

BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

In the Matter of:

MORDEN K. TURNER
(Claimant)

MT. SAN JACINTO COLLEGE
(Employer)

PRECEDENT
BENEFIT DECISION
No. P-B-157
Case No. 73-4483

and

Case No. 73-5455

The claimant appealed from decisions of the referees in cases numbered ONT-32096 and ONT-SE-32693. Both decisions affirmed Department determinations which held the claimant ineligible for benefits under section 1253.4 of the Unemployment Insurance Code. The determinations cover the same essential facts and differ only in that they apply to separate school recess periods. They are consolidated herein under the authority of section 5107 of Title 22 of the California Administrative Code.

STATEMENT OF FACTS

The claimant is employed as a security guard at Mt. San Jacinto College on a part-time basis. He is responsible for security on holidays and weekends, totaling 122 days each year. He is allowed to work a maximum of 52 hours every two weeks at the rate of \$2.82 per hour and his rent of \$140 per month for the space on which his mobile home is located is deducted from his salary, the employer being the landlord. He is also permitted to do other nonconflicting incidental work at the school for which he is paid \$1.65 per hour when such work is available. He is allowed two weekends per year for vacation.

The claimant is considered to be a classified employee of the school district to which the college belongs and he has been so employed since May of 1971. At that time, he was also working full time for a non-school employer but was laid off from that employment in February of 1972. He filed a claim for benefits in March of 1972 and his present benefit year began March 11, 1973.

He has a weekly benefit award of \$75 and has been paid partial benefits in amounts depending upon his weekly earnings.

In Case No. ONT-32096, benefits were disallowed for the week beginning April 15, 1973 because the college was having its spring school recess period. In Case No. ONT-SE-32693, benefits were disallowed for the week beginning May 27, 1973 because Memorial Day, May 28, 1973, was a school holiday.

On appeal to this board, consistent with his earlier appeals, the claimant contends that the interpretation of section 1253.4 of the code, which denied him benefits, is inconsistent with the legislative intent and that the legislation was never intended to deny benefits to part-time classified employees whose regular part-time work schedule is on weekends, holidays and recess periods. It is his further contention that it was the legislative intent to except from coverage classified employees working on a ten month rather than twelve-month basis.

We take official notice of the present policy of the Department with respect to section 1253.4 of the code. That policy provides for administration of claims to allow otherwise eligible classified school employees benefits during recess periods in the amount of their award that is attributable to nonschool employers.

REASONS FOR DECISION

Section 1253.4 was added to the Unemployment Insurance Code by the Statutes of 1971, Chapter 1622, and amended in 1972 by the Statutes of 1972, Chapter 36. As amended, Section 1253.4 provides as follows:

"Notwithstanding any other provision of this division, unemployment compensation benefits, extended duration benefits, and federal-state extended benefits based on service performed in a classified service position that is included in covered employment pursuant to section 605.2, shall not be payable to any individual with respect to any week if any day of the week is within any school vacation, summer or special school session, recess or holiday (hereinafter referred to as 'recess period') and he is scheduled to return to work at the end of the recess period, except that if he is not returned to work at the end of the recess period or is laid off within 30 working days

thereafter, the department may reconsider any determination denying benefits and may pay benefits to him for any week in the recess period if he is otherwise eligible in all respects except for the requirement of subdivision (b) of Section 1253 that he report for each week benefits are claimed." (Emphasis added)

Section 605.2 of the Unemployment Insurance Code provides as follows:

"Except as provided in Section 13658 of the Education Code and Section 642 of this code, 'employment' for the purposes of this Part and Parts 3 (commencing with Section 3501) and 4 (commencing with Section 4001) of this division includes all services performed for an employing unit as defined by Section 135.3 of this code in a classified position as defined in Articles 1 (commencing with Section 13580) to Article 5 (commencing with Section 13701), inclusive, of Chapter 3 of Division 10 of the Education Code."

Section 135.3 of the code provides as follows

"'Employing unit' also means the governing board of any school district, any county board of education, any county superintendent of schools, or any personnel commission of a school district which has a merit system as provided in Article 5 (commencing with Section 13701) Chapter 3 of Division 10 of the Education Code, which employs one or more classified employees."

Section 13658 of the Education Code provides as follows:

"Every regularly employed classified school employee employed by any of the following: (a) governing board of a school district, (b) county board of education, (c) county superintendent of schools, or (d) personnel commission of a school district which has a merit system as provided in Article 5 (commencing with Section 13701) of Chapter 3 of Division 10 of the Education Code, shall be covered for unemployment

insurance pursuant to Section 135.3, 605.2, and 802 of the Unemployment Insurance Code.

"As used in this section, 'regularly employed classified school employee' includes all persons employed pursuant to Sections 872, 934, 949, 13581.2, 13581.5, 13599.7, and Sections 13581.1 and 13712 and any other similar provisions heretofore or hereafter enacted. Persons serving as substitute, short-term, part-time playground, full-time day student employed part-time where enrolled, apprentice, temporary professional expert, emergency, limited term, or provisional employees or volunteers are, unless otherwise eligible, excluded from the meaning of the term.

"This section shall apply to districts that have adopted the merit system in the same manner and effect as if it were a part of Article 5 (commencing with Section 13701) of this chapter."

Claimant's status as a classified school employee is not disputed and his eligibility for benefits is not contested except for those periods of time for which benefits were denied because of school recess or holiday. Our reading of section 1253.4 convinces us that the legislature did not intend to deny all benefits to all classified employees during weeks in which occur holidays or school recesses. The extent of the limitation, we feel, is defined by that portion of section 1253.4 we have emphasized above. To wit: "based on service performed in a classified service position." It appears clear to us the legislative intent was to disallow only that portion of benefits in the claimant's award which is attributable to wages earned as a classified school employee. The Department is, in fact, administering this section presently according to this interpretation and we approve of this method.

In the instant case, the claimant has had prior wage credits with an employer other than a school and, if any portion of his present award is attributable to that employment, and, if he is otherwise eligible for the periods in question, the prorated benefits are payable to him for the weeks beginning April 15, 1973 and May 27, 1973.

With respect to claimant's contention that the legislature did not intend the exclusion in section 1253.4 to apply to twelve-month classified service employees or to employees specifically assigned to weekend, holiday and recess work, we concede the logic of his argument. However, the plain, clear language of the statute provides for no exceptions of this nature. That the legislature did provide an exception for employees not returning to work at the

end of a recess period or for those laid off within 30 working days thereafter is significant. The specific statement of the aforementioned exceptions indicates that had other exceptions been contemplated, they would have been clearly defined. Therefore, while we concede the merit to the claimant's contention, we cannot legislate to provide for that which is not already in the code. That function is the legislature's and the claimant is directed to that body for future relief.

DECISION

The decisions of the referees are modified. Benefits based upon the claimant's earnings in classified employment for the periods in question are denied. Benefits based upon claimant's earnings in other covered employment, if any, are payable provided the claimant is otherwise eligible.

Sacramento, California, December 6, 1973.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

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