

BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

In the Matter of:

AURELIA TURKO
(Claimant)

PRECEDENT
BENEFIT DECISION
No. P-B-109
Case No. 70-3182

The claimant appealed from consolidated Referee's Decision Nos. SF-16461 and SF-16645 which held that the claimant was not entitled to retraining benefits under section 1266 of the Unemployment Insurance Code and that she was unavailable for work and ineligible for regular benefits under section 1253(c) of the code.

STATEMENT OF FACTS

The claimant last worked as a teletype operator for a large corporation in San Francisco. She worked 40 hours per week at a salary of \$425 per month. The employer reorganized its activities and placed all the teletype operators at one location. The reorganization eliminated the claimant's job and she was laid off for lack of work.

The claimant believed that teletype operator was a vanishing occupation. She decided to retrain herself as a computer programmer. She enrolled in a school for that purpose. She attended school from 9 a.m. to 1 p.m. each day, Monday through Friday. The claimant's daytime school attendance eliminated about 80 percent of her labor market as a teletype operator.

The claimant has a secondary skill as a general clerk. She does not like that type of work and has not been seeking a position in that field. Because of her daytime school attendance her labor market as a general clerk is reduced about 75 percent.

The occupation of teletype operator is not a vanishing occupation. It is what is referred to as an "in balance" occupation. That means the

requirement for teletype operators in the San Francisco area, which is the claimant's labor market, is neither increasing nor decreasing. There is a substantial labor market for the claimant in her secondary occupation of general clerk.

REASONS FOR DECISION

Section 1266 of the California Unemployment Insurance Code states that since experience shows many individuals find competition for jobs difficult because of advancement in technological improvements and automation and relocation in our economy, it is the policy of the state to provide unemployment compensation benefits during a period of retraining for other types of work.

Section 1269 of the code provides, in pertinent part, that an unemployed individual is potentially eligible for retraining benefits only where reasonable employment opportunities for which the unemployed individual is fitted by training and experience do not exist or have substantially diminished in the labor market area in this state in which she is claiming benefits.

Before an individual can be found potentially eligible for benefits during a period of retraining, all the conditions imposed by section 1269 of the code must be satisfied. Further, these conditions must be construed in a manner which will conform with the public policy as stated in section 1266 of the code. Thus, in applying the first condition of section 1269 of the code, the one pertinent to the present case, it must be shown that reasonable employment opportunities for which the unemployed individual is fitted by training and experience do not exist or have substantially diminished in the labor market area in this state in which he is claiming benefits because his ability to compete for jobs in the labor market is impaired by advancement in technological improvements and the widespread effects of automation and relocation in our economy.

These views are in accordance with an opinion of the Attorney General of the state which was given to the Director of Employment under the date of December 6, 1967. In that opinion the Attorney General stated:

". . . While no cases have been found in which the sections [1266 and 1269] were considered, this office¹ did render one opinion concerning the retraining benefit provisions. 39 Ops. Cal. Atty. Gen. 205, 207. The specific issue presented

here was not considered therein, but we did discuss the purposes of the statutory provisions as follows:

"It should be noted, however, that if reasonable employment opportunities do exist for which an unemployed individual is fitted by training or experience, he would not be eligible for retraining either in a course relating to an entirely new skill or trade or in a course relating to advanced techniques in his present skill or trade. In such a situation, the only purpose for retraining would be to increase the individual's skills, probably for the purpose of securing better paid employment. This would be beyond the scope and purpose of the statute.'

* * *

"It has been pointed out, however, that the specific causes of unemployment referred to in section 1266 are general economic influences which have some effect upon every segment of the labor force. Nevertheless, the Legislature stated in section 1266 that it was the policy of the state to assist 'such individuals' meaning those whose employment opportunities have decreased because of 'technological improvements and the widespread effects of automation and relocation in our economy.' The Legislature thereby indicated that it was entering a new area with some caution rather than intending to provide retraining benefits in the broadest possible number of situations. In this connection, it is interesting to compare the provisions of the 1962 Federal Manpower Development and Training Act with the 1961 California statutes. 42 USC sections 2571 and 2582 indicate an intent to provide retraining benefits to far more individuals than are covered by the state provisions.

"After considering the declaration of state policy in section 1266, the distinction between the language used in the California and Federal Statutes and the fact that retraining benefits constituted an extension of unemployment benefits, we conclude, as did the Appeals Board that section 1269 subsection (a) should be read in conjunction with and in a manner designed to carry out the legislative policy set forth in section 1266."

We considered eligibility for retraining benefits in Benefit Decisions Nos. 6675 and 6693. In those cases we held that there must be a definite showing that there was a substantial diminution in the labor market area in the field which the claimant is fitted to continue work before a conclusion may be

drawn that retraining benefits are appropriate. We reaffirm those cases. The claimant's occupation as a teletype operator is in balance. There has not been a substantial reduction of jobs in that skill in the claimant's labor market. At the present time the claimant is ineligible for retraining benefits under the provisions of sections 1266 and 1269 of the code.

Section 1253(c) of the code provides that a claimant is eligible to receive benefits with respect to any week only if he was able to work and available for work for that week.

We have consistently held that a claimant is available for work if he is ready, willing and able to accept suitable employment in a labor market where there is an adequate demand for his services and without undue restrictions on acceptable work, either self-imposed or created by force of circumstances.

Because of her school attendance the claimant herein is unavailable for work during a substantial portion of each of the days during her normal workweek. As a result, approximately 80 percent of her labor market as a teletype operator and 75 percent of her labor market as a general clerk are eliminated. Under such circumstances, she cannot be considered available for work under our definition of the term and is therefore ineligible for regular benefits under the provisions of section 1253(c) of the code.

The claimant's hourly restrictions to attend school are self-imposed and could be removed at any time. However, our holding as to her availability for work is only effective up to the date of the referee hearing, which was June 22, 1970.

DECISION

The decision of the referee is affirmed. The claimant is not eligible for retraining benefits under sections 1266 and 1269(a) of the code. The claimant, prior to June 22, 1970, the date of the referee hearing, is also ineligible for regular unemployment insurance benefits under the provisions of section 1253(c) of the code.

Sacramento, California, July 5, 1971.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

ROBERT W. SIGG, Chairman

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