BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

THIS DECISION DESIGNATES FORMER BENEFIT
DECISION NO. 6767 AS A PRECEDENT
DECISION PURSUANT TO SECTION
409 OF THE UNEMPLOYMENT
INSURANCE CODE

In the Matter of:

RICHARD SANVILLE
(Claimant-Appellant)

FILMASTER, INC.
(Employer-Respondent)

PRECEDENT
BENEFIT DECISION
No. P-B-349

FORMERLY
BENEFIT DECISION
NO. 6767

The claimant appealed from Referee's Decision No. LA-9461 which reversed a determination by the Department of Employment denying the employer's protest of the department's computation of the claimant's claim.

STATEMENT OF FACTS

The claimant filed a claim for unemployment insurance benefits effective June 2, 1963. He listed the employer as his last employer, and in the space provided for stating the reason for leaving work he wrote: "script finished." The employer was notified of the filing of the claim, and on June 10, 1963 advised the department that:

> "This person was not fired, nor did he quit in fact he was never employed. We purchased a script as per written agreement and at no time entered into an employment relationship with the man."

On June 10, 1963, the department notified the claimant (on its form DE 429) of the computation of his claim. The computation did not include any wages from the employer, and did not include enough wages from other employers to establish a valid claim. The claimant was so advised.

On June 18, 1963, the claimant protested the accuracy of the computation. In connection therewith he certified (under penalty of perjury, on department form DE 455) that he had received approximately $1,500 in wages from the employer during the second and third quarters of 1962. The accounting section of the department did not find any report of these wages in the employer's contribution returns, so on July 3, 1963, it requested that an audit investigation be made. The investigation which followed resulted in a recommendation by the auditing section of the department on July 15, 1962 that the claimant be allowed $1,500 in wage credits from the employer with respect to the second quarter of 1962.

It also resulted in the department notifying the employer on July 16, 1963 of the making of an assessment against the employer in the amount of $67.50 contributions, and $6.75 penalty, to which the department added the then accrued interest in the amount of $4.05. The assessment was based upon the unreported $1,500 in question. On July 26, 1963, the employer filed a petition to a referee for reassessment of this assessment upon the basis that this amount was not paid to the claimant as "wages" for "employment."

In the meanwhile, on July 24, 1963, a recomputation of the claim was made using the $1,500 in controversy as additional wage credits. A benefit award of $925 payable at the rate of $55 a week was established for the claimant, payable "if cleared by local office." On August 28, 1963, the claim was found valid. Thereafter, the claimant received seven weekly benefit payments up to and including the week ending September 21, 1963 in the total amount of $382.

On September 27, 1963, the department mailed notice to the employer of its (new) computation of the claim, showing $1,500 in wages from the employer for the second quarter of 1962. On October 2, 1963 the employer protested this computation and questioned the validity of the claim and benefit award, stating that:

> "The Notice of Computation indicates that the claimant's benefit award in connection with the claim established 6-2-63 is based primarily on an alleged wage payment of $1,500 in the second quarter ending 6-30-62.

"It is alleged the inclusion of the aforesaid amount in the claimant's benefit award is contrary to the provisions of the code and that the Department has no jurisdiction to grant these wage credits to the claimant for the establishment of a benefit award since it is based on an assessment levied by the Department of Employment from which a petition for reassessment has been filed. Under the provisions of law when a matter is under appeal it is clearly established that the Department loses jurisdiction and cannot act on the matter under appeal until a final decision is issued. It is therefore alleged that the claimant's benefit year and benefit award based on the above alleged earnings renders the claim invalid."

On October 9, 1963 the employer was advised by the department of its determination denying his protest of the computation of the claim. On October 10, 1963 the employer appealed this determination to a referee. On October 16, 1963 the department stopped further payment of benefits to the claimant.

On May 19, 1964 a hearing on the employer's appeal was held separately from and just prior to a hearing on the employer's petition for reassessment of the July 16, 1963 assessment. The only issue raised was the authority of the department to use the $1,500 payment from the employer to the claimant as wages in computing the claim while its character as such was the subject of a tax controversy. At the conclusion of the hearing on the benefit appeal, the matter was submitted on this issue, and during the course of the subsequent tax hearing the fact was clarified that the benefit appeal was not consolidated with the tax proceeding.

REASONS FOR DECISION

The employer protested the accuracy of the first computation of the claim of which it received notice. It appealed to a referee from the adverse determination of its protest. Its appeal, accordingly, is a benefit proceeding initiated under the provisions of Unemployment Insurance Code section 1330.

The claimant's eligibility for benefits is based upon the accuracy of the computation of the claim. In turn, both of these things rest upon a determination by the department that the claimant received $1,500 in wages during his base period as an employee of the employer. At the time this determination was made, this was a subject of controversy in a pending tax proceeding. The employer asserts that the department had no authority to make such a determination while the tax proceeding was pending.

The authority and duty of the department in these matters is set forth in the code. Section 1329 states that:

> "Upon the filing of a new claim for benefits, a computation of the claim shall promptly be made. . . ." (underscoring added)

Code section 1326 states that:

> ". . . Except as otherwise provided in this article, benefits shall be promptly paid if the claimant is found eligible or promptly denied if the claimant is found ineligible.' (underscoring added)

In support of its position, the employer relies upon code section 1335 which provides that:

> "If an appeal is filed, benefits with respect to the period prior to the final decision on the appeal shall be paid only after such decision. . . ." (underscoring added)

The employer contends that its petition to a referee for reassessment under code section 1133 constitutes such an appeal.

In Empire Star Mines Company, Ltd. v. California Employment Commission (1946), 28 Cal. 2d 33 at pages 46 and 47, 168 P. 2d 686 at pages 694 and 695, our Supreme Court said that:

> ". . . the Unemployment Insurance Act . . . makes a clear distinction between procedures available to a person against whom a levy for contributions is made and the means specified for an applicant to secure a determination of his claim to benefits. . . .
>
> ". . .a determination that an applicant is entitled to benefits, is not . . . res judicata in an action brought . . . for the recovery of contributions . . . upon the ground that the plaintiff is not an employer within the meaning of the statute. . . ."

In our opinion, the word appeal is used in code section 1335 with this distinction in mind. We believe that it refers to a benefit appeal to a referee under the provisions of code sections 1328, 1330, 1331 or 1332. It does not include a petition to a referee for reassessment of taxes under code section 1133.

There is, of course, sound reason why the code makes a clear distinction between benefit and tax procedures. A tax is an involuntary exaction. Its levy may raise questions that are not easily nor speedily resolved. Fundamental rights of many persons may become involved. Time is not as much of the essence in that delay may be compensated by interest.

But prompt payment of claims is essential to the purposes to which the benefit program has been dedicated. In Abelleira v. District Court of Appeal (1941), 17 Cal. 2d 280 at pages 298, 299 and 300, 109 P. 2d 942 at pages 952 and 953, 132 A.L.R. 715 at pages 728 and 729, our Supreme Court said that:

> ". . . The very essence of the act is its provision for the prompt payment of benefits to those unemployed. . . . Any substantial delay would defeat this purpose and would bring back the very evil sought to be avoided.
> . . .
>
> ". . . The legislature has concluded on the basis of normal experience that the large majority of administrative orders will be proper, and that to permit these justifiable and necessary payments to be postponed for long periods would defeat the objectives of the act. . . .

> ". . . The legislature has concluded that it is wiser to have a system of unemployment compensation operating with a possible small percentage of error, than to have a system not operating at all. . . ."

The Supreme Court clearly had this in mind when it pointed out the distinction between tax and benefit proceedings in Empire Star Mines Company, Ltd. v. California Employment Commission (1946), supra, 28 Cal. 2d 33 at page 49, 168 P. 2d 686 at pages 695 and 696.

The occasional erroneous determination arising out of the faster pace of benefit proceedings is a small but necessary cost that must be borne if the benefit program is to operate successfully. Time is importantly of the essence in benefit proceedings. There is no compensation for delay that will relieve the hardships of unemployment.

The employer took no issue in this proceeding with the department's computation of the claim, other than to question its authority. For the reasons stated we believe that the department had the authority in question. Accordingly, the determination should be affirmed.

DECISION

The decision of the referee is reversed. The determination of the department respecting the computation of the claim is affirmed.

Sacramento, California, June 18, 1965.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

GERALD F. MAHER, Chairman

LOWELL NELSON

NORMAN J. GATZERT

Pursuant to section 409 of the Unemployment Insurance Code, the above Benefit Decision No. 6767 is hereby designated as Precedent Decision No. P-B-349.

Sacramento, California, May 24, 1977.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

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