

BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

In the Matter of:

ROY E. COLBERT
(Claimant)

DEPARTMENT OF HUMAN
RESOURCES DEVELOPMENT

PRECEDENT
BENEFIT DECISION
No. P-B-137
Case No. 71-9094

The Department appealed from that portion of Referee's Decision No. OAK-FED-UCFE-7380 which held that the claimant was not ineligible for benefits for a three-week period ending September 18, 1971 under the provisions of section 1253(a) of the Unemployment Insurance Code. Written argument was received from the Department. None was submitted by the claimant.

STATEMENT OF FACTS

On September 1, 1971 the claimant filed a new claim for unemployment benefits which was made effective September 5, 1971. In completing the claim form the claimant showed his most recent employer as being a wrecking company for whom he had last worked prior to June 1971.

On or about July 5, 1971 the claimant had started work for a metal concern in Hayward, California and he continued to work through a portion of the week ending August 14, 1971. The claimant was in active claim status during this time but did not disclose to the Department the fact that he was working or had earnings. On September 21, 1971 the claimant belatedly notified the Department of his employment and the amount of earnings. He was subsequently held disqualified for benefits for the period of that employment and for an additional period for failing to report his earnings and employment. An overpayment covering the amount of benefits paid was established.

The claimant has not appealed from that portion of the referee's decision which affirmed the Department's action referred to in the above paragraph.

The issue to be decided is whether the claimant is ineligible for benefits due to filing an invalid claim for the three-week period ending September 18, 1971 by reason of the fact that he did not disclose his most recent employer at the time of filing his claim on September 1, 1971.

REASONS FOR DECISION

Section 1253 of the Unemployment Insurance Code provides in part:

"An unemployed individual is eligible to receive unemployment compensation benefits with respect to any week only if the director finds that:

"(a) A claim for benefits with respect to that week has been made in accordance with authorized regulations."

Section 1326-3 of Title 22, California Administrative Code provides:

"A new claim may be filed by any person who has become separated from his work or who is working on a part-time or reduced earnings basis on the effective date for which his claim was filed, and shall set forth that:

"(a) He has become separated from his work or is working on a part-time or reduced earnings basis;

"(b) He registers for work;

"(c) He claims benefits;

"(d) Such other information as the Department may require."

The Department in its written argument contended that in order to discharge its duties to inform California employers of the filing of claims for benefits, it must require a claimant to furnish the name and address of the employer for whom he last worked immediately prior to filing the claim.

In Appeals Board Decision No. P-B-50 we were concerned with the entitlement of an employing unit to notices of administrative action by the

Department due to its failure to furnish each and every item set forth in the code and pertinent regulations. We concluded that in dealing with permissive rather than mandatory implementation of legislative intent, we should be guided by the principle of "substantial compliance." This would permit an employer additional time and a reasonable opportunity to correct deficiencies in the submission of information to the Department.

It was further declared that a proper interpretation of the Unemployment Insurance Code looks toward the broadest participation of both claimant and the employer in the process under which the determination of eligibility for benefits is made.

We feel that such a principle of "substantial compliance" exists with respect to the administrative actions and notices of the Department toward claimants, as well as employers. This would require affording an individual the time and opportunity to correct deficiencies in filing claims for benefits rather than cancellation of potentially rightful claims due to a procedural defect.

We can envisage a number of circumstances arising in the course of filing new or additional claims for unemployment benefits wherein a claimant may furnish incorrect or erroneous information. We feel equitable consideration must be given to all parties to meet the substance of the law rather than procedural form. If, thereafter, deficiencies continue to exist or wrongful acts are divulged, appropriate remedies are provided in the code. Among these are application of the provisions of section 1257(a) of the Unemployment Insurance Code, as well as possible prosecution in the courts under section 2101 of the code.

We have previously held under similar circumstances that a claim may be valid when an employing unit is named even though erroneously it is not the most recent employer.

Under the provisions of section 1332.5 of the code there exists the authority to redetermine a claimant's eligibility in any situation wherein fraud, misrepresentation or wilful nondisclosure exists. In the situation where a claimant wilfully and intentionally provides the Department with the incorrect last employer and if the leaving of work was under disqualifying conditions, the Department can redetermine such individual's eligibility for benefits retroactively. Conversely, if the error is due to innocent mistake there would be no retroactive punishment.

In the instant case it is unquestioned that the claimant intentionally misrepresented to the Department the name and address of his last employer. However, in line with prior board holdings, we find that this does not render the claim for benefits invalid under section 1253(a) of the code. We believe that the proper procedure is through the application of section 1257(a).

We are cognizant of the Department's application of the provisions of section 1257(a) with respect to the claimant's failure to report his earnings and employment while claiming benefits. A second disqualification under section 1257(a) of the code as set forth in section 1260(d) would have served no useful purpose as it would have run concurrently with the disqualification already assessed.

Section 1261 of the code states:

"When successive disqualifications under Section 1257 occur, the director may extend the period of ineligibility provided for in Section 1260 for an additional period not to exceed eight additional weeks."

Application of this provision of the code would appear to have been the proper recourse in the case before us.

DECISION

That portion of the referee's decision under appeal is affirmed. The claimant is not ineligible for benefits under section 1253(a) of the code. The claim filed effective September 5, 1971 is valid. The issue of the claimant's eligibility under section 1257(a) of the code is referred to the Department for its consideration.

Sacramento, California, May 2, 1972.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

ROBERT W. SIGG, Chairman

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