

BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

In the Matter of:

LAWRENCE L. GOLDMAN
(Claimant)

DEPARTMENT OF HUMAN
RESOURCES DEVELOPMENT

PRECEDENT
BENEFIT DECISION
No. P-B-156
Case No. 73-2476

The Department appealed from Referee's Decision No. BK-21202 which held the claimant was not ineligible for benefits under Unemployment Insurance Code section 1277.

STATEMENT OF FACTS

The claimant had had a prior claim with a benefit year beginning in November 1971. He exhausted this claim and, effective November 26, 1972, filed a new claim for benefits with the Department. The Department held that the claimant did not meet the requirements of section 1277 of the code as he had not had "some work" during the period between November 28, 1971 and November 27, 1972.

The claimant is a writer. He has written novels and short stories for motion pictures and television, resumes for individuals, and he has also conducted correspondence courses, ghosted books for others and assisted in writing technical articles.

During the 12-month period following November 28, 1971, the claimant was paid residual wages for television scripts and his earnings were in excess of \$750. He was not employed in an employee-employer relationship between November 28, 1971 through November 27, 1972. During that time he completed a novel and received an advance from a publisher in November 1972. He also worked on a "treatment" (outline) for a television movie-of-the-week. The treatment was not accepted by a television producer, but a contract was given him by a publisher to write a novel based on the treatment. He received this contract in April 1972 and thereafter worked on the novel to reduce it to final form.

The claimant had never considered himself as an employee when writing novels or treatments which he attempted to sell after they were completed.

It was the Department's position that the claimant's work was in self-employment, and therefore he did not meet the "some work" requirement of section 1277 of the code.

REASONS FOR DECISION

Section 1277 of the California Unemployment Insurance Code prior to January 1972 provided as follows:

"Wages paid prior to the filing of a valid claim and not used in the computation of the award may be used for the purpose of computing the amount of any other award only if within the 12-month period following the date of the filing of the valid claim the individual was paid sufficient wages to meet the eligibility requirement under Section 1281. For the purpose of this section only the term 'wages' includes any and all compensation for personal services performed as an employee for the purpose of meeting the eligibility requirement under Section 1281. This section is not applicable to the computation of an award for disability benefits but the establishment of a valid claim for disability benefits shall not constitute a valid claim for unemployment compensation benefits unless the claimant has sufficient wages to entitle the claimant to an award under this section."

The State Legislature in 1971 amended section 1277 of the code to be effective January 1, 1972, by inserting, following "Section 1281" in the first sentence, the words "and had some work"; and substituted, following "claimant" in the last sentence, "was paid sufficient wages and performed some work to entitle the claimant" for "has sufficient wages to entitle the claimant."

Although section 1277 was further amended during the 1972 session of the legislature, the statute in effect at the time the claimant filed his claim for benefits in 1972 is as set forth above.

The amendments to section 1277 which required a claimant to have some work during the 12-month period following the date of a previous valid claim were necessary to conform to portions of the Federal Unemployment Tax Act as set forth in Public Law 91-373, passed by the 91st Congress and approved August 10, 1970.

Section 121(a)(7) of Public Law 91-373 is as follows:

"(a) Section 3304(a) of the Internal Revenue Code of 1954 is amended by inserting after paragraph (6) (added by section 104(a) of this Act) the following new paragraphs:

"(7) an individual who has received compensation during his benefit year is required to have had work since the beginning of such year in order to qualify for compensation in his next benefit year;"

Section 121 (10)(b) further provided the amendments made by subsection (a) should take effect January 1, 1972 and would apply to the taxable year 1972 and taxable years thereafter.

Neither the federal statutes nor the state statutes define the "work" requirement. However, the United States Department of Labor in manual instructions to the states sets forth the federal interpretation of "work" as follows:

". . . 'work' means the performance of services for which remuneration is payable. Accordingly, an individual who received benefits during a benefit year must perform services for remuneration after the beginning of that year as a condition for receiving benefits in a second benefit year. Remuneration received after the beginning of a benefit year for service prior to that year cannot be used to satisfy the requalifying requirement. Disability benefits, vacation pay, separation pay or back pay would not meet the definition of 'work' since none of these is remuneration for services performed. Report-in or stand-by pay would meet the definition since reporting for work or holding oneself in readiness to work for one's employer is considered performing service. These are examples, and merely illustrative rather than exhaustive of the kinds of remuneration which may fall within or without the definition of 'work.'"

The above interpretation of "work" furnished some basis for determining when the "some work" requirement under section 1277 was met by a claimant. In order to implement, interpret and make specific the "work" requirement in respect to section 1277, the Department adopted regulation 1277-2(a), Title 22, California Administrative Code, effective May 13, 1973 which reads as follows:

"'Work' means services performed by a person for remuneration under a bona fide contract with and payable by another person, including any employing unit, and includes services performed for income or earnings in self-employment, or as an employee as defined by Section 621 of the code, or as an independent contractor for a principal, or as an employee under the usual common law or admiralty rules regardless of whether the services are in 'employment' under the code."

In order for the claimant in the present matter to be entitled to a valid claim for benefits, the facts must show he was paid sufficient wages to meet the eligibility requirement of subdivision (a) of section 1281 and had some work during the 12-month period following November 28, 1971.

Section 1281(a) of the code provides as follows:

"An individual cannot establish a valid claim or a benefit year during which any benefits are payable unless he has during his base period been paid wages for employment by employers of not less than seven hundred fifty dollars (\$750)."

The eligibility requirement of section 1281(a) is satisfied in this matter as the claimant was paid wages in excess of \$750 during the 12-month period following November 28, 1971. The main question is whether the claimant's efforts of writing novels or treatments during the period in question satisfied the "some work" requirement. It is apparent the claimant did not work for an employer in an employer-employee relationship between November 28, 1971 and November 27, 1972. In our opinion, the claimant was engaged in self-employment during the period in question.

Self-employment generally means a person is earning income from one's own business, trade or profession rather than as a specified salary or wages from an employer. The term "work" as used in the Federal

Unemployment Tax Act, Public Law 91-373 section 121(a)(7), and section 1277 of the code, does not specify that such "work" need be in an employee-employer relationship. Section 1277 does require that wages to satisfy the requirement under section 1281 of the code be for services performed as an employee. Had the legislature intended to limit "some work" to that in an employment relationship, it could have easily so provided by adding "as an employee" after "some work." The logical conclusion to be reached is that the legislature did not intend that "some work" be limited to "as an employee." Consequently, any type of work for which remuneration could be expected would satisfy the "some work" requirement of section 1277.

The Department's regulation 1277-2 which was adapted to implement and interpret the "work" requirement of section 1277 included self-employment. We believe this was a correct interpretation and, in line with our reasoning above, hold "self-employment" does satisfy the "some work" requirement of section 1277.

Accordingly, we conclude the claimant met the requirement of establishing a valid claim for benefits effective November 26, 1972 under section 1277 of the code.

DECISION

The decision of the referee is affirmed. The claimant is not ineligible for benefits under section 1277 of the code. Benefits are payable if the claimant is otherwise eligible.

Sacramento, California, October 30, 1973.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

ROBERT W. SIGG, Chairman

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