

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**January 29, 2004**

Cornelia G. Clark  
Clerk of Court of Appeals

**NOTICE**

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

**Appeal No. 03-0107  
STATE OF WISCONSIN**

**Cir. Ct. No. 02CV000270**

**IN COURT OF APPEALS  
DISTRICT IV**

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**MICHAEL A. PHARO,**

**PLAINTIFF-APPELLANT,**

**v.**

**WISCONSIN DEPARTMENT OF LABOR & INDUSTRY REVIEW  
COMMISSION AND WISCONSIN DEPARTMENT OF  
WORKFORCE DEVELOPMENT,**

**DEFENDANTS-RESPONDENTS.**

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APPEAL from an order of the circuit court for Dane County:  
RICHARD J. CALLAWAY, Judge. *Affirmed.*

Before Deininger, P.J., Dykman and Higginbotham, JJ.

¶1 PER CURIAM. Michael Pharo appeals from an order affirming a decision by the Labor and Industry Review Commission that holds him personally responsible for a corporation's unemployment compensation taxes. The issue is

whether the commission had the authority to apply statutory amendments that became effective in 1998 to conduct that occurred before that date. We conclude it did and affirm.

¶2 The commission determined that Pharo is personally liable for unemployment compensation taxes that should have been paid by Protective Services, Inc. from 1991 to 1993. That determination was made using standards provided in WIS. STAT. § 108.22(9) (2001-02).<sup>1</sup> That statute was amended by 1997 Wis. Act 39, § 149. Pharo argues that the commission should have applied the standards that existed before that amendment because the commission did not have the authority to apply the new statute to conduct that occurred before the amendment. Pharo's argument raises a question of statutory interpretation. Although there are a variety of standards of review that may apply to statutory interpretation in the context of administrative decisions, we need not choose one in this case because our decision would be the same under all of them.

¶3 The act that amended the statute provides the following regarding the effective date of the amendments: "The treatment of section 108.22(9) of the statutes first applies with respect to determinations issued under section 108.10 of the statutes on the effective date of this subsection." 1997 Wis. Act 39, § 165(8). The effective date was January 4, 1998. The key part of this language is that the amendments apply to "determinations issued" under WIS. STAT. § 108.10 after the effective date. It does not say that the amendments apply to "liabilities accruing" or "conduct occurring" after that date. Rather, the focus is on the date of the

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2001-02 version unless otherwise noted.

determination. The legislature no doubt was aware that determinations issued immediately after that effective date would necessarily involve liabilities and facts that occurred before the effective date. Therefore, the legislature's intent, as demonstrated in this provision, was for the amendments to be applied to facts that occurred before the effective date. Pharo does not raise any constitutional or other claims as to the legislature's ability to have the statute apply to determinations regardless of when the underlying conduct occurred.

¶4 In this case, the department's first determination under WIS. STAT. § 108.10(1) that Pharo was personally liable for the taxes payable by Protective Services, Inc., was issued in June 1999. That was well after the effective date of the amendments. Accordingly, the department and commission properly applied the current version of WIS. STAT. § 108.22(9) to the facts before it, regardless of when those facts occurred.

*By the Court.*—Order affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5.

