

BEFORE THE  
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

In the Matter of:

OLIE H. GRIGGSBY  
(Claimant-Appellant)

PRECEDENT  
BENEFIT DECISION  
No. P-B-17  
Case No. 68-466

CIRAOLO SHELL SERVICE  
(Employer-Respondent)

The claimant appealed from Referee's Decision No. S-15563 which held that the claimant was ineligible for benefits under the Unemployment Insurance Code on the ground he was not available for work under section 1253(c) of the code.

STATEMENT OF FACTS

The claimant was employed intermittently at a service station from the spring of 1966 to October 17, 1967 for a wage of \$1.75 per hour. The claimant worked both full and part-time shifts, but at the end of his employment had imposed certain restrictions on days and hours.

The claimant desired a day shift Monday through Friday. The claimant did not want night work on Tuesdays and Fridays or any work on Saturdays and Sundays because he acted as an unpaid, volunteer minister of his religion during those periods.

The claimant did not testify that tenets of his religion prohibited work on these days and at these hours.

The claimant could have continued to work for the interested employer on a part-time basis if he had been willing to accept work on night shifts.

The claimant testified he was an auto mechanic and service station attendant but had looked primarily to service stations for employment. He

explained that most stations do mechanical work. The claimant added he had owned his own station in prior years and then had been able to fix his own hours of work.

Most service stations in the area operated both day and night shifts and were open seven days a week. A department representative testified that the claimant eliminated approximately 50 percent of his labor market by his restrictions.

### REASONS FOR DECISION

Section 1253(c) of the California Unemployment Insurance Code provides that a claimant is eligible to receive benefits with respect to any week only if he was able to work and was available for work for that week.

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.

In order to meet the eligibility requirements of section 1253(c) of the code a claimant must be able to work and available for work for each day during the claimant's normal workweek, and inability to work during any workday renders a claimant ineligible for benefits for the entire week.

A claimant is not available for work if, through personal preference or force of circumstances, he imposes unreasonable restrictions on suitable work such as limitations on hours, days, shifts or wages, which materially reduce the possibilities of obtaining employment.

In his appeal to us the claimant cites Appeals Board Decision No. P-B-1 as appropriate and recent authority that he properly could limit his availability for work because of religious reasons and not be ineligible for unemployment insurance benefits.

In the cited precedent case, the claimant was a construction laborer in an area where principal employers required that employees be available for work on any of the three basic shifts: day shift, night shift and swing shift.

The claimant therein was a member of an established church and always had conformed to church tenets. One tenet prohibited work by members from sunset Friday through sunset Saturday, the proclaimed Sabbath.

The claimant would accept work only on the day shift Monday through Friday. The department found him ineligible for benefits under section 1253(c) of the code on the ground he was not available for work.

In the cited case, we reviewed earlier principles as applied to similar cases. This board consistently has held that observance of church tenets would not by itself render a claimant ineligible for benefits. In some instances, however, we found claimants who were not disqualified for their religious practices nonetheless ineligible because of other personal restrictions or because there was no showing that a labor market existed for their skills.

The record in Appeals Board Decision No. P-B-1 revealed that the claimant had substantial experience as a construction laborer gained solely in Monday through Friday day shifts. He also had obtained employment as a construction laborer after his appeal from the adverse determination of the department and before the referee's hearing was held.

(The claimant in the precedent case also had a second skill as hospital orderly, which was permissible employment even on the Sabbath, but we will not consider that aspect as it does not bear on the issues before us in the instant case.)

We noted in Appeals Board Decision No. P-B-1 that the claimant's restriction with respect to employment as a laborer did, in fact, eliminate a certain portion of the labor market. We further observed, however, that this restriction was not of major import when it was recognized that the claimant's entire experience as a laborer had been obtained despite his religious restrictions of Monday through Friday employment, and that even during the pendency of the action he had found work on his terms in the construction field.

Any consideration of availability for work and eligibility for benefits, for the reasons under discussion, necessarily leads to Sherbert v. Verner (1963) 374 U. S. 398, 10 L. Ed. 2d 965; 83 S. Ct. 1790, the latest expression of the Supreme Court of the United States on the subject.

The Supreme Court therein found that a Seventh-Day Adventist was disqualified improperly for unemployment insurance benefits in South Carolina because of her refusal to work Saturdays, her church's designated day of worship.

The Supreme Court said that a state statute, as administered by the South Carolina employment commission and interpreted by the courts, imposed a burden on the individual's free exercise of religion. The court's opinion observed the claimant was denied benefits because of her religious principles and indirect pressure was put upon her to forego her religious practice in order to be eligible for benefits.

That portion of South Carolina law which was under consideration by the United States Supreme Court reads in pertinent part:

". . . if . . . he has failed, without good cause ... to accept available suitable work when offered him by the employment office or the employer. . . ."

The highest federal court disapproved and struck down administrative and judicial interpretations which held that the claimant did not have good cause for refusing Saturday employment for religious reasons. The court said:

"Our holding today is only that South Carolina may not constitutionally apply the eligibility provisions so as to constrain a worker to abandon his religious convictions respecting the day of rest."

In considering the case, the Supreme Court made two comments on other aspects of the proceeding. One observation was based on evidence and the other on law.

The court noted that membership in the Seventh-Day Adventist faith was not a practical bar to employment in the area where the claimant resided. Of some 150 coreligionists in the area, only the claimant and one other were unable to find suitable non-Saturday employment.

The court also noted that other South Carolina statutes allowed a Sunday worshipper to decline work on his day of rest in certain circumstances if he so chose.

The court observed that in addition to the unconstitutional interference with the claimant's right to practice his religion stemming from the interpretations of the unemployment law, these other statutes permitted

discrimination against Saturday worshippers and in favor of Sunday adherents.

Of equal importance in the Supreme Court's decision is the language which clearly shows where the court drew the line in its consideration of the problem:

". . . Nor do we, by our decision today, declare the existence of a constitutional right to unemployment benefits on the part of all persons whose religious convictions are the cause of their unemployment. This is not a case in which an employee's religious convictions serve to make him a nonproductive member of society.... "

Both Sherbert v. Verner and our cited precedent decision were quite similar in the law and on the facts. Both claimants were appealing from decisions holding them ineligible for benefits because of their refusal to accept Saturday work based on religious beliefs. On an evidentiary basis, the Supreme Court found this restriction was of little practical importance in the South Carolina case because some 148 of 150 Seventh-Day Adventists had found acceptable employment. In Appeals Board Decision No. P-B-1 we reached a similar conclusion based on the claimant's demonstrated success in obtaining employment despite his religious restriction.

The question was not squarely before the Supreme Court of the United States, but the court's decision leaves no doubt that while freedom of religious expression is guaranteed to all, there may well be religious practices - mandatory or otherwise - which would render an individual unavailable for suitable work and hence ineligible for benefits.

The court made clear that while there is a constitutional freedom to practice one's religion, there is not a constitutional right to receive unemployment insurance benefits if the religious beliefs involved caused unemployment and made an individual "a nonproductive member of society."

The instant case must be distinguished from the cited authorities. In the case before us, the claimant not only restricted himself from Sunday employment but also from any employment on Saturdays and on Tuesday and Friday nights.

The claimant did not contend that the days and periods involved were prescribed periods of rest and worship by his church, but only that he was engaged in volunteer, unpaid ministerial work.

As we understand Sherbert v. Verner, the Supreme Court reiterated the constitutional right to religious freedom, but held that unemployment insurance benefits could be received only when the religious practice was mandatorily binding on a practicing member, who recognized that he was bound and was willing to be bound, and that the practice or observance involved was one that would not be the cause of unemployment or make the member a nonproductive member of society. The court found that the 24-hour Sabbath of the Adventists was a proper religious exercise which did not result in making the claimant unavailable for work under South Carolina law.

Our own Appeals Board Decision No. P-B-1 embraced and pronounced the same principles based on similar facts and law.

The claimant herein suffered no interference with his manner of religious worship. There is no proof that the practices of the claimant were mandatorily binding on him. The evidence, in fact, establishes that the claimant's actions were personal and volunteered and without religious compulsion.

We conclude that the claimant's activities were not those intended to be protected by the rule of Appeals Board Decision No. P-B-1 and Sherbert v. Verner. Those authorities do not justify his refusal to accept work on Saturdays and Sundays and on Tuesday and Friday nights because of religious beliefs.

We view the claimant's situation as that contemplated by the Supreme Court in Sherbert v. Verner when it said it was not establishing a constitutional right to unemployment benefits on the part of all persons whose religious convictions are the cause of their unemployment.

The claimant's restrictions on employment eliminated some 50 percent of his potential labor market. Religious considerations apart, such unreasonable restrictions have the effect of making a claimant unavailable for work under section 1253(c) of the code and ineligible for benefits.

We conclude, therefore, that the claimant herein was not available for work under section 1253(c) of the code for the reasons above stated and is ineligible for benefits. The decision of the referee will be affirmed but for the reasons contained herein.

DECISION

The decision of the referee is affirmed. The claimant is ineligible for benefits under section 1253(c) of the code.

Sacramento, California, June 18, 1968.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

ROBERT W. SIGG, Chairman

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LOWELL NELSON

JAMES M. SHUMWAY (Not Voting)

JOHN B. WEISS