BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

In the Matter of:

JESSIE L. TATMAN
(Claimant)

49'ER SERV-U-DRUG
(Employer)

PRECEDENT
BENEFIT DECISION
No. P-B-250
Case No. 75-8031

Referee's Decision No. S-24960

The claimant appealed from that portion of the referee's decision which held that she was not entitled to unemployment insurance benefits under section 1264 of the Unemployment Insurance Code. The decision also held the employer's account subject to charges.

STATEMENT OF FACTS

The claimant was last employed in the cosmetic department of the above-named retail firm from October 23, 1974 to March 6, 1975.

The claimant was 25 years of age and single. She had been working and living by herself since age 19. She maintained a residence separate from her parents and was self-supporting. The claimant was engaged to a man living in the State of Washington.

On February 20, 1975 the claimant's fiance, who was an unemployed carpenter, journeyed from his home in Washington to Fresno, California where the claimant lived and worked. The claimant and her fiance decided to be married. The claimant thereafter gave her employer two weeks' notice that she would be leaving her employment. They were married on March 8, 1975,

and then moved to Washington on March 9, 1975. Both she and her husband were unemployed when the claimant subsequently filed her claim for unemployment insurance benefits on March 12, 1975. His last work was in self-employment, he had no wage credits for unemployment insurance purposes and had been unemployed since December 1974. Additionally, the claimant's husband had consistently declined to seek employment both before and after marriage.

REASONS FOR DECISION

Under the provisions of section 1264 of the code, a claimant is rendered ineligible for unemployment insurance benefits for the period of unemployment ensuing after her leaving of work to be married. She remains ineligible until she subsequently secures bona ride employment even though good cause existed for her voluntary leaving of work unless she was the major support of her family at the time she left work and at the time she filed her claim for benefits. The claimant in the present case is clearly ineligible for benefits under this section of the code unless she comes within the major support exception.

In Appeals Board Decision No. P-B-58 we held that a sole self-supporting person does not constitute a "family" within the meaning of section 1264 of the code, and perforce would be ineligible to receive benefits. We published that decision on November 25, 1969. In so doing, we overturned our long-standing holdings, as well as the Department's administrative interpretations, to the contrary.

The facts of the case now before us have caused us to reexamine our 1969 decision and the dissent in Appeals Board Decision No. P-B-58. We have done so in the light of a long series of cases stretching from the holding of California Employment Commission v. Los Angeles Downtown Shopping News Corporation, 24 C. 2d 421, decided in 1944, through Gibson v. Unemployment Insurance Appeals Board, 9 Cal. 3d 494, 108 Cal. Rptr. 1, promulgated in 1973, which have consistently stressed that the law requires that the Unemployment Insurance Program be liberally construed with the purpose of extending its benefits to unemployed workers. Additionally, it is evident that the entire thrust and purpose of unemployment compensation is to provide benefits to persons unemployed through no fault of their own in order to reduce the suffering that is a concomitant of unemployment (section 100, Unemployment Insurance Code).

From this point of departure, we find it appropriate to focus our attention on the content of the dissent in Appeals Board Decision No. P-B-58 which, in turn, examined the law prior to the adoption of that precedent. There, it was pointed out that in 1955 this Board adopted the principle that a single self-supporting person, although not a member of a family in the ordinary sense, was entitled to the benefits of the "major support" provision of what is now section 1264 of the code (Benefit Decision No. 6362). The point was also made that this construction had met with salutory results ,Benefit Decision No. 6370) and had become a well established principle. In that regard, the dissenters observed:

> "Consistent administrative construction of a statute over many years, particularly when it originated with those charged with putting statutory machinery in effect, is entitled to great weight and will not be overturned unless clearly erroneous (Di Giorgio Fruit Corporation v. Department of Employment (1961), 56 C. 2d 54; 13 Cal. Rptr. 663; 362 P. 2d 487). The construction of a statute by the officials charged with its administration must be given great weight for their 'substantially contemporaneous expressions of opinion are highly relevant and material evidence of the probable general understanding of the times and the opinions of men who probably were active in the drafting of the statute.' When an administrative interpretation is of long-standing and has remained uniform, it is likely that numerous transactions have been entered into in reliance thereon, and it could be invalidated only at the cost of major readjustments and extensive litigation (see Whitcomb Hotel, Inc. v. Cal. Emp. Com. (1944), 24 C. 2d 753, and cases cited therein).
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> "We have previously noted herein our consistent construction of section 1264 of the code as applied to factual situations similar to the instant case. Although numerous bills have been introduced in the State Legislature over the years to amend, and indeed, repeal section 1264 of the code, the text still remains unchanged since its original enactment in 1953. The same is true of Administrative Regulation No. 1264-1 which was adopted shortly after enactment of the statute.

> Under these circumstances, it is our opinion that such long-standing and consistent interpretation of the statute should not be overturned except for weighty reasons. We do not find the reasoning of the majority opinion to be so persuasive as to justify the overturn of our long-standing and consistent interpretation of the statute."

After six years of experience, we are persuaded that the reversing of the decisions in Benefit Decisions Nos. 6362 and 6370 in Appeals Board Decision No. P-B-58, wherein we hold that a single person cannot be a "family" within the meaning of the escape clause of section 1264 of the code, was ill advised. Too frequently, deserving, unmarried, hard-working, self-supporting individuals who have become unemployed through no fault of their own have been denied benefits on what we now perceive to be the spurious ground that they were not a "family." We are persuaded that the better logic, when viewed in the context of the remedial nature of the Unemployment Insurance Program which is designed to aid the unemployed worker, sustains the conclusion that a sole self-supporting individual does constitute a family within the meaning of section 1264 of the code. In so concluding, we expressly overrule our finding to the contrary in Appeals Board Decision No P-B-58.

We now turn to the claimant's case. It is evident that the claimant was single and self-supporting at the time she quit to be married. She was, in fact, sole support of that "family." At the time she filed for benefits both she and her husband were unemployed. The claimant's husband had not worked for some time, did not endeavor to find employment, and had no wage credits that would make him eligible for unemployment insurance benefits. The claimant, on the other hand, had an enviable employment record, was actively seeking work and had wage credits that would entitle her to unemployment insurance compensation. In these circumstances, we find that the claimant was then the major support of her new "family" (see De Somov v. California Unemployment Insurance Appeals Board, 36 Cal. 3d 845. As she was in the statutory support role both at the time she quit and at the time she filed for benefits, the claimant is eligible for benefits despite the restricture provisions of section 1264 of the code

DECISION

The decision of the referee is reversed. Benefits are payable provided the claimant is otherwise eligible. The employer's account is subject to charges.

Sacramento, California, March 2, 1976.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

DON BLEWETT, Chairperson

MARILYN H. GRACE

HARRY K. GRAFE

RICHARD H. MARRIOTT

DISSENTING - Written Opinion Attached

CARL A. BRITSCHGI

DISSENTING OPINION

In my opinion, a single person cannot be called a "family." In reaching the opposite conclusion, the other members of this Board quote no specific authority for their decision.

We are not dealing with some esoteric concept. We are dealing with the meaning of a common everyday word, "family." In my judgment, a reasonable person having no ulterior motive for reaching a particular result would conclude that a "family" encompasses a plurality of persons and not a single person.

The last sentence of section 1264 of the code (the support provision) does not specifically mention single persons. Such persons would not be able to escape the ineligibility effects of the section unless an interpretation was developed to cover them under the support provision. There is, therefore, an ulterior motive to find an interpretation which would make it possible for single persons to draw benefits following a marital or domestic leaving of work. The point of least resistance in arriving at this result is to conclude that a "family" can be a single person. It is through this tortured thought process that the other members of this Board reach their decision, in my judgment.

Research reveals that some 13 states have provisions in their unemployment insurance law concerning benefit entitlement for leaving work for marital or domestic reasons. Five of those states, including California, have a support provision for relieving the effects on benefit entitlement of the provision.

The support provision in Nevada and Utah is similar to the California provision. The support provision in Pennsylvania concerns support for a substantial part of "the six months either prior to such leaving or the time of filing either an application or claim for benefits." The support provisions of California, Nevada, Utah and Pennsylvania refer to the support of a "family" only.

The Idaho support provision reads as follows:

> ". . . The provisions of this subsection shall not apply after a change in conditions whereby claimant has become the main support of self or immediate family."

Prior to 1971, the Utah support provision read as follows:

> ". . . provided, that the foregoing provisions of this subsection shall not apply after a change in conditions whereby she has become the main support of herself or her immediate family.

It is obvious from the above six support provisions that if a legislature wished to encompass a single person it would so state specifically as was the law in Utah and which is the law in Idaho.

The definitions of "family" and "major support" in section 1264-1 of Title 22, California Administrative Code, are in complete accord with the concept that a "family" envisions a plurality of persons.

The definition of "major support" is in terms of "family members" (plural), a family member providing more than one-half of the support, and that not more than one person can be the major support of the family. These terms or concepts just do not envision a single person being a "family."

In Appeals Board Decision No. P-B-22 it is stated:

> "The cardinal rule in the construction of a statute is to follow the legislative intent and that intent must be determined from the express language of the statute. Where the meaning of the language of the statute is free from ambiguity, the intention of the legislature must be determined from that language, and it cannot be rewritten through interpretation to conform to a presumed intention which is not expressed, however desirable such result might appear to be. . . ."

In my judgment the other members of this Board believe it to be a just and proper result to conclude that a single individual is a "family." I do not believe that the clear and unambiguous language of the statute permits such a conclusion. As mentioned above, it would be a simple matter for the legislature to make such a law. All it need do is say so. The California legislature has deemed, in its wisdom, not to do so.

I also note that if the legislature believed that Appeals Board Decision No. P-B-58 was an erroneous interpretation of the law, it has had a period in excess of six years to specifically amend the statute to alter the result of the decision. The legislature took such action to overrule this Board's decision in Disability Decision No. 668 by amending section 2656 of the code (Appeals Board Decision No. P-D-55). Having failed to amend section 1264 of the code following the issuance of Appeals Board Decision No. P-B-58 shows, in my judgment, legislative approval for the result reached in that decision.

For the above reasons and for the reasons stated in the majority opinion in Appeals Board Decision No. P-B-58, I think that a single person cannot be a "family." I therefore dissent.

CARL A. BRITSCHGI