BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

THIS DECISION DESIGNATES FORMER BENEFIT DECISION NO. 6518 AS A PRECEDENT DECISION PURSUANT TO SECTION 409 OF THE UNEMPLOYMENT INSURANCE CODE.

In the Matter of:

GEORGE SMILEY (Claimant)

CALIFORNIA COTTON OIL CORPORATION (Employer-Appellant)

PRECEDENT BENEFIT DECISION No. P-B-169

FORMERLY BENEFIT DECISION No. 6518

Referee's Decision No. LA-26070

STATEMENT OF FACTS

The claimant last worked for this employer on Tuesday, June 5, 1956, when he was laid off indefinitely for lack of work. On June 6, 1956, the claimant registered for work with the Department of Employment and filed an additional claim. He reported earnings of $26.46 for such week. The department established the claim effective June 3, 1956, in a benefit year which began on April 15, 1956, with a weekly benefit amount of $33. The claimant was paid $10 in benefits for the week ended June 9, 1956.

The employer filed a timely protest on the ground that the claimant was not available and hence was not eligible for unemployment insurance benefits for the week ending June 9, 1956.

The questions presented for decision are:

1. Was the claimant unemployed during the week ended June 9, 1956?

2. Was the claimant available during that week?

REASONS FOR DECISION

Section 1252 of the Unemployment Insurance Code provided in part as follows:

> "1252. An individual is 'unemployed' in any week during which he performs no services and with respect to which no wages are payable to him, or in any week of less than full-time work if the wages payable to him with respect to that week are less than his weekly benefit amount. Authorized regulations shall be prescribed making such distinctions as may be necessary in the procedures applicable to unemployed individuals as to total unemployment, part-total employment, partial unemployment of individuals attached to their regular jobs, and other forms of short-time work. . ."

In this case, the claimant was employed by his regular employer during Monday and Tuesday of the week beginning June 3, 1956. At the close of business on Tuesday, the claimant's employment was terminated; and the claimant was thereafter unemployed for the balance of that week.

At that time, the claimant's unemployment status did not fall within any of the definitions set forth in 22 Cal. Adm. Code 1252-1 which had been adopted by the Director of Employment pursuant to the express authority set forth in code section 1252. It is not necessary that the claimant's unemployment status fall within any of the categories set forth in regulation 1252-1 because code section 1252 expressly recognized that a claimant might become engaged in "other forms of short-time work." We therefore hold that, although the claimant did not have "total unemployment, part-total employment, partial unemployment", he was nevertheless "unemployed" within the express provisions of code section 1252 and was entitled to unemployment insurance benefits subject to deduction as provided in code section 1279.

The Attorney General has rendered his opinion to the effect that a claimant unavailable for one work day is unavailable for the entire week (10 Ops. Atty. Gen. 208; 24 Ops. Atty. Gen. 81). In the two situations covered by the Attorney General's opinions, the claimants were prevented from working at any gainful occupation so the opinions cannot in any sense be said to apply

to those situations where the claimant was actually in an employment status for the days in question.

In this case, the employer contends that Benefit Decisions Nos. 6169, 6295, and 6503 are not to be considered as any authority because they involve either part-totally or partially unemployed claimants. It is true that, in Benefit Decision No. 6169, we held that the claimant was unavailable; but such holding was based solely on the evidence that the claimant would not accept other employment which would not conflict with her partial employment. In Benefit Decisions Nos. 6295 and 6503, we expressly held that employment for a portion of a week did not make the claimants unavailable; and the fact that those claimants were part-totally employed does not detract from the primary holding that employment for a portion of a week did not cause unavailability.

DECISION

The decision of the referee is affirmed. Benefits are payable as provided in the decision of the referee.

Sacramento, California, January 6, 1976

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

DON BLEWETT, Chairperson

MARILYN H. GRACE

CARL A. BRITSCHGI

RICHARD H. MARRIOTT

DISSENTING - Written Opinion Attached

HARRY K. GRAFE

DISSENTING OPINION

I dissent for the reasons set forth in my dissenting opinion in Appeals Board Decision No. P-B-168.

In addition, I find a flaw in the instant case which severely impairs any value it might otherwise have had as a precedent. Taken on its face, it appears that the claimant was paid benefits for the first week in which he filed his claim. Of course, we have no record of this almost 20-year-old case to review, and we do not have an opportunity to check the statement of facts against the evidence. Today, a one-week waiting period is required before benefits are payable.

By now adopting, as a precedent decision, a case in which it seems that benefits were paid without any waiting period, I fear we may mislead and confuse claimants who read and rely on our precedent decisions. We should exercise every caution to avoid misleading or confusing those persons who are not sophisticated in the laws governing the unemployment insurance program. For such reason, if for no other, we should not confer precedent status on this case.

In addition, the majority refused to permit any discussion of this case on its merits before adopting this decision, thus failing to adhere to the basic principles of due process of law.

HARRY K. GRAFE