BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

THIS DECISION DESIGNATES FORMER BENEFIT DECISION NO. 6482 AS A PRECEDENT DECISION PURSUANT TO SECTION 409 OF THE UNEMPLOYMENT INSURANCE CODE.

In the Matter of:

OTTO VIEROTH (Claimant-Appellant)

PACIFIC MARITIME ASSOCIATION
(Employer's Agent)

PRECEDENT
BENEFIT DECISION
No. P-B-356

FORMERLY
BENEFIT DECISION
No. 6482

Referee's Decision
No. SF-3384
Referee's Case
No. SF-5180

STATEMENT OF FACTS

Effective November 21, 1954 the claimant registered for work in the San Francisco Commercial Office of the Department of Employment and filed a claim for unemployment insurance benefits. Pacific Maritime Association was an association of and represented waterfront employers as their agent. The employer's agent protested the payment of benefits on the ground that the employment relationship had not been terminated and work was available for the claimant. Effective January 9, 1955 and February 6, 1955, the claimant attempted to file additional claims for unemployment insurance benefits since he had earned less than his weekly benefit amounts with respect to such weeks. The employer's agent renewed its protest. On February 18, 1955, the department issued a determination which held that the claimant was not unemployed under section 1252 of the Unemployment Insurance Code and was ineligible to file a valid claim for benefits. On February 22, 1955,

the claimant appealed the department's determination to a referee. In a decision issued April 20, 1955, the referee reversed the determination of the department and held that the claimant was unemployed at the three periods of time involved therein; that the claimant was available for work under code section 1253(c); and that benefits were payable provided the claimant was otherwise eligible. On April 29, 1955, the employer's agent appealed the referee's decision to the Appeals Board.

Effective April 3, 1955, the claimant again registered for work in the San Francisco Commercial Office of the department and filed an additional claim for benefits. The employer's agent was notified of the filing of the claim and responded thereto with facts relating to the claimant's unemployment. On May 5, 1955, the department determined under section 1256 of the code and ruled under section 1030 of the code that the claimant was not, on March 29, 1955, discharged from his last employment for misconduct connected with his work. The employer's agent appealed therefrom to a referee on May 11, 1955. Its appeal read in pertinent part as follows:

> "It is not and has not been the position of the employer that the claimant was discharged for misconduct in connection with his work. To the contrary, it has been the position of the employer and the basis of its original protest was that the claimant was not unemployed, that he has not made himself available for his regular work, and that an employer-employee relationship still exists and is in effect with the Pacific Maritime Association and the claimant."

Subsequent to a hearing before a referee in connection with such appeal but prior to the issuance of a decision by the referee, the Appeals Board removed the matter to itself under code section 1336; and the two cases have been consolidated for decision. A brief has been filed by the employer's agent.

The claimant, age 77, was a member of the International Longshoremen's and Warehousemen's Union, Local 10. He worked continuously as a winch driver in the San Francisco harbor area from 1942 until October 17, 1954 under a collective bargaining agreement entitled "Pacific Coast Longshore Agreement", which was entered into between the claimant's union and the Pacific Maritime Association. As provided by the terms of the agreement, a hiring and dispatching hall was maintained and operated jointly by the union and the Pacific Maritime Association

under the supervision of the Joint Port Labor Relations Committee. Such committee had control over the so-called "registration list", including the power to make additions to or subtractions from the list as may have been necessary in accordance with the needs of the port for longshore workers. The claimant was a member of such list throughout the period involved. As such, he was entitled to receive, and until October 17, 1954 he had registered for and received, his equal share of longshore work in his chosen occupation as winch driver. During the first nine months of 1954, the claimant's wage as a winch driver averaged $103.75 weekly.

On October 17, 1954, the claimant discontinued registering for work as a winch driver because he believed that his coordination had declined to a point where he was no longer properly performing his work. He thereafter sought work as a clerk on piers and terminals through a hiring and dispatching hall operated jointly by Local 34 of the International Longshoremen's and Warehousemen's Union and the Pacific Maritime Association under the terms of an agreement entitled "Master Agreement for Clerks and Checkers and Related Classifications". Such agreement contained provisions similar to those involving longshore workers, including the functioning of the Joint Port Labor Relations Committee, the maintenance of a registration list for clerks, and the distribution of a fair and equal share of the work to all "registered" clerks. The agreement also provided:

> "Clerks not on the registration list shall not be dispatched from the hiring hall or employed by any employer while there is any man on the registration list qualified, ready and willing to do the work."

Accordingly, the claimant was dispatched to work as a clerk only on those days in which there were insufficient registered clerks available to meet the requirements of the employers. During the period from October 17, 1954 to April 3, 1955, the claimant's weekly earnings as a clerk averaged $53.97. Although the claimant reported to the hiring hall regularly for work as a clerk, his earnings were less than his weekly benefit amount during each of the weeks beginning November 21, 1954 and January 9, February 6, and April 3, 1955.

The claimant's work as a winch driver was entirely satisfactory and, throughout the periods involved, the claimant continued as a full-fledged member of the longshoremen's registration list. As such, he was at all times entitled to the welfare provisions of the collective bargaining agreement and was eligible to command his fair share of work as a winch driver or other longshore work, such as a sweeper or a lineman, which work was available to older members who may have been excluded from other work only because of their impaired efficiency. The claimant, when he determined to abandon his work as a winch driver, chose to work as a clerk rather than as a sweeper or a lineman because he considered himself better suited by background, education, and experience to perform work as a clerk. Because a worker was required to be present at the hiring and dispatching hall each day for assignment to work, it was not feasible or practicable for the claimant to apply for work through both the clerks' and longshore hiring halls since they were too far from each other.

The questions to be decided are:

1. Was the claimant "unemployed" and entitled to establish a new claim for benefits effective November 21, 1954 and additional claims for benefits effective January 9, February 6, and April 3, 1955?

2. Was the claimant available for work during the periods in which he sought benefits?

3. Should the department have issued a favorable ruling under section 1032 of the code?

REASONS FOR DECISION

The employer's agent contends that the claimant was not entitled to unemployment insurance benefits because he was still in an employment relationship at the time he filed his claim on November 21, 1954. We cannot agree with this contention. Although at that time the claimant was a member in good standing of Local 10 of the International Longshoremen's and Warehousemen's Union and could have had his fair share of the longshore work by reporting to the hiring hall operated by the Joint Port Labor Relations Committee, the claimant on that date was actually not employed by any employer belonging to the Pacific Maritime Association. In order to satisfy

the "unemployment" requirement of code section 1252, it is only necessary that, for a particular week, a claimant need perform no services and receive no wages or may be employed less than full time and receive wages for that week of less than his weekly benefit amount. Consequently, for the week beginning November 21, 1954, the claimant was "unemployed" within the meaning of section 1252 of the code (Benefit Decision No. 6454). Having had sufficient wage credits to establish an award of benefits, we find that the claimant had established a valid new claim effective November 21, 1954 (Benefit Decision No. 6146).

Even though the claimant had ceased to be engaged in longshore work because he chose to work as a clerk on the waterfront, the record before us establishes that there was a substantial labor market for such clerical work and that the claimant was receiving a substantial share thereof; and we therefore find that the claimant satisfied the availability requirements of section 1253(c) of the code (Benefit Decision No. 5093). Having found that the claimant was able and available for such clerical work, he could and did file valid additional claims for the weeks beginning January 9, February 6, and April 3, 1955, during which he had less than full-time work and had wages payable to him of less than his weekly benefit amount (22 Cal. Adm. Code 1251-1-d; Benefit Decision No. 6454).

The Pacific Maritime Association has apparently presented its contentions on the basis that it was the employer of this claimant. Although Barber vs. California Employment Stabilization Commission, 130 Cal. App. 2d 7, 278 P. 2d 762, and its predecessor cases, recognized that the work of the waterfront belonged to the maritime workers, it was expressly recognized that the Pacific Maritime Association was an association of and represented the interested shipowners and operators at the San Francisco harbor. It is obvious that this claimant was not employed by the Pacific Maritime Association but from time to time worked for various employers according to the work available to him through the hiring hall. From the record before us, we cannot determine who was the last employer of the claimant at the time involved in the department's ruling of May 5, 1955 or whether the claimant was on a layoff or leave of absence at that time or had actually been separated from such employment; but that matter can undoubtedly be entrusted to departmental determination without the necessity of an additional hearing before a referee. When the department has established the fact, it will issue or withhold a ruling depending upon whether the claimant was still in an employment status or whether his last employment had been terminated.

DECISION

The decision of the referee in Case No. 27191 is affirmed; and the determination of the department In Case No. 27702 is modified. The claimant is held to have established valid claims for benefits and to have been available for work. Benefits are payable provided the claimant was otherwise eligible. The department shall issue or withhold a ruling depending upon the claimant's employment status at the time in question.

Sacramento, California, April 26, 1956.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

MICHAEL B. KUNZ, Chairman

GLENN V. WALLS

ARNOLD L. MORSE

Pursuant to section 409 of the Unemployment Insurance Code, the above Benefit Decision No. 6482 is hereby designated as Precedent Decision No. P-B-356.

Sacramento, California, June 2, 1977.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

DON BLEWETT, Chairperson

MARILYN H. GRACE

CARL A. BRITSCHGI

HARRY K. GRAFE

RICHARD H. MARRIOTT