

BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

In the Matter of:

BOBBY V. DEMINGS
(Claimant)

PRECEDENT
BENEFIT DECISION
No. P-B-141
Case No. 72-988

The claimant appealed from Referee's Decision No. S-18502 which held him ineligible for unemployment benefits commencing September 26, 1971 under the provisions of section 1253(c) of the Unemployment Insurance Code on the ground that he was not available for work.

STATEMENT OF FACTS

The claimant was last employed as a design engineer by an employer in Downey, California, for approximately one year at an annual salary of \$15,000. He has for a number of years been suffering from a respiratory condition and was advised by his physician to move to a drier climate. Because of this advice it was decided that the family would leave Downey, California and move to a residence they owned in Richfield, Utah. The claimant voluntarily left his most recent work on August 1, 1971 to go to Richfield to prepare the residence there for the occupancy of his family. It is his long-range plan to establish his own machine shop business in Richfield. However, because of inclement weather and other reasons, he was unable to proceed with these plans immediately upon arriving in Richfield.

Downey has a population in excess of 88,000 and is located in the Los Angeles metropolitan area which has a population in excess of 3,000,000. Many aircraft manufacturing establishments are located in this area, as well as other types of industry which employ individuals with the same background and experience as the claimant.

Richfield, Utah has a population of approximately 4,500. There are no large manufacturing industries in the vicinity and employment during the winter months is not likely. Richfield is the largest of several other small communities in the area. The next largest is Gunnison, population 1,073,

which is approximately 30 miles north. The nearest large town to Richfield is Provo, Utah, approximately 122 miles north with a population of 53,131.

REASONS FOR DECISION

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

As stated in Appeals Board Decision No. P-B-17:

"To be considered available for work a claimant must be ready, willing and able to accept suitable employment in a labor market where there is a demand for his services."

As a general rule a claimant who leaves work and moves to an area where there is little or no market for his services cannot be considered available for work.

Here the record shows that this claimant left employment in a large labor market area of Southern California and moved to a small town in Utah with a population of only 4,500. The type of work in which the claimant has had extensive experience does not exist in this area. It appears that his primary interest was not to obtain permanent work but to obtain work until such time as he can establish himself in private enterprise. To summarize, this claimant left employment in a large labor market area to move to an area where there is not a reasonable demand for his services. Thus, the claimant, for all practical purposes, when he moved from Downey, California to Richfield, Utah, withdrew from any significant labor market and therefore cannot be found to be available for work as required by section 1253(c) of the code.

It might be contended that this decision deprives the claimant of his constitutionally protected right to travel from state to state and settle where he pleases without unnecessary governmental interference.

In Galvan v. Catherwood, 324 F. Supp. 1016 (1971), a three-judge United States District Court of the Southern District of New York was confronted with a similar contention. In that case the claimants concerned

moved from New York to Puerto Rico and filed claims for unemployment benefits under the New York Unemployment Insurance Code. There, the court stated in part as follows:

". . . the right to travel freely throughout the several states is not an absolute right. American citizens are 'free to travel * * * uninhibited by statutes, rules, or regulations which unreasonably burden or restrict this movement.' Shapiro at 629, 89 S.Ct. at 1329. In the case before us, the restriction involved is a minor one; claimants forfeit their rights only if they go to an area of such 'high persistent unemployment' that they are deemed to have effectively isolated themselves from any possibility of reemployment. Furthermore . . . this limitation is reasonably and directly related to the long-standing and valid policy of the unemployment insurance provisions of New York law—e. g. that a claimant be 'ready, willing and able to work'." (The Illinois Supreme Court ruled to the same effect in Wadlington v. Mindes (259 N.E. 2d 257; appeal to United States Supreme Court dismissed.)

We are not in any manner in this case infringing on any constitutional right this claimant might have. All we are saying is that by moving to an area where there is no reasonable demand for his services, the claimant has by this act rendered himself not available for work and is therefore ineligible for benefits under the Unemployment Insurance Code.

Finally, the claimant states in part "I have paid into the unemployment insurance without complaint." It is true that when the California Unemployment Reserves Act was adopted in 1935 employees were required to contribute to the Unemployment Insurance Fund. However, the law was amended by the 1946 session of the legislature and since then no employee in California has made any contributions to the Unemployment Insurance Fund; only employers pay into this fund. Employees do contribute to the disability insurance program by deductions from their paychecks and such contributions are used solely for disability insurance purposes.

DECISION

The decision of the referee is affirmed. The claimant is ineligible for benefits under section 1253(c) of the code commencing September 26, 1971.

Sacramento, California, May 30, 1972

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

ROBERT W. SIGG, Chairman

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