BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

In the Matter of:

JAMES ARTHUR ANDERSON
(Claimant-Appellant)

PRECEDENT
BENEFIT DECISION
P-B-1

The claimant appealed from Referee's Decision No. S-11688 which held him ineligible for unemployment benefits commencing June 25, 1967 under the provisions of section 1253(c) of the Unemployment Insurance Code on the ground that he was not available for work. The claimant was granted permission to submit written argument; however, none has been received by this board.

STATEMENT OF FACTS

The claimant is a construction laborer and a member of the construction laborers union in Oroville. The major employers of construction laborers in the Oroville area require that such employees be available for work on three shifts: the day shift, the night shift, and the swing shift.

The claimant is a member of the Seventh-Day Adventist Church and has always conformed to the tenets of that church which prohibits work from sunset Friday through sunset Saturday. Members of this faith observe this period as the Sabbath. Because of his religious beliefs the claimant will accept work only on the day shift, Monday through Friday. Insofar as the record shows, the claimant imposes no other restrictions on acceptable work. In addition to his experience as a construction laborer, the claimant has worked as a hospital orderly. The tenets of his church do not restrict the administering of aid to the sick or disabled and as a hospital orderly the claimant may, within the precepts of his religion, work any hours. All of the claimant's experience as construction laborer has been gained by working during the daytime hours. Subsequent to filing his claim and prior to the referee's hearing, the claimant obtained work as a construction laborer on the day shift for a period of in excess of three weeks.

The Department of Employment held the claimant not available for work because it considered his restriction to daytime work only significantly reduced the possibilities of his obtaining employment because it eliminated two of the three shifts on which construction laborers are employed.

REASONS FOR DECISION

Section 1253(c) of the Unemployment Insurance Code provides in pertinent part that an unemployed individual is eligible for benefits with respect to any week only if he was available for work during that week.

In this case the claimant, because of his religious principles, imposes a restriction on acceptable work which does, in fact, eliminate a certain portion of the labor market. However, this restriction does not eliminate any part of the labor market for hospital orderlies, an occupation in which the claimant has had experience. Nor does it eliminate the possibility of the claimant obtaining work as a construction laborer as shown by the facts that all of his work experience as a construction laborer has been obtained during the day shift, and that during a part of the period involved in this appeal he has been employed.

We believe the facts in this case are distinguishable from those which we considered in Benefit Decisions Nos. 1304, 4669 and 6418.

In Benefit Decision No. 1304, the claimant was a member of the Seventh-Day Adventist Church and would not accept work on Friday night or Saturday. She also refused to accept work as a presser for which a large labor market existed. We held in that case that her religious beliefs alone did not render the claimant unavailable for work, but these beliefs coupled with other restrictions imposed by the claimant on acceptable work did materially reduce the possibilities of her obtaining employment. We concluded the claimant was not available for work.

In Benefit Decision No. 4669, we again considered the eligibility of a member of the Seventh-Day Adventist Church. In that case the claimant moved from San Francisco where she was employed, to Oroville where most of the employers in her occupational fields required Saturday work. We held that the claimant's move from the large metropolitan area where she had been employed together with her restrictions on acceptable work because of her religious beliefs rendered her not available for work.

In Benefit Decision No. 6418, the claimant's religious beliefs prohibited her performance of work from sundown Friday to sundown Saturday. There was no showing that a labor market existed for a claimant who imposed such a restriction. We held the claimant did not meet the availability requirements of the code. In that decision, we stated:

> "Under the principles previously adopted by this Appeals Board as set forth above, the claimant's unwillingness to accept work on Saturday because of religious belief would not in itself render the claimant unavailable for work under the code. We recognize the right of the claimant to maintain her religious convictions and realize that there are many situations where such convictions would not affect the employment opportunities of a claimant. However, each case must be considered under the circumstances surrounding that particular situation."

The Supreme Court of the United States in Sherbert v. Verner (1963), 374 U.S. 398, 10 L. Ed. 2d 965; 83 S. Ct. 1790, considered a case with facts similar to those in the instant matter. In that case the claimant was a Seventh-Day Adventist and refused to accept employment which would require her to work on Saturdays. On the basis of her religious belief, the South Carolina Agency held her not available for work, and the South Carolina Supreme Court affirmed the denial of benefits. In reversing the judgment of the State Court, the Supreme Court of the United States stated:

> "We turn first to the question whether the disqualification for benefits imposes any burden on the free exercise of appellant's religion. We think it is clear that it does. In a sense the consequences of such a disqualification to religious principles and practices may be only an indirect result of welfare legislation within the State's general competence to enact; it is true that no criminal sanctions directly compel appellant to work a six-day week. But this is only the beginning, not the end of our inquiry. For '(i)f the purpose or effect of a law is to impede the observance of one or all religions or is to discriminate invidiously between religions, that law is constitutionally invalid even though the burden may be characterized as being only indirect.' .(Citation omitted) .Here not only is it apparent that appellant's declared ineligibility for benefits derives solely from the practice of her religion, but the pressure upon her to forego that practice is unmistakable. The ruling forces her to choose between following the precepts of her religion and forfeiting benefits, on the one hand, and abandoning one of the precepts of her religion in order to accept work, on the other hand. Governmental imposition of such a choice puts the same kind of

burden upon the free exercise of religion as would a fine imposed against appellant for her Saturday worship."

* * *

"In holding as we do, plainly we are not fostering the 'establishment' of the Seventh-day Adventist religion in South Carolina, for the extension of unemployment benefits to Sabbatarians in common with Sunday worshippers reflects nothing more than the governmental obligation of neutrality in the face of religious differences, and does not represent that involvement of religious with secular institutions which it is the object of the Establishment Clause to forestall. (Citation omitted) Nor does the recognition of the appellant's right to unemployment benefits under the state statute serve to abridge any other person's religious liberties. Nor do we, by our decision today, declare the existence of a constitutional right to unemployment benefits on the part of all persons whose religious convictions are the cause of their unemployment. This is not a case in which an employee's religious convictions serve to make him a nonproductive member of society. See note 2, supra: '. . . The record indicates that of the 150 or more Seventh-day Adventists in the Spartanburg area, only appellant and one other have been unable to find suitable non-Saturday employment.' Finally, nothing we say today constrains the States to adopt any particular form or scheme of unemployment compensation. Our holding today is only that South Carolina may not constitutionally apply the eligibility provisions so as to constrain a worker to abandon his religious convictions respecting the day of rest."

It is clear that within the principles expressed in our prior decisions, the restriction on acceptable work imposed by the claimant because of his religious convictions did not render the claimant unavailable for work. There remained a labor market for his services in which he could reasonably expect to obtain employment. We expressly refrain from deciding in this case, as did the court in Sherbert v. Verner, supra, whether a restriction imposed for religious reasons which would effectively preclude all opportunities for employment should result in ineligibility for benefits under the Unemployment Insurance Code. The claimant's restriction herein did not serve to make him a non-productive member of society.

DECISION

The decision of the referee is reversed. The claimant is not ineligible for benefits under section 1253(c) of the code.

Sacramento, California, December 15, 1967.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

GERALD F. MAHER, Chairman

LOWELL NELSON

CLAUDE MINARD

ROBERT W. SIGG

JOHN B. WEISS