

BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

In the Matter of:

MARILYN D. LOWE
(Claimant)

PRECEDENT
BENEFIT DECISION
No. P-B-396
Case No. 78-886

Office of Appeals Nos. S-FED-20647
S-EME-20648
S-EME-EX-20649

The claimant appealed from that portion of the decision of the administrative law judge which held that the claimant was liable to repay that part of an overpayment of federal supplemental benefits with respect to which she had received duplicate benefits under an Oregon combined claim.

STATEMENT OF FACTS

In Case No. S-FED-20647, the claimant appealed from a Department determination and assessment of overpayment dated October 31, 1977 which held that she was:

- (1) Not entitled to federal extended unemployment benefits (Federal Supplemental Benefits) effective November 28, 1976 on the ground that she was not an exhaustee within the meaning of the federal statute;
- (2) Not entitled to emergency extended compensation (Federal Supplemental Benefits) effective January 23, 1977 on the ground that she was not an exhaustee within the meaning of the federal statute; and
- (3) Liable for an overpayment of federal extended benefits (Federal Supplemental Benefits) in the amount of \$512.

In Case No. S-EME-20648, the claimant appealed from an assessment of overpayment dated October 31, 1977 which held that she was liable for an overpayment of extended emergency benefits (Federal Supplemental Benefits) in the amount of \$512.

In Case No. S-EME-EX-20649, the claimant appealed from an assessment of overpayment dated October 31, 1977 which held that she was liable for an overpayment of emergency extended benefits (Federal Supplemental Benefits) in the amount of \$204.

These cases involve common questions of law and fact. Since it appeared that the rights of the parties would not be jeopardized thereby, they were joined by the administrative law judge for the purpose of hearing and decision.

The claimant filed a claim for regular California State benefits effective December 21, 1975 and thereafter exhausted her maximum award under that claim. Effective November 28, 1976, the claimant filed a claim for federal extended benefits (Federal Supplemental Benefits) and established an award of \$512 payable at a weekly rate of \$68. Thereafter, the claimant claimed and received the maximum weekly benefit amount in consecutive weeks through the week ending January 15, 1977. A remaining balance of \$36 was paid to the claimant for the week ending January 22, 1977, and the claim was thereupon exhausted.

The claimant then filed a claim for emergency federal extended unemployment benefits (Federal Supplemental Benefits) and again established a maximum award of \$512 payable at a weekly rate of \$68. She then proceeded to claim and receive the maximum amount of benefits under that claim through the week ending March 12, 1977. A remaining balance of \$36 was paid to the claimant for the week ending March 19, 1977, exhausting this claim.

The claimant then filed a claim for further extended unemployment benefits (Federal Supplemental Benefits) and again established a maximum award of \$512 payable at a weekly rate of \$68. Thereafter, she claimed and received her maximum weekly benefit amount for the three- week period ending April 9, 1977.

Sometime in April 1977, the interstate office in Oregon discovered that the claimant was eligible for an Oregon combined wage claim with an award of \$630 payable at a weekly rate of \$28, which should have been filed on the claimant's behalf with an effective date of November 28, 1976. This information, together with advice that the claimant would be paid on that claim retroactively, was provided to the liable State of California on May 18, 1977, which suspended further payments of Federal Supplemental Benefits to the claimant. However, no action was initiated by the California Employment Development Department to assess any overpayment until October 31, 1977, more than five months later.

The combined wage claim was processed, and the claimant was paid four weeks of benefits for 1976 and 15 weeks of benefits for 1977 on or about May 18, 1977. Thereafter she received the balance of the total amount of the \$630 award.

To the extent that she received Oregon state benefits and Federal Supplemental Benefits for the same period, the claimant received duplicate benefits. Such benefits were received, however, without any fault or misrepresentation on the claimant's part.

The claimant has had training as a teacher but the extent of her training and her qualifications to teach are not revealed in the record. In any event, she has had no extensive employment over the last three years, and at the time of the hearing was working only one day and earning only \$30 per week. Although she has no dependents, she has no source of income apart from her own earnings and food stamps. She testified that she has no idea as to how she could repay the overpayment assessed.

REASONS FOR DECISION

We note preliminarily that the administrative law judge properly joined for hearing and decision all of the determinations and notices of overpayment described in the statement of facts. We therefore proceed to a discussion of the merits.

The Emergency Unemployment Compensation Act of 1974 (Public Law 93-572, as amended) created a temporary program of unemployment compensation ("Federal Supplemental Benefits"), financed, in part, from federal funds, for individuals who have exhausted their rights to compensation under permanent unemployment compensation programs. An individual

is not entitled to such benefits if he has a "right to compensation, including regular, additional, and extended compensation, . . . under the applicable State law or the State law of any other State; . . ." (Title 20, Code of Federal Regulations, section 618.5(a)(3))

The record establishes that the claimant received benefits under the Oregon claim for the last four weeks of 1976 and at least the first 15 weeks of 1977. She received Federal Supplemental Benefits for the last five weeks of 1976 and the first 13 weeks of 1977. Thus, she received duplicate benefits for a total of 17 weeks - four weeks in 1976 and 13 weeks in 1977. Oregon benefits received for these weeks amounted to \$364. The Federal Supplemental Benefits received during that period total \$1,228 and constitute an overpayment.

Section 1375 of the California Unemployment Insurance Code provides that a claimant who is overpaid benefits is liable for this amount unless the overpayment was not due to fraud, misrepresentation or wilful nondisclosure on his part, was received without fault on his part, and its recovery would be against equity and good conscience.

Because the record establishes that the claimant was free of any misrepresentation or fault in the receipt of duplicative benefits, the only question to be decided is whether recovery of the overpayment would be against equity and good conscience.

In Gilles v. Department of Human Resources Development (1974), 11 C. 3d 313, the Supreme Court of California rejected an interpretation of section 1375 which would allow attention to be focused upon a single issue, and held that the standard of equity and good conscience established by that section "involves a panoramic vision that encompasses all factors which might persuade an individual - or a government - of good conscience to forego recoupment of moneys previously paid." The court held that a decision on whether the recovery of an overpayment is against equity and good conscience must be based not merely on the notice to the claimant that he may be required to repay the benefits, but consideration must also be given to the cause of the overpayment, whether the claimant received only normal unemployment benefits or some extra duplicative benefits, whether the claimant changed his position in reliance upon the receipt of the benefits, and whether the recovery of the overpayment by imposing extraordinary hardship on the claimant would tend to defeat the objectives of the Unemployment Insurance Code. (11 C. 3d at p. 323; emphasis added)

The Gilles decision emphasized the need of most claimants for benefits, and the hardship which would be imposed on needy claimants if they were required to repay benefits for which they were initially found eligible and which have been spent on the necessities of life. The principal teaching of the case, however, is that considerations should be given to all of the enumerated factors. No single factor, including the receipt of duplicative payments, is to be considered to the exclusion of the others in determining whether recovery would be against equity and good conscience.

Although the claimant received \$532 of her \$630 Oregon award as a lump sum, the Department delayed for more than five months in sending the claimant a notice of overpayment. It is apparent from the length of this delay, the amount of the lump sum payment, and the claimant's testimony concerning her income and resources, that she had changed her position, i.e., had spent most or all of the lump sum payment before receipt of the notice of overpayment.

Applying the Gilles standard in Appeals Board Decision No. P-B-368, we concluded that where a claimant received an overpayment of Federal Supplemental Benefits without fault, only that portion of the overpayment representing the duplicative state benefits could be recovered. The present claimant having received an overpayment of Federal Supplemental Benefits without fault, the greatest sum recoverable from her under our holding in Decision No. P-B-368 is the amount of the duplicative Oregon benefits. The question to be decided in the present case, therefore, is whether recovery of the duplicative state benefits - \$364 - would be against equity and good conscience.

It is clear that the claimant had changed her position in reliance upon receipt of the Federal Supplemental Benefits before she learned from the California Department that she had received an overpayment. It is also clear that the claimant's total cash income - \$30 per week - is so small, even in relation to the duplicative Oregon benefits she received, as to make recovery of any part of that sum an extraordinary hardship. In the light of these considerations, we conclude that it would be against equity and good conscience, notwithstanding the claimant's receipt of duplicate benefits, to require the claimant to repay any portion of the overpayment.

In reaching our decision we recognize the transient nature of the Emergency Extended Unemployment (EME) and the Federal Supplemental Benefits (EME-EX) programs which give rise to the instant matter. Accordingly, it is appropriate that we note that our conclusion would be the same had the overpayment related directly to a state fund or combined claim.

DECISION

The decision of the administrative law judge is modified. The claimant was overpaid benefits of \$1,228; repayment of the overpayment is waived.

Sacramento, California, June 20, 1978.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

DON BLEWETT, Chairperson

MARILYN H. GRACE

HARRY K. GRAFE

RICHARD H. MARRIOTT

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