BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

In the Matter of:

KAREN MILLER BRIDGES
(Claimant)

PRECEDENT
BENEFIT DECISION
No. P-B-367

Office of Appeals No. S-SUA-11080

Case No. 77-4001

The claimant appealed from the decision of the administrative law judge which dismissed the claimant's appeal from a notice of overpayment from the Department on the ground that the issue in the case had previously been decided and that the administrative law judge accordingly lacked jurisdiction to decide the matter.

STATEMENT OF FACTS

On May 3, 1976 the Department mailed to the claimant a determination advising her that she was not entitled to special unemployment insurance assistance because she was qualified to establish a valid claim under the Texas unemployment insurance system. It concurrently mailed a notice of overpayment for 13 weeks of unemployment insurance benefits paid to the claimant for the period beginning February 8, 1975 and ending May 10, 1975. The amount of the overpayment was calculated at $642.

The claimant delayed until June 22, 1976 in filing her appeal from that notice of overpayment. Subsequently, her appeal was dismissed as being untimely filed by a decision of an administrative law judge mailed July 22, 1976. No appeal was taken to this Board from that decision. On February 3, 1977 the Department issued another notice of overpayment relating to the same time period and advising the claimant that the first notice of overpayment dated May 3, 1976 was erroneous and should be disregarded. The second notice also reduced the amount of the overpayment to $600. From the second corrected notice of overpayment the claimant filed a timely appeal on February 14, 1977. Following a hearing the administrative law judge issued his decision on April 13, 1977 in which he dismissed the appeal on the ground that he lacked jurisdiction to hear the case in view of the disposition of the first notice of overpayment. The claimant then filed a timely appeal which is now before the Board.

REASONS FOR DECISION

Section 1377 of the Unemployment Insurance Code provides in relevant part as follows:

> "Within 20 days from the date of mailing or serving of the notice of overpayment, the person affected may file an appeal to a referee. . . ."

At the outset it is important to note that the cited statutory provision is unequivocal in providing for an appeal from a Department notice of overpayment. In the instant case two such notices are involved. The first notice of overpayment became final when the administrative law judge issued his decision from which the claimant did not appeal (section 1334, Unemployment Insurance Code). However, the Department, some nine months later, issued a second notice of overpayment altering the amount which it contended the claimant had been overpaid. This raised a whole new factual issue, to wit: Was the claimant overpaid $600 rather than $642, or some lesser (or greater) sum?

The crucial factor is that each Department determination by its very nature raised a new set of facts and circumstances which are challengeable by an appeal. To hold, as did the administrative law judge below, that there is no jurisdiction to consider an appeal from the last Department notice of overpayment, could have pernicious consequences. For example, if that Department determination, through erroneous calculation or otherwise, had been in the amount of $6,000 rather than $600, and the claimant's timely appeal was barred on the theory of no jurisdiction, there could indeed be a grave miscarriage of justice if the claimant could not be heard on the merits.

In our view the legislature wisely provided, in absolute terms, that a timely appeal will lie from any Department notice of overpayment - whether it be initial, corrective, additive, or reconsidered. In short, we are aware of no rule or statute which operates to deny a claimant a hearing in the circumstances under consideration. Accordingly, we must disagree with the conclusion of the administrative law judge that the issue before him had previously been decided, or that he lacked jurisdiction for that reason.

Parenthetically, it is appropriate to observe that apparently the administrative law judge applied the doctrine of res judicata when he dismissed the claimant's appeal of February 14, 1977. We reach this conclusion as the reason given for the dismissal was, "The issue in this case has been previously decided and the undersigned has no jurisdiction to hear the matter."

Strictly speaking, the doctrine of res judicata gives conclusive effect to a former judgment of a court in subsequent litigation involving the same controversy, at least where it will not "defeat the ends of justice or important considerations of policy" (Greenfield v. Mather (1948), 32 Cal. 2d 23). Res judicata is applicable to administrative decisions of agencies which do not have the power to modify their decisions (Olive Proration etc. Com. v. Agric. etc. Com. (1941), 17 Cal. 2d 204, 209). Consequently, the doctrine applies to this Board as it may not review or reopen its final decisions (section 410, Unemployment Insurance Code).

The administrative law judge in the proceeding below evidently decided that the second notice of overpayment was not justiciable pursuant to the rules of res judicata, as the matter had been litigated and resolved against the claimant in the proceedings resulting from the first notice of overpayment. In this respect we believe the hearing judge was in error.

It is well established that res judicata has no application where a judgment has not been rendered on the merits (4 Witkin, California Procedure, Judgment, section 168, p. 3310). In the present case, the claimant's appeal from the first notice of overpayment was dismissed on the procedural ground of untimeliness, and there was no adjudication on the merits. Accordingly, the conclusion of the administrative law judge that the issue before him had been previously decided, and that he lacked jurisdiction for that reason, was erroneous, and the unequivocal language of section 1327 requires that the claimant be afforded a hearing.

DECISION

The decision of the administrative law judge is vacated, and the case is remanded to the administrative law judge for a further hearing on the merits, including the issue of whether there was an overpayment, and if so whether recoupment would be against equity and good conscience, and for preparation of a decision.

Sacramento, California, October 20, 1977.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

DON BLEWETT Chairperson

MARILYN H. GRACE

RICHARD H. MARRIOTT

HERBERT RHODES

Dissenting - Written Opinion Attached

HARRY K. GRAFE

DISSENTING OPINION

I dissent.

The facts in this case are neither complex nor controverted. The Department on May 3, 1976 issued a notice of overpayment to the claimant in the amount of $642. That assessment of overpayment became final on August 11, 1976 (if not earlier). Exactly nine months after the first notice of overpayment, on February 3, 1977, the Department issued a corrected notice of overpayment, but based on the same facts which precipitated the May 3, 1976 notice, but this time in the amount of $600. The claimant appealed this February 3, 1977 notice of overpayment on February 14, 1977. Following a hearing thereon, the administrative law judge issued a decision on April 13, 1977 dismissing the appeal on the basis that: "The issue in this case has been previously decided and the undersigned has no jurisdiction to hear the matter." As a matter of law, the administrative law judge is correct and his decision should be affirmed.

§ 1094.5 of the Code of Civil Procedure requires the reversal of a decision of an administrative order (such as the Department's notice of overpayment) or decision (such as a decision of this Board or an administrative law judge) if the Department or agency "has proceeded without, or in excess of jurisdiction." Once the decision of an agency becomes final, the agency lacks jurisdiction to alter or modify it (see Olive Proration Program Committee v. Agricultural Prorate Commission (1941),17 Cal 2d 204). All of an agency's powers derive from specific authorizing provisions, statutory or constitutional; if those provisions prohibit the agency from reconsidering or reopening a case after a certain point, the agency simply lacks the power to proceed further (see Hollywood Circle, Inc. v. Department of Alcoholic Beverage Control (1961), 55 Cal 2d 728; Smith v. San Francisco (1970), 11 Cal. App. 3d 606; § 5.8, Deering, California Administrative Mandamus, California CEB 1966). Although in some other states administrative agencies are said to have implied or inherent power to vacate, reopen or modify a final decision (see Anno, 73 ALR 2d 943 (1960)), the California courts have upheld such power only if it is expressed in the statute (Heap v. Los Angeles (1936), 6 Cal 2d 405; Crestlawn Memorial Park Association v. Sobieski (1962), 210 Cal. App. 2d 43; § 4.52, Deering and Klein, California Administrative Agency Practice, California CEB 1970).

An examination of the Unemployment Insurance Code discloses that the sole statutory authority granting the Department the power to reconsider its determinations is that set forth in § 1332, which limits the Department to 15 days after mailing or service of the notice. Although § 1332 allows a longer reconsideration period under specified circumstances, such circumstances are not present in the present case as the claimant did file an appeal from the May 3, 1976 notice of overpayment. That appeal was heard by an administrative law judge on July 20, 1976. The administrative law judge issued a decision on July 22, 1976 finding the claimant's appeal was untimely. The claimant did not initiate further appeal to this Board, thus the administrative law judge's decision became final on August 11, 1976 pursuant to § 1334 of the Unemployment Insurance Code. Once such finality attached, as there is no statute granting the Department, the administrative law judge or this Board the power of further reconsideration (see 37 Ops. Cal. Atty Gen. 133), there simply was no jurisdiction to reopen the matter of the overpayment (Olive Proration Program Committee v. Agricultural Prorate Commission, supra).

Consequently the decision of the administrative law judge, dismissing the appeal from the February 3, 1977 corrected notice of overpayment for want of jurisdiction, is entitled to be affirmed as a matter of law. This is not to suggest the Department is bound to collect an overpayment of $624 from the claimant if the Department now finds its original calculations were in error and the correct amount of overpayment was only $600. The Department appears to stand in the role of judgment creditor and can accept $600 as a compromise or accord and satisfaction to discharge its overpayment judgment in the amount of $624 (see Armstrong v. Sacramento Valley Realty Co. (1919), 179 Cal 648; Schwartz v. California Claim Service (1942), 52 Cal. App. 2d 47).

HARRY K. GRAFE