

BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

In the Matter of:

FREDERICK J. SUDDER, III
(Claimant-Respondent)

DEPARTMENT OF EMPLOYMENT
(Appellant)

PRECEDENT
BENEFIT DECISION
No. P-B-28
Case No. 68-2299

The Department of Employment appealed from Referee's Decision No. BK-12862 which held that the claimant was not ineligible for benefits for the week ending March 23, 1968 under section 1253(c) of the Unemployment Insurance Code. Written argument was submitted by the department. Although the claimant was afforded an opportunity to submit argument, he did not do so.

STATEMENT OF FACTS

The claimant is a sheet metal worker and a member of a union local, headquartered in Santa Barbara, California. That local has jurisdiction over sheet metal workers in three counties, including Ventura, the county of the claimant's residence. Practically all sheet metal work within the three counties requires union membership. Members are not permitted to accept nonunion employment.

When a member is unemployed, he notifies the union, who places the member's name on the union availability list in the order in which the notification is made. When employers call in for sheet metal workers, such workers are referred from the aforementioned list in numerical order. Members are notified by telephone at least 24 hours in advance respecting a referral to a job opening. The Department of Employment recognizes the union hiring hall arrangement as meeting the "seek work" requirements of the code.

On March 15, 1968 the claimant received word of his grandfather's death. Funeral services were to take place in Benton, Illinois. At that time the

claimant was about number 30 or 35 on the union's list. Work was slow, and the claimant did not anticipate being called to work for some period of time. He did not notify the hiring hall that he was intending to be away from his residence in order to attend his grandfather's funeral. However, the claimant's wife remained at home and would have received any telephone calls made by the union dispatcher. The claimant left California to attend his grandfather's funeral early March 16 and returned to Ventura on March 21, 1968 at about 11 a.m. He reported to the department about 12:30 p.m. His regular reporting time was 8:15 a.m. That afternoon he telephoned his union and learned that he was still about number 30 on the list. The claimant's wife had not received any calls from the union during his absence from the area. On March 28, 1968 the department determined the claimant ineligible for benefits under section 1253(c) of the code for the week ending March 23, 1968, on the ground that the claimant was "unavailable for work for more than two working days in a week due to a death in immediate family."

The referee reversed the determination of the department on the ground that the claimant lost no work opportunities during the period involved, citing Benefit Decisions Nos. 6581 and 6625 as authority for his decision.

In its written argument to us the department contends that section 1253.1 of the Unemployment Insurance Code clearly and unambiguously allows only two days for an absence caused by a death in a claimant's immediate family and therefore concludes that the loss of work opportunities is not pertinent. The department further contends that Benefit Decisions Nos. 6581 and 6625, cited by the referee, are not pertinent since these cases did not involve a claimant being unavailable for work because of a death in his immediate family under section 1253.1 of the code.

REASONS FOR DECISION

Section 1253(c) of the Unemployment Insurance Code provides that a claimant shall be eligible for benefits for any week only if he is able to work and available for work for such week.

Eligibility within the purview of the above section requires a claimant to be in a labor market ready, willing and able to accept suitable work (Appeals Board Decision No. P-B-17).

As a general rule eligibility for benefits under the above section requires satisfaction of the requirements of availability for the entire workweek, and

any claimant who has withdrawn from the labor market or rendered himself unavailable for employment for a portion of the workweek is ineligible for benefits for the entire week (Benefit Decisions Nos. 6333 and 6457). However, in Benefit Decisions Nos. 6581 and 6625 we held that inability to work or unavailability for work for a short period of time within a workweek did not render the claimant ineligible for benefits when the evidence disclosed there was no loss of employment opportunities.

In the above cited cases we were not concerned with a situation of a claimant being unavailable for work because of a death in his immediate family. In the present case we are involved with just such a situation.

In 1959 the legislature saw fit to make a statutory exception to section 1253(c) by setting forth in section 1253.1(a) of the code the following provision;

"1253.1. An unemployed individual who is in all respects otherwise eligible for unemployment compensation benefits shall not be deemed ineligible for any week in which, for not exceeding two working days, he cannot reasonably be expected to work because:

"(a) There has been a death in his immediate family."

This section of the code was implemented by regulation 1253.1-1(a) in title 22, California Administrative Code, which provides that a grandparent is considered a member of one's immediate family.

In the instant case the claimant was absent from his normal labor market three working days and a portion of a fourth working day because he left California to attend his grandfather's funeral in Illinois.

The language of section 1253.1(a) of the code specifically restricts the period in which a claimant cannot reasonably be expected to work because of a death in his immediate family to "not exceeding two working days." This language is clear, unambiguous and free from uncertainty.

Crawford on Statutory Construction, page 244, states:

"The object or purpose of all construction or interpretation is to ascertain the intention of the lawmakers, and to make it effective. The basic principle has been announced time after time that if the statute is plain, certain and free from ambiguity, a bare reading suffices and interpretation is unnecessary. . . ."

Further, on page 249 of Crawford on Statutory Construction it is stated:

". . . when construing a statute, the reason for its enactment should be kept in mind, and the statute should be construed with reference to its intended scope and purpose. The court should seek to carry out this purpose rather than to defeat it. . . . if the language is unambiguous and the statute's meaning is clear, the statute must be accorded the expressed meaning without deviation, since any departure would constitute an invasion of the province of the legislature by the judiciary. . . ."

Section 1253.1 of the code is remedial in nature and provides for an exception to the requirements of section 1253(c) of the code. Generally a remedial statute should be given a liberal construction in order to effectuate the purposes of the legislation, but as stated by Crawford on page 249, quoted above, a liberal construction does not justify an extension of the statute's scope beyond the contemplation of the legislation.

Therefore, in the instant case we may not extend the exception beyond those expressly and clearly mentioned in section 1253.1 of the code. Under these circumstances, we conclude that since the claimant herein was not available for work for a period exceeding two working days because of a death in his immediate family he is ineligible for benefits for the week ending March 23, 1968.

DECISION

The decision of the referee is reversed. The claimant is ineligible for benefits for the week ending March 23, 1968.

Sacramento, California, October 29, 1968.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

ROBERT W. SIGG, Chairman

LOWELL NELSON

CLAUDE MINARD

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DONALD D. BLEWETT