

BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

In the Matter of:

HUBERT GILLES
(Claimant)

DEPARTMENT OF HUMAN
RESOURCES DEVELOPMENT

PRECEDENT
BENEFIT DECISION
No. P-B-113
Case No. 71-898

The Department appealed from Referee's Decision No. LB-4986 which waived an overpayment in the amount of \$845 under the provisions of section 1375 of the Unemployment Insurance Code. We have considered the Department's written argument.

STATEMENT OF FACTS

The claimant last worked as a hand mill operator for the Smith Tool Company in Compton, California. He was discharged from this employment on June 19, 1970. The employer contended that the claimant was discharged for an excessive amount of poor work and continually remaining away from his work station despite numerous verbal warnings. The claimant attributed his absences from his work station and poor performance to a varicose vein condition in one of his legs. The Department, after considering the matter, issued a determination holding that the claimant was discharged for reasons other than misconduct and not disqualified for unemployment benefits. The employer appealed.

The Department commenced paying the claimant benefits but issued him a notice which read as follows:

"An appeal has been filed from the local office, or referee, decision holding you eligible for unemployment insurance benefits. This Department will continue to pay these benefits to you, pending the result of the appeal. However, if the referee, or the Unemployment Insurance Appeals Board, finds that you are not eligible, you will have to repay these benefits to the Department."

In due course the employer's appeal to a referee came on for a hearing, and on October 22, 1970 the referee issued a decision based upon substantially the same facts holding that the claimant was discharged for misconduct connected with his work and disqualified for benefits under section 1256 of the code.

On October 27, 1970, after receipt of the referee's decision, the Department notified the claimant that he had been overpaid benefits in the amount of \$845 and was liable for the repayment thereof. The claimant appealed the notice of overpayment to a referee. He also appealed the referee's decision on the termination issue, which brought about the overpayment notice, to this board.

On December 3, 1970 we affirmed the referee's decision holding that the claimant had been discharged for misconduct connected with his most recent work. On January 14, 1971 a referee's decision was issued holding that the overpayment set up against the claimant should be waived. The waiver issue is now before us.

REASONS FOR DECISION

The California Legislature in enacting the Unemployment Insurance Code apparently decided that overpayments of benefits should be held to a minimum. In accordance with that plan the Legislature enacted section 1335 of the code, which reads as follows:

"1335. If an appeal is filed, benefits with respect to the period prior to the final decision on the appeal shall be paid only after such decision, except that:

"(a) If benefits for any week are payable in accordance with a determination by the department irrespective of any decision on the issues set forth in the appeal, such benefits shall be promptly paid regardless of such appeal, or

"(b) If a referee affirms a determination allowing benefits, such benefits shall be paid regardless of any appeal which may thereafter be taken, and regardless of any action taken under Section 1336 or otherwise by the director, Appeals Board, or other administrative body or by any court.

"If such determination is finally reversed, no employer's account shall be charged with benefits paid because of that determination."

The overall effect of section 1335 was to stop benefits from being paid if an employer filed an appeal to a referee or to this board until the matter was heard and finally decided. This procedure had one exception. If both the Department and a referee decided the case in favor of the claimant, benefits were paid immediately. Overpayments were held to a minimum, but some eligible claimants were denied benefits for several weeks while appeals were being processed.

On May 14, 1970 the process was drastically changed by a three judge Federal District Court in the case of Judith Java, et al. v. California Department of Human Resources Development, Case No. C69350ACW U.S. District Court for the Northern District of California. In that case the court issued an injunction against the Department's enforcement of section 1335 of the code.

The decision of the lower court was affirmed by the Supreme Court on April 26, 1971.

The Supreme Court held:

"Section 303 (a)(1) of the Social Security Act requires a method of administration "reasonably calculated to insure full payment of unemployment compensation when due." In light of the intent of Congress to make payments available at the earliest stage of unemployment as is administratively feasible, in order to provide a substitute for wages, the language "when due" must be construed to mean when benefits are allowed as a result of a hearing of which both parties have notice and are permitted to present their respective positions. Since California's initial interview provides such a hearing, enforcement of Section 1335 of the California Unemployment Insurance Code, providing for the withholding of insurance benefits upon an employer's appeal from the initial eligibility determination, must be enjoined because it conflicts with the requirement of Section 303 (a)(1) of the Social Security Act."

It should be noted that the lower court found that holding up benefits after an employer appeal violated the claimant's constitutional right of due process. The Supreme Court said that they found it unnecessary to reach that issue. However, the Supreme Court in holding that the Department's initial interview accords all of the parties procedural due process may well have reversed the lower court on the constitutional issue, at least by implication. In any event the manner in which the Supreme Court treated the issues convinces us that the same rules concerning payment of benefits apply after an appeal from a referee hearing as apply after an appeal from a Department determination. To be more specific, benefits must be paid while an appeal is pending from a referee decision in favor of the claimant in the same way that benefits must be paid after a Department determination in the claimant's favor. In view of our finding that the same payment rules apply in each case, we conclude that the same rules apply as to waiver of overpayments, which is the issue presently before us.

The lower court and the Supreme Court understood from the briefs that their action would result in numerous overpayments. Counsel for the claimants argued that the desirability of immediate payment to claimants otherwise eligible outweighed any undesirable effect of overpayments. The court did not discuss the overpayment issue. Consequently, we must assume that the California statute concerning overpayments remains applicable.

Section 1375 of the code reads as follows:

"1375. Any person who is overpaid any amount as benefits under this part is liable for the amount overpaid unless:

"(a) The overpayment was not due to fraud, misrepresentation or wilful nondisclosure on the part of the recipient, and

"(b) The overpayment was received without fault on the part of the recipient, and its recovery would be against equity and good conscience."

A close analysis of section 1375 of the Unemployment Insurance Code reveals that three tests must be met before an overpayment can be waived. First, the overpayment must not have been caused by fraud, misrepresentation or wilful nondisclosure. Second, the claimant must be

without fault. And third, it must be against equity and good conscience to require repayment. The claimant satisfies the first two tests but not the third.

Ballantine's Law Dictionary defines equity as:

"A term having a variety of meanings. The mitigating principles, by the application of which substantial justice may be attained in particular cases wherein the prescribed or customary forms of ordinary law seem to be inadequate. A complex system of established law and jurisprudence. The standing of a party to claim relief. An interest in property which a court of equity will protect."

Black's Law Dictionary in defining equity states in part:

"It is grounded in the precepts of the conscience, not in any sections of positive law. . . ."

The definitions of "equity" and "good conscience" seem to intertwine and lead us to believe that the terms are substantially synonymous and pertain to some moral right or obligation, rather than any legal concept.

In the instant case the claimant is not entitled to the benefits he received and he was put on notice that the money would have to be repaid if the case was reversed on appeal. It does not appear that he has any legal or moral right to the money.

Accordingly, we find that it is not against equity and good conscience to require the claimant to repay the benefits. In fact, we have previously held in Appeals Board Decision No. P-B-47 that to charge the fund, by waiving repayment of benefits that a claimant is not entitled to, would be unjust and a detriment to the public at large.

We conclude that the referee erred in waiving the overpayment.

DECISION

The decision of the referee is reversed. The claimant is liable for the overpayment in the amount of \$845.

Sacramento, California, July 27, 1971.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

ROBERT W. SIGG, Chairman

CLAUDE MINARD

JOHN B. WEISS

CARL A. BRITSCHGI

DISSENTING - Written Opinion Attached

DON BLEWETT

DISSENTING OPINION

In my opinion it is against equity and good conscience to require that this claimant repay the overpaid benefits.

In arriving at this conclusion I have first considered the basis upon which the United States Supreme Court in Java found that benefits must be paid during the period of appeal from an initial determination holding a claimant eligible for benefits.

In Java the court stated:

"It is true, as appellants argue, that the unemployment compensation insurance program was not based on need in the sense underlying the various welfare programs that had their genesis in the same period of economic stress a generation ago. A kind of 'need' is present in the statutory scheme for insurance, however, to the extent that any 'salary replacement' insurance fulfills a need caused by lost employment. The objective of Congress was to provide a substitute for wages lost during a period of unemployment not the fault of the employee. Probably no program could be devised to make insurance payments available precisely on the nearest payday following the termination, but to the extent that this was administratively feasible this must be regarded as what Congress was trying to accomplish. The circumstances surrounding the enactment of the statute confirm this."

* * *

". . . The purpose of the Act was to give prompt if only partial replacement of wages to the unemployed, to enable workers 'to tide themselves over, until they get back to their old work or find other employment, without having to resort to relief.' Unemployment benefits provide cash to a newly unemployed worker 'at a time when otherwise he would have nothing to spend,' serving to maintain the recipient at subsistence levels without the necessity of his turning to welfare or private charity. . . ."

* * *

". . . Paying compensation to an unemployed worker promptly after an initial determination of eligibility accomplishes the congressional purposes of avoiding resort to welfare and stabilizing consumer demands; delaying compensation until months have elapsed defeats these purposes. . . ."

I also note the concurring opinion of Mr. Justice Douglas in which he states:

"The argument of California in this case is surprisingly disingenuous. First it seeks to distinguish Goldberg v. Kelly, 397 U.S. 254, on the ground that 'welfare is based on need; unemployment insurance is not.' But that simply is not true, for the history makes clear that the thrust of the scheme for unemployment benefits was to take care of the need of displaced workers, pending a search for other employment. . . ."

In overruling California's statutory provision for the suspension of benefits on appeal (section 1335), the Supreme Court has stated the purpose of the federal statutory scheme is to provide cash to the unemployed worker serving to maintain him at a subsistence level without the necessity of turning to welfare or private charity.

Is this purpose frustrated by requiring a recipient of such benefits to repay them?

In a footnote to the court's decision in Java, there appears this statement:

"Counsel informed the Court that recoupment is effected by the Department as to approximately 65% of the amounts erroneously paid; this is generally accomplished by way of offset against benefits subsequently granted in a later unemployment claim. The Department may also file a civil action for recovery. See Cal. Unempl. Ins. Code §2739."

If the usual method of recovery of overpayment is by offset against benefits subsequently granted on a later claim, it is apparent to me that the

purpose of prompt payment of benefits will be frustrated. Is there any reason to believe that the worker will not be in just as great a need for benefits in a later period of unemployment? Will the withholding of such benefits to which he is entitled accomplish the congressional purpose of avoiding resort to welfare and private charity? The answers are obvious. The denial of benefits to an otherwise unemployed eligible benefit claimant through the offset procedure just as effectively frustrates the congressional purpose as did the original suspension of benefits pending disposition of the appeal.

Thus, it seems to me the court in Java has provided the answer to the question of whether it would be against equity and good conscience to require this claimant to repay the overpaid benefits. True, the court did not discuss the overpayment issue, and properly so, for the issue was not before it. But its decision clearly points the way. To require repayment would frustrate the congressional purpose, would be contrary to the decisional law in this State as hereinafter discussed, and would certainly be in violation of equitable principles and good conscience.

This is borne out by the great weight of judicial authority in the United States and money paid in error solely because of a mistake of law cannot ordinarily be recovered by the payor. (63 Alr. 1354) This is certainly true of private money so overpaid. (Klinker v. Guarantee Title Co., 98 Cal. App. 469, 277 Pac. 177) While not so well settled, the majority view applies the same rule to public money overpaid under a mistake of law. (40 Am. Jur. 453) There is abundant reason to believe that the California laws recognize the majority view in holding that public money overpaid because of a mistake of law cannot ordinarily be recovered. Whatever may be the California rule as to public money in general, the law fully supports the proposition that insofar as unemployment benefits are concerned, no recovery of benefits overpaid solely because of a mistake of law is the rule and recovery the exception. In Western etc. Lbr. Co. v. Cal. Emp. Com., 58 C.A. 2d 403, 137 Pac. 2d 76, the California District Court of Appeal in discussing benefits overpaid to claimants stated:

". . . [The claim of the employer's] that the moneys erroneously paid under the mandatory provisions of the act can be recovered on the theory that the state is not bound by the acts of its agents acting beyond the scope of their authority cannot be upheld. This we say because, although the payments were erroneously made it cannot be said that the payments were unauthorized. . . . such payments were made by 'authority of law,' by a tribunal possessed of jurisdiction in the

matter and clothed with no other alternative than to make the payments in question. * * * that if such payments are coupled with the obligation on the part of the beneficiary to make restitution in the event of a later reversal of the commission's decision by the courts, an equally great or greater hardship would be visited upon the claimant than would ensue from a long postponement of benefits under a stay order pending ultimate decision on appeal. . . . and that it was not intended to visit upon the unemployed beneficiary of the fund the burden and responsibility of refunding such payments if it was later determined that the commission, although acting in good faith, has misinterpreted the law. . . ."

In the instant case the payment of benefits resulting in the overpaid benefits was consummated in good faith by all parties. The mistake was made by the Department. The claimant was entitled to rely on the superior knowledge of the law possessed by the Department. Equity and good conscience is therefore on the side of the claimant. As stated in the case of National Labor Relations Board v. Industrial Cotton Mills, 45 ALR 2d 880, 208 F. 2d 87:

"As between the victim of the mistake and the person who made the mistake, it seems just that the perpetrator bear the onus of his own error rather than the burden be shifted to the employee who cannot guard against it. NLRB v. Don Juan Co., 2 Cir., 185 F. 2d 393, 394."

DON BLEWETT