

BEFORE THE  
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

THIS DECISION DESIGNATES FORMER BENEFIT  
DECISION NO. 6164 AS A PRECEDENT  
DECISION PURSUANT TO SECTION  
409 OF THE UNEMPLOYMENT  
INSURANCE CODE.

In the Matter of:

ARTHUR P. JOERGENSEN (Claimant)

PRECEDENT  
BENEFIT DECISION  
No. P-B-178

FORMERLY BENEFIT DECISION No. 6164
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The above-named claimant on January 6, 1954, appealed to a Referee (LA-64363) from a determination of the Department of Employment which held that the claimant was not entitled to benefits under Section 1253(c) of the Code. Subsequent to the issuance of the Referee's decision, the California Unemployment Insurance Appeals Board on April 16, 1954, set aside the decision of the Referee and removed the matter to itself under Section 1336 of the Code.

STATEMENT OF FACT

The claimant has been employed as a carpenter for approximately forty years until May 26, 1953, when he left his work due to a disability. Prior thereto he was a seaman.

On May 28, 1953, the claimant filed a claim for disability benefits which were paid to him until the claim was exhausted. On December 22, 1953, his physician released him for "light work such as a gate watchman". On this same date the claimant registered for work as a watchman and filed a claim for unemployment insurance benefits in the Glendale office of the Department of Employment.

On January 1, 1954, the Department issued a determination which held that the claimant was ineligible for benefits beginning December 22, 1953, under Section 1253(c) of the Code.

The claimant's physical condition will not permit him to do any work requiring extensive standing, walking, or any lifting, or stair climbing. He is unable to perform any work which might cause any slight injury, which would bleed since his blood will not coagulate. Because of his condition of coronary thrombosis, he cannot pass the physical examination required of employees by larger manufacturing firms. As a physically handicapped person, he must depend on the efforts of agencies to develop a job for him with some employer. There is a very limited labor market for these services. Due to his condition, he has not been able to make a search for work.

### REASON FOR DECISION

Section 1253(c) of the Code provides that an individual to be eligible for benefits must be able to work and available for work.

This section has been construed to require that a claimant be in a labor market where there is a reasonable demand for his or her services, without unreasonable restrictions either self-imposed or created by force of circumstances, so that it may be found that the claimant is genuinely in that labor market ready, willing and able to accept suitable employment (Benefit Decision No. 6090).

In the instant case, although the claimant is willing to accept work which he feels he is able to perform, his physical condition prevents him from accepting any employment which requires lifting, stair climbing, or any extensive standing or walking. There is a very limited labor market for his services. In fact because of his handicap, it will be necessary for some agency to enlist the cooperation of an employer to employ him. Under these facts, we do not believe that the claimant is able to work and available for work as required by Section 1253(c) of the Code (Benefit Decision No. 6090).

DECISION

The determination of the Department is affirmed. Benefits are denied.

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, except as to the last three paragraphs thereof.

In addition, this 1954 case was removed to itself by the Board pursuant to section 1336 of the Unemployment Insurance Code. There is no record available for our review; thus, we are unable to ascertain whether the Board's removal of this case to itself was timely within the meaning of Isobe v. California Unemployment Insurance Appeals Board (11 Cal. 3d 313). The court in Isobe ruled that the ten-day limitation within which an appeal could be taken to this Board from a Referee's decision (prior to January 1, 1976) is also the jurisdictional time limit within which the Board could remove a case to itself pursuant to section 1336.

In the instant case all the records have been destroyed and we have no way of knowing whether the Board's "take-over" action was timely; thus, there exists doubt whether the Board actually had jurisdiction to set aside the Referee's decision and consider this matter. If we apply the presumption that each government action preceding the Board's "take-over" was performed in accordance with law, the result is that the Board's removal appears to have been in excess of the ten-day limit. The claimant here filed his appeal to a Referee on January 6, 1954, and it may be assumed that the appeal was disposed of within 30 days in accordance with federal standards. Consequently, the Board's "take-over" on April 16, 1954 would seem to be beyond the ten-day limit prescribed in Isobe, and there is a lack of jurisdiction to further consider the Referee's decision.

HARRY K. GRAFE