

BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

THIS DECISION DESIGNATES FORMER BENEFIT
DECISION NO. 6765 AS A PRECEDENT
DECISION PURSUANT TO SECTION
409 OF THE UNEMPLOYMENT
INSURANCE CODE

In the Matter of:

JOHN ZUANICH
(Claimant-Appellant)

PRECEDENT
BENEFIT DECISION
No. P-B-355

MLADENKO GRGAS-CICE AND OTHERS
(Claimants-Appellants)
(See Appendix)
[Appendix removed in accordance
with California Code of Regulations,
title 22, section 5109(e)]

FORMERLY BENEFIT DECISION No. 6765
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SAMUEL J. BOLOGNA AND OTHERS
(Claimants-Appellants)
(See Appendix)
[Appendix removed in accordance
with California Code of Regulations,
title 22, section 5109(e)]

The claimants appealed from Referee's Decisions Nos. LB-17748, LB-17319 et al., and LB-17317 et al. (see Appendix)[Appendix removed in accordance with California Code of Regulations, title 22, section 5109(e)], which held them ineligible for benefits under sections 1252.1 and 1252.2 of the Unemployment Insurance Code. No appeal was taken from Referee's Decisions Nos. LB-17982 and LB-17983.

The appeals are interrelated and present a common issue of law. There appearing no prejudice will result to any of the claimants, the appeals are consolidated for decision pursuant to section 5071, Title 22, California Administrative Code.

STATEMENT OF FACTS

All claimants herein are commercial fishermen operating out of the greater Los Angeles harbor area. The workweek for commercial fishing purposes is six days for those vessels engaged in fishing in local waters. For those vessels whose cruises take them beyond the continental limits of the United States, the workweek is seven days.

Claimants Dinko Obuljen, Vieko Obuljen and Gregas-Cice were crew members of the boat "City of Los Angeles." During the week ending December 12, 1964 their boat was tied up for repairs. Saturday night, December 12, the skipper telephoned the above claimants and requested them to report to the boat Monday morning, December 14, at 8 o'clock. Upon reporting as instructed, they were advised of their termination and they immediately removed their gear.

The claimants Bologna, Braskovich, Evich, Greget, Kordich, Krokes, Mardesich, Mariani and Smaljan represented the entire crew of the boat "Cape Cleare."

On Saturday, December 5, the skipper, who was also the owner, entered into negotiations for the sale of the boat. The arrangements were made and the price established orally that night. On Tuesday, December 8, all necessary documentary evidence of the sale was completed and the ownership and possession of the boat were transferred. The crew at that time, with but one exception, were advised of the transfer of the boat and the termination of their services. All claimants had removed their gear by Wednesday, December 9, 1964.

Claimant Zuanich was a crew member of the boat "Jo Ann." Monday, January 11, 1965, he was informed of the termination of the fishing season and that he was no longer attached to the boat. He reported to the department on that date to claim benefits for the prior week and immediately returned to the boat to obtain his gear, which he then removed.

None of the claimants above secured a berth on any other boat throughout the balance of the respective benefit week in question. The claimants did not engage in any fishing during any part of the week and were in receipt of no earnings with respect to such week.

In each instance the department considered the claimants' eligibility for benefits under the provisions of either section 1252.1 or 1252.2 of the code, and in each instance denied the claimants benefits.

The claimants contend that their eligibility for benefits should be determined under section 1252 or 1279.

REASONS FOR DECISION

The department has positioned its denial of benefits on the claimants' failure to satisfy all of the provisions of either section 1252.1 or 1252.2. Citing Benefit Decisions Nos. 6752, 64-2231 and 64-2232, it is urged that as commercial fishermen the claimants' entitlement to benefits may be established only within the purview of such sections.

The claimants do not deny that as commercial fishermen their eligibility must be established within the limitations of the above sections. They contend, however, that for the weeks in question their eligibility should be considered as unemployed individuals under section 1252 or 1279 of the code, and distinguish the facts presented by the instant appeals from those presented in the cases cited by the department.

A review of the above cases indicates that each of the claimants involved therein, although unemployed insofar as a rendition of services may be concerned, were nevertheless continuously commercial fishermen. Each claimant had voluntarily left his employment as a member of a crew to accept employment as a member of a crew on another vessel. The claimants herein, however, were members of a crew for only a portion of, and during the first part of, a normal workweek. Their unemployment resulted from the sale of the vessels to which they had been attached, or because the fishing season had ended.

Section 1252.1 of the code provides:

"1252.1. With respect to individuals hired as commercial fishermen a 'totally unemployed individual' means an individual who, during a particular week, while still attached to his employer from the standpoint that there did not occur any severance of the employer-employee relationship,

earned no wages and performed no services because his employer's boat was tied up for one or more of the following reasons:

- "(a) Inclement weather.
- "(b) Absence of fish in fishable waters.
- "(c) Lack of orders for fish from buyers.
- "(d) Boat is laid up for repairs."

Section 1252.2 of the code provides:

"1252.2. With respect to individuals hired as commercial fishermen a 'partially unemployed individual' means an individual who, during a particular week:

- "(a) Earned less than his weekly benefit amount;
- "(b) Was employed by his regular employer in the act of catching or attempting to catch fish;
- "(c) Was during such week continuously attached to his employer from the standpoint that there did not occur any severance of the employer-employee relationship; and
- "(d) (1) Worked less than normal customary full-time hours or full number of days per week for such regular employer because of lack of full-time work, or
- "(2) If normal customary full-time hours or full number of days per week are not determinable, he worked less than four (4) days during a payroll week for such regular employer because of lack of full-time work."

A literal reading of the preface of each provision emphasizes the necessity of being a commercial fisherman. Each section specifically sets forth the eligibility of commercial fishermen.

Sections 1252.1-1 and 1252.2-1, Title 22 of the California Administrative Code define commercial fishermen as individuals who are members of a crew of a vessel engaged in the capture of fish for sale and not in pleasure or sport fishing.

The claimants, therefore, may be commercial fishermen only so long as they are actually engaged or attached to a fishing boat or are members of a fishing crew (Benefit Decision No. 5295). The facts presented in Benefit Decision No. 5295 are dissimilar to the extent that the fishing fleet was involved in a trade dispute. It had commenced approximately December 1947. On January 19, 1948, however, the boat to which the claimant therein had been attached was sold and the crew terminated. In finding the claimant purged of the trade dispute we also found him, effective January 19, an unemployed individual. We stated:

". . . The sale of the vessel was therefore a factor intervening between the trade dispute and the claimant's unemployment subsequent to such sale with sufficient effect to sever the direct causal connection between the two. Accordingly, it relieves the claimant of the disqualification from benefits under Section 56(a) to which he was theretofore subject.

". . . The claimant was a crew member of a specific vessel, and that vessel was the 'establishment in which he was employed' within the meaning of Section 56(a). The locale of 'his work' was the Golden Gate, not the San Pedro waterfront; his employer was the owner of that boat, not the San Pedro fishing industry or an organization of fishing boat owners. . . ."

While the issue in Benefit Decision No. 5295 was the claimant's eligibility under the trade dispute provisions of the code, nevertheless, the rationale of the termination of employment is equally applicable to the claimants herein. Although claimant Zuanich was laid off, whether the separation occurred because of a layoff or because the boat was sold, the net result is identical. As of the date of termination, the claimants were no longer attached to any boat nor were they members of any crew. Thus they are, as of such date, no longer within the definition of commercial fishermen despite their experience or potential future employment. Their eligibility, therefore, must be determined within the meaning of section 1252 or 1279 of the code as unemployed individuals.

Section 1252 of the code provides:

"1252. An individual is 'unemployed' in any week during which he performs no services and with respect to which no wages are payable to him, or in any week of less than full-time work if the wages payable to him with respect to that week are less than his weekly benefit amount. . . ."

It is clear from the facts presented herein that none of the claimants had any earnings for the particular week in question. None of the claimants performed any services. In each instance, therefore, the claimants would be unemployed individuals within the meaning of section 1252 of the code and would be entitled to an eligibility determination as such.

DECISION

The decisions of the referees are reversed. The claimants' eligibility for benefits for the respective weeks in question shall be determined pursuant to the provisions of section 1252 of the Unemployment Insurance Code.

Sacramento, California, June 4, 1965.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

GERALD F. MAHER, Chairman

LOWELL NELSON

NORMAN J. GATZERT

Pursuant to section 409 of the Unemployment Insurance Code, the above Benefit Decision No. 6765 is hereby designated as Precedent Decision No. P-B-355.

Sacramento, California, June 2, 1977.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

DON BLEWETT, Chairperson

MARILYN H. GRACE

CARL A. BRITSCHGI

HARRY K. GRAFE

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