

BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

THIS DECISION DESIGNATES FORMER BENEFIT
DECISION NO. 6754 AS A PRECEDENT
DECISION PURSUANT TO SECTION
409 OF THE UNEMPLOYMENT
INSURANCE CODE

In the Matter of:

GERALD T. GALLAGHER
(Claimant)

PRECEDENT
BENEFIT DECISION
No. P-B-359

FORMERLY BENEFIT DECISION NO. 6754
--

The claimant appealed to a referee from a determination of the Department of Employment that the claimant was disqualified for benefits for five weeks beginning May 3, 1964 under section 1256 of the Unemployment Insurance Code. Subsequent to the issuance of Referee's Decision No. SD-4361, we set aside the decision of the referee under section 1336 [now section 413] of the code.

STATEMENT OF FACTS

The claimant filed a new claim for benefits effective March 8, 1964 and established a weekly benefit amount of \$48 a week. The claimant certified for benefits for each successive week thereafter and without interruption through June of 1964. During the week ending May 9, the claimant filed a continued claim for benefits for the week ending May 2 showing that he had earnings of \$25 from temporary work for a building maintenance company. On May 14, 1964 the claimant filed a continued claim for benefits for the week ending May 9, 1964 and reported that he had worked two days for a steel company, earned \$33, and had quit on May 8, 1964 because the work was unsatisfactory.

A representative of the department interviewed the claimant concerning the reasons for the termination of his employment on May 8. The representative also telephoned the steel company and obtained information concerning the circumstances of the termination of the employment. The personnel manager for the steel company indicated in the telephone conversation that he intended to protest the payment of benefits. No notice of the filing of the claim was sent to the steel company by the department.

At the hearing before the referee on July 8, 1964 the claimant was informed that there probably would be an additional hearing on the merits of the case in order to have the steel company represented at the hearing. The claimant was also informed that he should prepare to present further evidence at the additional hearing and that the referee would not rule on the merits of the case based upon the evidence presented at the hearing on July 8, 1964.

The questions presented to us for consideration are:

1. During continuous "periods of unemployment," must "additional claims" be filed and notices of claim be given to employers in connection with less than full-time employment for less than the claimant's weekly benefit amount, and
2. Was the claimant afforded an opportunity for a fair hearing?

REASONS FOR DECISION

Section 1327 of the Unemployment Insurance Code provides as follows:

"1327. A notice of the filing of a new or additional claim shall be given to the employing unit by which the claimant was last employed immediately preceding the filing of such claim, and the employing unit so notified shall submit within 10 days after the mailing of such notice any facts then known which may affect the claimant's eligibility for benefits."

Section 1251-1(d) of Title 22 of the California Administrative Code defines an additional claim as follows:

"(d) 'Additional claim' means an application for a determination of eligibility for benefits which certifies to the beginning date of a period of unemployment and which would fall within a benefit year previously established, for which a continued claim or claims may be filed, and which follows a period of employment which occurred subsequent to the date of filing the last new, additional, reopened or continued claim." (Emphasis added)

Subsection (f) of section 1251-1 defines a continued claim as follows:

"(f) 'Continued claim' means an application which certifies to the completion of a week of total, part-total, or partial unemployment either to satisfy a week of the waiting period requirement or to claim benefits for a compensable week."

Section 1030(a) of the Unemployment Insurance Code provides that any employer who is entitled under section 1327 to receive notice of the filing of a new or additional claim may submit information concerning the circumstances of the termination of employment entitling it to a ruling concerning the reasons for termination of employment.

Because the precise meaning of "additional claim" is not set forth in the Unemployment Insurance Code, it is within the power of the Director of Employment to define by regulation the meaning of the term as an administrative aid in carrying out the purposes of the code (Regulation Decision No. 14). In our opinion, the director did not act unreasonably by defining an "additional claim" as one which may be filed only for a "period of unemployment" following a "period of employment" subsequent to the date of filing of the last claim. Periods of unemployment are not interrupted by less than full-time employment for less than the weekly benefit amount (section 1252 of the code; Benefit Decisions Nos. 6140 and 6315).

Since the claimant had less than full-time work for which he earned less than his weekly benefit amount during the weeks ending May 2 and May 9, 1964, the claimant could not file additional claims but could file only continued claims when he next reported to the department for those two weeks.

Therefore, neither employer was entitled to a notice of additional claim (Benefit Decisions Nos. 6452 and 6752). Because neither employer was entitled to notice of claim and neither employer was a party to this matter, the hearing should have been conducted on this basis. Instead, the claimant was informed that he should prepare to present further evidence at an additional hearing and that the referee would not rule on the merits of the case based upon the evidence presented at the hearing on July 8, 1964. Under these circumstances, we hold that the claimant was not afforded an opportunity for a fair hearing under section 1334 of the code. The matter must be remanded to a referee for further hearing and decision in connection with the claimant's appeal. Representatives of the steel company, of course, could be brought into the hearing as witnesses on the issue of whether the claimant had good cause to leave that company.

Our conclusion that the employers in this matter were not entitled to notice of additional claim and therefore were not entitled to protest as interested employers on that basis is consistent with prior decisions which have held that not every employer is entitled to notice or to be a party in connection with every termination of employment or leaving of work (Ruling Decision No. 75; Benefit Decisions Nos. 6638 and 6703). If an employer's reserve account is subsequently subject to benefit charges, it may seek remedies appropriate for its circumstances at that time (Tax Decision No. 2328 and Disability Decision No. 640).

DECISION

The matter is remanded to a referee for an additional hearing and a decision in connection with the claimant's appeal to a referee from the determination of the department.

Sacramento, California, October 1, 1964.

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. 6754 is hereby designated as Precedent Decision No. P-B-359.

Sacramento, California, June 7, 1977.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

DON BLEWETT, Chairperson

MARILYN H. GRACE

CARL A. BRITSCHGI

HARRY K. GRAFE

RICHARD H. MARRIOTT