK SO .

IF THE UNEMPLOYMENT COMMISSION DETERMINES , AS OF SEPTEMBER 1 , YOUR CL IENT IS

ENTITLED TO UNEMPLOYMENT BENEFITS, THEN FOR THE ENTIRE PENDEN CY OF THE AEALS PERIOD, IT COULD B E OVER A YEAR , YOUR CLIENT DOESN'T HAVE TO PROVE THAT HE IS ST ILL SEEKING EMPLOYMENT AND HAS BEEN DENIED EMPLOYMENT. HE CAN JUST GET UNPLOIME NTD BENEFITS WITH OUT - - UNEMPLOYMENT BENEFITS WITHOUT SEEKING ANY JO B.

I THINK IN THE S E NSE, RATHER AL IKE A PRESUMPTION , I THINK AN ACCESS RES PONSE THAT THE INDIVIDUAL IS SUOSE -- AN ACT IVE RESPONSE THAT THE INDIVIDUAL IS SU OSED TO MAKE AND YOU HAVE A PASSIVE ONE. ONCE THERE HAS BEEN ACTIVELY SEEKING BENEFITS AND THE BENEFITS ARE NOT FORTHCOMING FOR WHATEVER YOUR SIT UATION , THEY WERE FORTHCOMING BUT NOW HAVE STOED BECA USE THE AEAL IS PENDING , I AM NOT SURE THAT CIRCUMSTANCE , WHETHER THE BENEFITS WILL HAVE STOP PED, OR IF THEY HAVEN'T STOED, THEN , O F COURSE, YOUR QUESTI ON HAS BEEN ANSWERED , BECAUSE IT IS STILL PENDING. IF THEY HAVE BEEN STOED, I THINK AT THAT POINT THERE ARE PRESUMPTION THAT IS THERE IS A ACTIVE AEAL PENDING. THE INDIVIDUAL HAS NOT ACTIVELY P ULLED OR SOMEBODY -- ACTIV ELY TOLD O R SOMEBODY HAS REPORTED THAT HIS STATUS HAS CHANGED , I THINK THERE IS A PRES UMPTION THAT HIS ENTITLEMENT AND HIS REQUEST FOR CLAIMS IS STILL FORTHCOMING, YE S, YOUR HONOR.

IN YOUR EXAMIN ATION OF THE RECORD HERE , I SEE THAT , WITH THE UNEM PLOYMENT AEALS COMM ISSION ACTED IN THIS CASE THAT, THE ONLY PREVAILING LAW OUT THERE WAS THE LAW FROM THE THIRD DISTRICT. WHICH THE UNEMPLOYMENT AEALS COMMISSION IN THIS CASE, AARENTLY RULED CONTRARY TO THE LAW FROM T HE THIRD DI STRICT. CAN YOU EXPL AIN OR I S THERE ANY EXPLANATION IN THE RECORD, HOW THE COMM ISSION FELT IT COULD IGNORE THE PREVAIL ING LAW FROM THE THIRD DISTRICT?

NO , I CAN 'T. I THINK THAT THE FIRST AELLATE COURT THAT I SAW THAT RULED ON A STATUTE OF THIS STATUTE , WAS THE THIRD DISTRICT IN SAVAGE AND DINES , AND I DI DN'T FIND ANYTHING IN BETWEEN, SO I THINK YOU HAVE THAT, AND IT SEEMS TO ME THAT THE , THAT I CAN'T EXPLOIN PLAIP TO YOU WHY IT WAS THAT -- EXPLAIN TO YOU WHY IT WAS THAT THOSE C ASESWEREN'T ON, OTHER THAN T O SAY THAT WE SI MPLY DON'T AGREE WITH THEM .

I NOTICE, TOO , THAT THE THIRD DISTRICT IN SUBSTANTIAL FOOTNOTES IN THEIR CASE , IN THE ORIG INAL ONE THERE , AARENTLY WAS VERY CONCER NED THAT THE COMMISSION WAS FO LLOW ING ITS DECISION.

I ABSOLUTELY AGR EE WITH YOU. I KNOW THAT THAT WAS SAVA GE, AND SAVAGE WAS THE FIRST THING THAT HAENED. THE DI VISION HAD DENIE D BENEFITS AND COM E UP FOR AEAL. THE THIRD DISTRICT RULES IN FAVOR OF THE CLAIMANT , AND ISSUES A MAND ATE, AND AT THAT POINT IT IS NOT THAT THEY DENIE D OR THEY PU T A LIMITATION ON IT. THEY SAID , W ELL , ESSENTIALLY YOU HAVE GOT BENEFITS BY T HETHIRD DISTRICT BUT WE ARE GOING TO SUBTRACT FROM THA T ALL OF THE TIME THAT YOU ARE AEAL, AND THIS IS E VEN WHAT IS IN THE FOO TNOTE , THE THIRD BECAME VERY CONCERNED ABOUT THAT, AND THAT BEC AME THE FIRST GROU ND IN THE SAVAGE CASE .

CHIEF JUSTICE: THE THIRD DISTRICT'S DECISION IS THAT THE 443. 091 A LIES , BUT THAT IT IS, IT IS NOT A MANDATORY , IT IS SUBJ ECT TO THE UNEMPLOYMENT COMPENSATION COMMISSION SHOWING PREJUDICE. YOUR ARGUMENT IS THAT I T DOESN'T ALY AT ALL. SO IT IS A DIFFERENT STATUTORY CONSTRUCTION ARGUMENT. DO YOU AGREE WITH THAT?

WHEN I READ THE D INESDECISION, THERE IS A SENTENCE IN THERE THAT SAYS THAT THE STATUTORY REQUIREMENT DOESN'T ALY, BECAUSE IT IS M ERELY ADVISORY AND THEN IT GOES O N TO TALK ABOUT HARMLESS ERRO R, BUT THE WAY I READ THAT IS NOT NECESSARILY ACKNOWLEDGING THAT THERE IS A STATUTORY REQU IREMENT. IT IS MORE LIKE , IF , I F THERE WAS A STATUTORY REQUIREMENT , IT W OULDN'T , IT WOULDN'T BE ENFORCEABLE F ORTHE FOLLOWING ROPES. AGAIN, I DON'T WANT TO STR AY TOO FAR FROM WHAT THE CR UX OF THE

CASE IS. HOW DO WE INTERPRET THE LANGUAGE OF THE 2002 VERSION AND WHAT DOES IT MEAN TO THOSE CLAIMANTS WHO FALL WITHIN THE WINDOW PERIOD, BETWEEN THE 2002 VERSION AND THE 2003? I BELIEVE THAT, CONTRARY TO THE CONSTRUCTION OF THE 2003 AMENDMENT THAT, THE SECOND DISTRICT GAVE TO IT, THAT ACTUALLY WHAT THE 2003 AMENDMENT PROPERLY SHOULD BE LOOKED AT, IS THE LEGISLATURE HAS, NOW, REALIZED, EITHER FOR THE FIRST TIME OR THE FIRST TIME IT IS BEING EXTRACTED, THERE IS A PROBLEM THAT CLAIMANTS AND COURTS AREN'T UNDERSTANDING THAT THIS IS WHAT THE LEGISLATURE WOULD LIKE TO SEE.

CHIEF JUSTICE: YOU ARE IN YOUR REBUTTAL. I KNOW YOU HAVE A SHORT TIME FOR REBUTTAL. I WANTED TO REMIND YOU.

THANK YOU VERY MUCH. I AM NOT FAMILIAR WITH THE LIGHTS UNFORTUNATELY.

CHIEF JUSTICE: WE MAY WORK ON A BETTER LIGHTING SYSTEM HERE.

ACTUALLY IT WAS FINE. IF I WAS UP HERE OFTEN ENOUGH, I WOULD BE FAMILIAR WITH THAT. THE QUESTION IS WHAT DOES IT MEAN TO THOSE CLAIMANTS WHO ARE FILING THEIR CLAIMS DURING THE WINDOW PERIOD. THE LEGISLATURE, I THINK, CORRECTED THE INADEQUACY OF THE 2002 VERSION OF THE STATUTE, SO THAT ANY CLAIMANTS WHO ARE NOW FILING UNDER THE 2003 STATUTE, THERE IS NO QUESTION. THEY HAVE GOT TO FILE DURING THE AEALS PERIOD, BUT OUR CASE, JUST LIKE IN, I KNOW YOU HAVE ANOTHER CASE, THOSE CASES ARE STILL WITHIN THE WINDOW PERIOD, AND WHAT IS THE PROPER WAY OF CONSTRUING WAS THAT THE NOTIFICATION REQUIREMENT OF 443.091 AND THE OTHER STATUTES HAVE BEEN FULFILLED, AND I THINK THE PROPER WAY OF CONSIDERING THAT IS THAT THEY SIMPLY DON'T MEET THE NOTIFICATION REQUIREMENTS.

CHIEF JUSTICE: YOU WANT TO SAVE THE REST OF YOUR TIME FOR REBUTTAL?

ABSOLUTELY.

CHIEF JUSTICE: MR. MAHER.

MAY IT PLEASE THE COURT. I AM JOHN D MAHER AND I REPRESENT THE FLORIDA UNEMPLOYMENT AEALS COMMISSION. I ALSO REPRESENTED THE COMMISSION SEVEN YEARS AGO, WHEN THE SAVAGE CASE WAS DECIDED AND SIX YEARS AGO, WHEN THE DINES CASE WAS DECIDED.

CHIEF JUSTICE: IN TERMS OF THE FACTS, CAN YOU TELL US IF HE HAD CONTINUED TO FILE, WOULD HE HAVE BEEN ELIGIBLE DURING THIS AEALS PERIOD? IN OTHER WORDS IS THIS A SITUATION WHERE, ON THE MERITS, HE WOULD, HE SUCCEEDED, BUT, WELL, YOU DON'T THINK IT IS A GOTCHA, BUT IT IS A SITUATION WHERE YOU WON THE BATTLE BUT YOU LOST THE WAR, BECAUSE YOU FORGOT TO FILE DURING THIS PERIOD OF TIME?

IF HE FILED AND HE MET THE REQUIREMENTS THAT HE MUST STARR -- ESTABLISH UPON EACH FILING, NAMELY SET FORTH IN 443.111 PAREN 1.8, IT STATES THAT EACH CLAIM SHALL MOVE FORWARD IN THE MANNER PRESCRIBED --

CHIEF JUSTICE: I UNDERSTAND THE REPORT FILING, BUT IN OTHER WORDS HE WAS FIRST, LET ME JUST, SO WE GET THIS STRAIGHT. HE WAS RECEIVING CHECKS, AND HE WAS GIVEN CLAIMS FORMS, AND THEN AT SOME POINT, HE WAS TOLD HE WAS NO LONGER ELIGIBLE, AND AT THAT POINT, IS WHEN HE AEALD. WOULD HE HAVE, IF HE HAD CONTINUED TO FILE THE CLAIMS FORM, WOULD HE HAVE ON THE MERITS OF ELIGIBILITY, HAVE WON THAT DECISION, OR DID THEY NEVER REACH THE ISSUE BECAUSE HE HADN'T FILED?

WELL, YES, IF HE HAD FILED AND HE HAD ATTESTED TO THE FACT THAT HE HADN'T EARNED

ANY MONEY, THAT HE HAD SOUGHT EMPLOYMENT, IF HE HAD DONE ALL OF THOSE THINGS UPON FILING, YES, HE WOULD HAVE QUALIFIED.

CHIEF JUSTICE: SO WHAT WAS THE REASON HE WAS DETERMINED TO BE INELIGIBLE?

BECAUSE HE DIDN'T FILE. BECAUSE --

CHIEF JUSTICE: HE WAS ORIGINALLY GETTING CHECKS.

CORRECT.

CHIEF JUSTICE: HE WAS TOLD HE WASN'T ELIGIBLE.

CORRECT.

CHIEF JUSTICE: SO NOW YOU ARE SAYING THAT THE ONLY REASON HE DIDN'T WIN WAS BECAUSE HE DIDN'T CONTINUE TO FILE.

CHAIKIN.

CHIEF JUSTICE: WELL, DOESN'T THAT LEAD TO A POTENTIAL ABUSE OF THE SITUATION, WHERE SOMEBODY, THE WAY YOU COULD END UP NOT GETTING THE MONEY IS TO SAY THEY ARE REALLY ELIGIBLE BUT WE ARE GOING TO DENY IT, AND THEN DURING THE TIME THEY ARE ON AN AEAL -- THEY ARE ON AN AEAL, WE WILL LET THEM THINK THEY DON'T HAVE TO FILE ANYMORE OR WORSE HERE, WE WILL TELL THEM THAT MAYBE THEY WERE SUBJECT TO FRAUD FOR OVERPAYMENT AND THEN WE DON'T HAVE TO PAY OVER THAT PERIOD OF TIME, EVEN IF THEY WERE ELIGIBLE ON THE MERITS.

THE AEAL COULD TAKE MONTHS OR A DISTRICT COURT OF AEAL COULD TAKE MONTHS. DURING THAT TIME HE IS NOT GOING TO REPORT EVERY TWO WEEK PERIOD. THE STATUTE GIVES HIM THE ABILITY TO CONTINUE TO REPORTING ON HIS CLAIM AND IT IS A MATTER OF STATUTORY ENTITLEMENT.

CHIEF JUSTICE: YOU WOULD AGREE THAT IT PUTS A PETITIONER SUCH AS THIS PETITIONER, IN A DIFFICULT SITUATION. NOW IT IS SPECIFICALLY SET FORTH THAT THIS MUST BE DONE, BUT THE QUESTION IS, WAS IT SPECIFICALLY SET FORTH UNDER THE 2002 VERSION?

THAT IS WHY THEY ARE TOLD, WHEN THEY GET AN ADVERSE DETERMINATION, ON THE FACE OF THE DETERMINATION, IT SAYS, IF YOU ARE STILL UNEMPLOYED, YOU MUST CONTINUE REPORTING ON YOUR CLAIM UNTIL IT IS RESOLVED.

MR. MAHER, IF MR. CHAIKIN RELY COME TO ME -- IF MR. COSTARELL CAME TO ME AND SAID HE HAD TO FILE THE BENEFIT CLAIMS FORMS, I WOULD SAY I AM LOOKING AT THE THIRD DISTRICT DECISION AND, NO, YOU DON'T, SO I AM A LITTLE CONCERNED ABOUT HOW, WHEN THE ONLY LAW OF THE STATE THAT IS OUT THERE, IS SAYING THAT IT IS NOT NECESSARY, HOW DOES THAT WORK IN THIS SITUATION, TO BRING THE PETITIONER RESIDENT TO THE CASE?

IT DID LEAD TO THE 2002 AMENDMENT, ADDRESSED SPECIFICALLY --

CHIEF JUSTICE: I AM TALKING ABOUT MR. COSTARELL. LET'S SAY HE GOES TO A LAW LIBRARY, AND HE READS THE DINES CASE.

THE INFORMATION SPECIFICALLY BEING GIVEN BY THE AGENCY SAYS YOU MUST CONTINUE REPORTING ON YOUR CLAIM, IN ORDER --

I AM VERY CONCERNED HERE, YOU TELL ME HOW YOUR COMMISSION HAD ANY AUTHORITY,

AFTER BEING A PARTY IN BOTH OF THE CASES IN THE THIRD DISTRICT, THAT LED TO A CONTRARY RULING, HOW YOUR COMMISSION, THEN, HAD ANY AUTHORITY TO RULE TO THE CONTRARY OF WHAT YOU WERE TOLD THE LAW WAS BY THE THIRD DISTRICT COURT OF APPEAL, WHEN YOU PARTICIPATED IN THAT. YOU WERE A PARTY TO THAT, AND I ASSUME, I DON'T ASSUME, TELL ME WHAT AUTHORITY THAT THE COMMISSION HAD, THEN, TO IGNORE THE LAW THAT THE THIRD DISTRICT TOLD HIM WAS APPLICABLE TO THESE SITUATIONS IN THIS CASE!

THEY ALIENED THE LAW IN THE DINES CASE. THEY DIDN'T ALIEN THE LAW THAT IS WRITTEN BY THE THIRD DCA IN THIS CASE. THEY ALIENED THE LAW AS THIS LEGISLATURE HAD PROVIDED, WHICH IS REQUIRED IN THIS VERSION.

IN YOUR CASE, THE UNEMPLOYMENT APPEALS COMMISSION WAS A PARTY, CORRECT?

YES.

IN THE THIRD DISTRICT CASE IN DINES, THE UNEMPLOYMENT APPEALS COMMISSION WAS A PARTY IN NOT ONE BUT TWO SUCCESSIVE APPEALS. IS THAT CORRECT?

THAT'S CORRECT, YOUR HONOR.

ARE YOU TELLING ME THAT, SOMEWHERE ELSE IN THE STATE, AFTER A DISTRICT COURT OF APPEAL RULES, WITH THE UNEMPLOYMENT APPEALS COMMISSION BEING A PARTY TO THAT APPEAL, THAT THEY ARE NOT BOUND BY THE LAW OF THAT DECISION AFTER THAT AND THAT THEY CAN IGNORE IT?

I CAN ONLY SAY WHAT HAPPENED, YOUR HONOR. I CAN'T --

IN OTHER WORDS, TELL ME, YOU, NOW, HAVE SAID THAT, IN YOUR INTRODUCTORY REMARKS, THAT YOU WERE THE LAWYER FOR THE COMMISSION IN BOTH OF THE THIRD DISTRICT, SO WE DON'T HAVE ANY PROBLEM ABOUT YOU KNOWING WHAT THE LAW IS. DID YOU ADVISE THE UNEMPLOYMENT APPEALS COMMISSION THAT THEY HAD THE RIGHT TO IGNORE THE THIRD DISTRICT DECISION?

NO, YOUR HONOR.

TELL ME HOW THAT CAME TO PASS, SINCE YOU HAVE BEEN THE LAWYER REPRESENTING THIS COMMISSION THROUGHOUT THESE PROCEEDINGS?

I CAN'T TELL YOU HOW. THERE WAS TWO DIFFERENT COMMISSIONS.

SO YOU TOLD THE COMMISSION THAT THEY WERE BOUND BY THE THIRD DISTRICT.

THAT IS NOT WHAT I SAID.

IS THAT RIGHT?

YOU WOULD RECOGNIZE THAT THIS COURT HAS TOLD THEM THAT THE LAW OF A DISTRICT COURT IS THE LAW AND THE DISTRICT COURT RULES THAT, IS THE LAW. IT DOESN'T MAKE ANY DIFFERENCE, CORRECT? IT DOESN'T MAKE ANY DIFFERENCE. THIS IS IN THE SECOND DISTRICT. THE THIRD DISTRICT WAS THE LAW OF FLORIDA.

THAT'S TRUE. I UNDERSTAND THAT PRINCIPLE, AND, BUT NEVERTHELESS THE SECOND DISTRICT DID AGREE WITH THE COMMISSION AND DISAGREE WITH THE THIRD DISTRICT COURT OF APPEAL.

THEY DID, ONLY AFTER THE APPEALS COMMISSION HAD ITSELF, IGNORED THE DECISION OF THE



THIRD DISTRICT. IT WOULD BE A DIFFERENT STORY , IF THE AEALS COMMISSION HAD RULED CONSISTENT WITH WHAT HAD HAENED THERE , IT THOUGHTTHAT THE IS SUE , TO RULE CONTRARY, THEY HAVE BEEN A PARTY TO THAT CASE , THAT JUST , AND YOU A REREPRESENTING TO THIS COURT THAT YOU ADVISED T HECOMMISSION THAT THEY WERE BOUND BY THE THIRD DISTRICT DECISION.

I ADVISED THEM WHAT THE DECISION SA ID. I DIDN'T SAY --

I SEE .

THE CHAIRMAN OF THE COMMISSION IS A LAWYER. HE HAS THE QUALIFICATIONS OF A CIRCUIT JUDGE. HE CAN READ THE OPINION AS WELL AS I CAN.

I SEE . SO YOU PLA YED NO ROL E IN ADVISING THEM.

IT IS NOT A MA TTER OF ME TELLING THEM WHAT IT SAYS. THEY CAN DETERMINE THAT F ROM --  
HOW MANY COMMISSIONS ARE THERE?

THERE ARE THR EE . DETERMINATIVE COMMISSION AND THE --

ONLY ONE COMMISSION WITH THREE COMMISSIONERS?

THERE IS A CHAIRMAN WHO IS A FULL-TIME OFFI CER. THE OTHER TWO ARE PART -TIME OFFICERS.

FOR THE E NTIRE STAT E?

FOR THE EN TIRE STATE . NOW, WHAT I WOULD REALLY LIKE TO GET BACK TO IS ADDRESSING THE DIFFERENCE BETWEEN THE SECOND DISTRICT COURT OF AEAL S AND O P INION AND THE THIRD DISTRICT C OURT OF AEALS OPINION, TO DEMONSTRATE THAT THE COURT WAS WRONG IN THE THIRD DISTRICT, WHEN IT DECIDED SAVAGE AND DINES.

WELL , THE STATUTE IS V ERY CLEAR , NOW , IS IT NOT? IT HAS AN EX PRESS PROVISION THAT, EVEN PE NDING AEALS , THIS FILING SHALL CONT INUE?

WHAT IS NOT CLEAR , TH OUGH , IS THE DINES - -.

I ME AN, THAT IN THE STATUTE NOW?

YES.

IS THAT CORRECT? NOW, THAT WASN'T IN THE STATUTE BEFORE, WAS IT?

IT DIDN'T MENTI ON ON AEAL. IT MEN TIONED AL L THE TIME , THOUGH, SO THAT WOULD ENCOMPASS ON AEAL. THAT WAS THE WAY THE STATUTE WAS WORD ED. IT DIDN'T NEED TO SAY THAT. NOBODY DECIDEDED NEEDED TO SAY THAT UNTIL DINES C AME OUT.

CHIEF JUSTICE: DINES CAME OUT IN WHAT YE AR?

I THINK IT WAS - -

CHIEF JUSTICE: 1999?

YES. 1999.

CHIEF JUSTICE: WELL, IN 1999, THE COMMISSION KNOWS THAT IT NOW HAS AN ADVERSE RULING , SO FOR THE , THEY DON'T SEEK TO CHANGE THE LAW UNTIL 2003, AFTER THE SECOND DISTRICT SUGGESTS WHAT , THEIR INTERPRETATION. NOW, THIS STATUTE WAS PASSED ORIGINALLY IN WHAT YEAR ? THE WAY IT READ IN 2002. HOW LONG HAD IT READ THAT WAY?

AT LEAST '97.

CHIEF JUSTICE: HOW WAS THE IDEA THAT THEY HAVE NOW , IN 2003 , FOUR YEARS AFTER DINES , AND SEVEN YEARS AFTER THE ORIGINAL TIME THIS STATUTE WAS SET, HOW WOULD WE INTERPRET THAT INDICATION OF LEGISLATIVE INTENT BACK IN 1997, AS OPOSED TO MR . SEPLER ARGUES , LOOKING AT IT AND SAYING YOU KNOW , I SEE HOW THE THIRD DISTRICT READ IT AND THE SECOND DISTRICT CAN BE CONFUSING. WE BETTER MAKE CLEAR, OUR INTENT, THAT THIS SHOULD CONTINUE DURING THE APPEALS PROCESS.

THE AMENDMENT TOOK PLACE PRIOR TO COSTARELL BEING DECIDED BY THE DCA. AS FAR AS HOW SOON THE STATE SOUGHT AN AMENDMENT , I CAN'T SAY FOR SURE. IT DIDN'T SUCCEED IN GETTING AN AMENDMENT UNTIL THE 2003 STATUTE. SOMETIMES THE PROCESS TAKES LONGER TO GET IMPLEMENTED AND WHAT IS GOING ON IN THE LEGISLATURE, IT IS NOT A SIMPLE MATTER. I THINK THIS COURT UNDERSTANDS THAT, THAT LEGISLATION IS NOT INSTANTANEOUS, AND THE UNEMPLOYMENT COMPENSATION MAY NOT BE THE HIGHER PRIORITY IN THE LEGISLATURE AT A GIVEN POINT IN TIME .

CHIEF JUSTICE: SO, AGAIN , YOU ARE SAYING THAT DURING THE PERIOD OF TIME 1999 TO 2002, THE LEGISLATURE , THE UNEMPLOYMENT APPEALS COMMISSION, IS THAT WHO WAS THE ENTITY , IT WOULD --

THE AGENCY THAT ACTUALLY IMPLEMENTS THE PROGRAM IS THE AGENCY FOR WORK FORCE INNOVATION.

CHIEF JUSTICE: THEY REALIZE THERE IS A PROBLEM OUT THERE, AND THEY REALIZE THE SOLUTION , IS TO GO TO THE LEGISLATURE .

EVENTUALLY .

CHIEF JUSTICE: I GUESS IS STILL AND I DON'T WANT TO BEAT DEAD HORSE ABOUT IT , IT STILL, THE IDEA THAT THEY WOULD, THEN , TELL THE COMMISSIONERS THAT THEY CAN , REALLY, IGNORE THE THIRD DISTRICT OPINION, IS , STILL , SOMETHING THAT CONCERNS ME . WOULDN'T THAT BE THE REASON TO SAY THERE IS REALLY AN ESTOPEL UNDER THESE CIRCUMSTANCES, THAT THE LEGISLATION ISN'T CLEAR , SOMEBODY IS , FIRST , GIVEN BENEFITS THEN IS TOLD THAT HE, THERE HAS BEEN AN OVERPAYMENT AND MAY BE SUBJECT TO FRAUD, AND THE ONLY REASON THAT THEY ARE DENIED THE BENEFIT IS BECAUSE THEY DIDN'T REPORT , EVEN THOUGH THEY ARE TOLD THAT THEY WEREN'T ELIGIBLE ANYMORE?

WELL , EXCEPT THAT THAT WOULD IGNORE AND LEAVE UNRESOLVED THE CONFLICT BETWEEN THE SECOND DCA AND THE THIRD DCA , ON THE ISSUE OF WHAT THIS 2002 STATUTE MEANT.

CHIEF JUSTICE: THAT IS ONLY AS NARROW, THERE IS HOW MANY OTHER CASES DO WE HAVE THAT FIT THIS WINDOW ?

I MEAN, AT WHAT LEVEL

CHIEF JUSTICE: YOU CAN'T SAY?

I KNOW THERE ARE CASES OUT THERE , BUT BEYOND THAT, I COULDN'T SAY.

DOES THE REGULATION SAY , CONTINUE TO SAY FOLLOW THE DINES DECISION , THAT A REPORT WAS TO BE MADE?

THE REGULATION , AS FAR AS I KNOW, REMAINED UNCHANGED UNTIL THE 2003 AMENDMENT . IT DIDN'T REQUIRE THE CLAIMANT TO CONTINUE TO DO THAT AFTER THE DINES DECISION, IF I UNDERSTAND YOUR QUESTION, JUSTICE WELLS.

THAT IS CONTRARY TO THE LEGAL RULING OF THE THIRD DISTRICT.

YES.

WHAT IS , ABSENT AN EXTENSION OF BENEFITS , WHAT IS THE MAXIMUM CLAIM?

THE MAXIMUM CLAIM IS 26 WEEKS .

WITHOUT EXTENDED BENEFITS?

IF THERE ARE EXTENDED BENEFITS, IT WOULD GO BEYOND 26 WEEKS, USUALLY 13 MORE WEEKS FOR EACH EXTENSION.

SO 26 WEEKS IS THE ?

THE MAXIMUM REGULATORY CLAIM. THAT DEPENDS UPON THE PERSON'S EARNING , THE MAXIMUM CLAIM. I CANNOT READ THIS AT THIS TIME, INTERPRET IT WHERE IT STANDS, BUT I WOULD LIKE TO FINISH UP BY SAYING THERE BASICALLY ISN'T A LOT OUT THERE , BUT THE CONCERN IS WE HAVE THE DINES AND THE SAVAGE OPINIONS ON THE BOOKS THAT BASICALLY SAY THAT A CLEAR EXPRESSION BY THE LEGISLATURE IS MERELY ADVISORY AND USELESS EXERCISE. A MEANINGLESS , A SERIES OF USELESS ACTS, A FAULTURE TO CLAIM IS AN ENTIRELY HARMLESS TECHNI CALITY . A NONESSENTIAL MODE OF PROCEEDING . IS IT IS ADDITIONAL OR DIRECT --

IT IS ADVISORY OR DIRECTORY ONLY. THE STATUTE SAYS IT IS CLEAR , IT IS MANDATORY AND IT SHOULD BE ENFORCED. THE RESOLUTION OF THAT CASE IS WHAT COMES FROM THIS PROCEEDING.

I THINK THE COURT UNDERSTANDS OUR POSITION. THE ONLY THING I REALLY CAN'T WANT TO ADD TO THIS AND I AM NOT GOING TO ADDRESS , IS THE COMMISSION FOLLOWING DINES OR DIDN'T FOLLOW DINES , I THINK I --

WHAT DO YOU MAKE OF THE LANGUAGE IN DINES THAT JUSTICE PARIENTE REFERRED TO EARLIER , IT FOLLOWS THE STATEMENT THAT IT MUST BE DEEMED TO BE ADVISORY OR DIRECTORY ONLY, BY SAYING IT IS ADMITTED PREJUDICE TO THE COMMISSION, SEEMS TO BE THAT CONTRADICTORY .

THE WAY I INTERPRET THAT IS AS WHAT WAS BEING REFERRED TO EARLIER, IS THAT THIS IS AN INDIVIDUAL WHO IS OTHERWISE ELIGIBLE , AS WAS THE CASE IN DINES , THE CASE IN SAVAGE, THE CASE HERE. MR. COSTARELL IS OTHERWISE ELIGIBLE FOR BENEFITS DURING THAT DEALS PERIOD. THE ONLY QUESTION IS WHETHER HE REPORTED , SO HOW DO I INTERPRET THAT LANGUAGE?

HOW DO WE KNOW HE IS OTHERWISE ELIGIBLE?

IT HAS JUST BEEN CONCEDED TO YOU THAT HE IS OTHERWISE ELIGIBLE.

HOW DO WE KNOW , UNLESS HE IS ACTIVELY SEARCHING FOR EMPLOYMENT AND BEING DE

NIED EMPLOYMENT, AND REPORTS THAT, HOW DO WE K NOW THAT HE IS DOING THAT, UNLESS HE REPORTS THAT HE IS DOING THAT?

WELL, GENE RALLY, I M IGH T AGREE WITH YOU .

BUT WE ARE LO OKING AT ANOTHER CASE WHERE MR . S MITH IS DENIED AND AEALS AND TWO WEEKS AFTER THE AEAL, EITHER A JOB, BUT UNDER YOUR INTERPRETATION OF THE STATUTE, HE WOULD CONTINUE TO GET UNEMPL OYMENT BENEFITS DURING THE PENDEN CY OF THE AEAL.

THAT SAME THING WOULD B E TRUE BUT NEVER EVEN REACH ED THE AEALS COU RT. IF HE IS IN THE FIRST CLA IMS PERIOD AND HE FILES ON WEEK ONE, AND THEN ON WEEK THREE HE GETS A JOB BUT H E DOES N'T NOTIFY .

THIS DISTRICT, THIS WAS A MATTER OF STATUTORY CONSTRUCTION . REALLY, IT IS A MATTER IF THERE IS NO PREJUD ICE TO THE COMMISSION, THEN, THIS I S NOT SOMETHING THAT WAS THERE.

FIRST THERE IS MAND ATORY , AND I DON'T WANT T O R UNAF OUL OF TIME. THE MAND ATORY LAN GUAGE FIRST STARTED AS DI CTUM IN H O L DING IN DINES. I THINK THE ANSWER , I TH I NK , WOULD BE , IT WOULD B E C LEARTO ALL OF US, I F THE THIRD DISTRICT HAD SAID WE F IND THAT THERE IS NO REQUIREMENT. IT DIDN'T SAY. THAT IT REFERR ED TO A REQUIREMENT . MY INTERPRETATION OF THAT LANGUAGE, IN L IGH T OF YOUR QUESTION, IS THAT , I F THERE WAS OR IF THERE WERE A STATUTORY REQUIREMENT , IT WOULDN'T BE ENFORCEABLE.

BUT THE HEAR T OF THAT GOES TO THE Q UESTION THAT YOUR OP PONENT WAS REPEAT ED LY ASKED -- REPEAT EDLY ASKED ABOUT WHY THE COMMISSION DIDN'T GIVE ADVOCACY TO THE THIRD DISTRICT'S OPINION, AND WHETHER IT WAS A MATTER OF EXPRESS CONSTRUCTION OF THE STATUTE OR A MATTER THAT THE PRO VISION COULD REASONABLY BE DEA LT WITH CASE BY CASE.

THERE ARE TWO AS PECT T O YOUR QUESTION. THE FIRST AS EFFECT IS WHAT DID THE -- THE FIRST AS PECT IS WHAT DID THE DEPARTMENT ADVISE THE LOWER COURTS , LOWER TRIBUNALS , AS RE LATES TO THE DINES CASE AND THE HOLDING OF THE THIRD, A ND IDON'T KNOW WHAT IT ADVISED. I THINK IF YOU HAVE A CONTRARY DECISION THAT IS OUT THERE, YOU NEED TO ADVISE WHATEVER TRIB UNAL Y OUARE BEFORE THAT THERE IS A CONTRARY DECISION, AND THAT IT IS DINEDING. BUT BEYOND THAT , I THINK THE OVER -- THAT IT IS B INDING. BUT BEYOND THAT , I THINK THE OVERALL QUESTION HERE IS WAS THE O VERALL READ ING OF THE STATUTE FULFILLED. READING THAT THE THIRD DISTRICT WERE CORRECT , YOU DON'T HAVE TO AGREE WITH THEIR RATIONALE BUT THE HOLDING IS CORRECT AND THE SECOND DISTRICT , W H ILE WELL-INTENTIONED, WAS NOT CORRECT. IN MY MIND , THE 2002 DECISION WAS SOMETHING THAT WASN'T CLEAR BEFORE, AND THIS GENTLEMAN AS IN DINES AND IN THE OTHER CASES BEFORE THIS COURT , THOSE PEOPLE, THE REQUIREMENT WAS THAT YOU HAVE GOT TO FILE BUT NOT NECESSARILY WHEN YOU ARE ON AEAL, PARTICULARLY BECAUSE THERE IS THE DINES AND THE SAVAGE CASE OUT THERE .

YOUR ADVANCED READING OF THE THIRD DISTRICT DECISION IS THE WAY THAT I HAVE READ IT , AND I SEE IT , IS THAT THEY ACKNOWLEDGE THAT THERE IS A FILING REQUIR EMENT , B UTTHAT THERE IS NO PROVISION IN THERE FOR WHAT HA ENS IF INITIALLY , THE COMMISSION DENIES YOUR CLAIM AND SAYS THAT YOU ARE NOT ELIGIBLE , TO BEGIN WITH , SO THAT THEY CONSTRUED THE FILING REQUIREMENT , S INCE IT HAD NO PROVISION ABOUT WHAT YOU ARE TO DO IF YOU HAVE BEEN INITIALLY DENIED AT THE OUTSET, THAT IT DOES NOT ALY IN THE CONTEXT OF WHERE YOU HAVE BEEN DENIEDAND NOW YOU ARE AEALING. IN A SENSE SAYING WHY S HOULD YOU CONTINUE TO FILE, IF YOU HAVE BEEN TOLD YOU ARE NOT GOING TO BE PA ID . IS THAT --

FIRST OF ALL MY TIME IS UP. MAY I AN SWER THE QUESTION?

CHIEF JUSTICE: YES .

LET THIRD DISTRICT -- WHAT THE THIRD DISTRICT HELD , I AM LOOKING AT DINES NOW, IT HELD THAT THE NONESSENTIAL MOTIVE ANDRIGHTS OF PROCEEDING, IT SAYS THE STATUTORY REQUIREMENT FOR THE FILING OF WEEKLY REPORTS, MUST BE DEEMED TO BE ADVISORY AND DIRECTORY ONLY. I DO NOT INTERPRET THAT A S BE ING THAT THERE IS A STATUTORY REQUIREMENT, BUTWE ALL HAVE TO FOLLOW T I INTERPRET IT AS SAYING ANY STATUTORY REQUIREMENT THATYOU HAVE TO DO THIS , IS UNENFORCEABLE, BECAUS E IT IS DIRECTORY ONLY OR IT I S HARMLESS OR SOMETHING L IKE.THAT I DO NOT SEE THE THIRD DISTRICT'S DECISION AS SAYING THAT THERE IS A STATUTORY REQUIREMENT, BUTYOU DON'T HAVE TO DO IT. I DON'T INTERPRET IT THAT WAY.

CHIEF JUSTICE: THANK YOU VERY MUCH, MR . SEPLER, A NDTHE COURT WANTS TO T HANK YOU IN PARTICULAR , BEC AUSE YOU UNDERTOOK THIS CASE PRO B ONO , IN THE FINE TRAD ITION OF THE FLORIDA BAR , AND I AM S URE THAT ANYBODY WAT CHING THIS TODAY , WOULD NOT BE ABLE T O TELL THE DIFFERENCE BET WEEN YOU BEING THE EXCELLENT ADVOCATE BEING PAID OR PRO BONO, SO WE THANK YOU VERY , VERY MUCH.

IT WAS A PLEASURE. THANK YOU.