

BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

In the Matter of:

DAVID CLARK
(Claimant)

EMPLOYMENT DEVELOPMENT DEPARTMENT

PRECEDENT
BENEFIT DECISION
No. P-B-433
Case No. 82-6235

Office of Appeals No. SF 22794

The Department appealed from the decision of the Administrative Law Judge which held that the claimant had purged a disqualification assessed under section 1256 of the Unemployment Insurance Code.

STATEMENT OF FACTS

The claimant filed a new claim effective July 5, 1981, after having been terminated from employment from Safeway Stores, Inc., on June 18, 1981. The Department determined that the claimant was not disqualified from receiving unemployment insurance benefits under section 1256 of the code and it commenced paying benefits to the claimant through the week ending September 26, 1981.

During that period of time the employer, Safeway Stores, Inc., appealed the Department's determination and ruling. Following a hearing an Administrative Law Judge issued a decision on November 17, 1981, in which the Department's determination and ruling were affirmed. The employer filed a timely appeal of that decision to the Appeals Board.

On March 2, 1982, the Appeals Board issued its decision reversing the Administrative Law Judge's derision. It held that the claimant's actions constituted misconduct under section 1256 of the Code, and relieved the employer's reserve account under the provisions of subsection (b) of section 1335 of the code.

In the meantime the claimant had obtained work with another employer on September 26, 1981. He was laid off by this employer on January 31, 1982, and he reopened his claim for unemployment insurance benefits effective February 14, 1982. The Department paid benefits to the claimant until it received the Appeals Board's decision of March 2, 1982. At that juncture the Department stopped paying benefits to the claimant on the rationale that he had been disqualified from receiving benefits during the week beginning February 28, 1982, by virtue of the Appeals Board's decision of March 2, 1982.

It is the Department's position that any wages used by the claimant to purge the disqualification imposed during the week of February 28, 1982, must be earned in bona fide employment after that date.

REASONS FOR DECISION

Section 1260(a) of the Unemployment Insurance Code provides as follows:

"An individual disqualified under Section 1256, under a determination transmitted to him by the department, is ineligible to receive unemployment compensation benefits for the week in which the act that causes his disqualification occurs and continuing until he has, subsequent to the act that causes disqualification and his registration for work, performed service in bona fide employment for which remuneration is received equal to or in excess of five (5) times his weekly benefit amount."

Section 1260(a)-1, Title 22, California Administrative Code, provides in part that:

"This section interprets subdivision (a) of Section 1260 of the code which provides for a purge of a disqualification under Section 1256 of the code if a disqualified individual, after the act causing disqualification, performed service in bona fide employment for which remuneration is received equal to or in excess of five times his or her weekly benefit amount. . . ."

The plain language of both the statute and the regulation interpreting the statute does not sustain the Department's contention in this matter. Both sections refer to the act giving rise to a disqualification. In section 1260(a) of the code the ineligibility continues until the claimant has, subsequent to the act, earned wages in bona fide employment in an amount sufficient to satisfy the code requirement.

The regulation interpreting the code section provides for a purge of the disqualification if the requisite wages are earned after the act causing the disqualification. With respect to the case before us, the only act that is relevant to the issue is the discharge of the claimant (and, perforce, the underlying circumstances) from his employment with Safeway Stores, Inc.

We do not agree that the operation of section 1335 of the Unemployment Insurance Code in double affirmation cases transforms the date of the occurrence of the act leading to disqualification from the week in which it in fact occurred to the week in which the Appeals Board issued its decision. The plain meaning of the language in the aforementioned code sections is not made ambiguous by application of the double affirmation rule. Since the language is not ambiguous, it does not lend itself to the interpretation given it by the Department.

We therefore conclude that the "act causing disqualification" cited in section 1260 of the code has reference to the week in which the act occurred, and not to the week in which a final decision adverse to the claimant is issued by the Appeals Board.

DECISION

The decision of the Administrative Law Judge is affirmed. The disqualification is purged under section 1260 of the code. Benefits are payable provided the claimant is otherwise eligible.

Sacramento, California, July 26, 1983.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

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