

BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

In the Matter of:

ELISA ALMERA
(Claimant)

L.A. COUNTY DEPARTMENT OF
PUBLIC SOCIAL SERVICES
(Employer)

PRECEDENT
BENEFIT DECISION
No. P-B-414
Case No. 79-8156

Office of Appeals No. LB-4P-2386

The employer appealed from the decision of the administrative law judge which held that the claimant had been discharged for reasons other than misconduct and the employer's reserve account was not relieved of benefit charges.

STATEMENT OF FACTS

The Department issued a determination and a ruling which held that the claimant had been discharged for misconduct in connection with her work and the employer's reserve account relieved of charges. From this adverse determination the claimant appealed.

A hearing was held before an administrative law judge on September 20, 1979. The administrative law judge recited:

". . . The Employer is represented by R. E. Harrington Company in the person of Toby J. Boothroyd. . . ."

Thereafter in the course of the hearing, the employer's representative asked for a continuance, which was granted.

A second hearing was scheduled for October 18, 1979, and the parties were so notified. Through inadvertence the office of appeals neglected to send the notice of hearing to Harrington Company. The employer appeared at the hearing on the scheduled date and represented itself through one of its employees; the Harrington Company not having been notified did not appear. The administrative law judge issued a decision adverse to the employer and from that decision the employer appealed through its agent.

The employer, a political entity, has elected to finance its unemployment insurance coverage pursuant to sections 801 et seq. of the Unemployment Insurance Code, and is a reimbursable employer.

REASONS FOR DECISION

Section 1334 of the Unemployment Insurance Code provides in part that the referee (administrative law judge) shall issue his decision after affording a "reasonable opportunity for a fair hearing."

Section 411 of the code provides that the Appeals Board "may promulgate rules or amend or rescind rules pertaining to hearing appeals and other matters falling within its jurisdiction."

Pertinent rules of the Appeals Board are contained in the following sections of Title 22 of the California Administrative Code, as follows:

"5002. For the purpose of these rules:

* * *

"(j) Unless the context otherwise requires, the term 'authorized agent' is included in the words 'appellant,' 'party,' 'petitioner,' 'proponent,' or 'respondent.' "

"5004. Notices to Authorized Agents. Whenever the records of the appeals division indicate that a party is represented by an authorized agent, such agent shall be furnished a copy of all notices and decisions to which the party is entitled. Notices to an authorized agent for appeals

and petitions filed by that agent shall constitute notice to the party. In all other cases parties shall be furnished a copy of such notices and decisions."

"5029. Notice of Hearing. Unless otherwise provided by the code, written notice of the time and place of hearing an appeal shall be mailed to each party at least ten (10) days before the date of the hearing; and written notice of the time and place of hearing any tax petition shall be mailed at least twenty (20) days before the date of hearing. The time of notice "may be shortened with the consent of the parties. Any party may waive notice."

Section 5029 provides that notice of the time and place of hearing an appeal shall be mailed to each party. Under section 5002(j) the term "party" includes the term "authorized agent." Section 5004 provides that the notice shall be sent to an authorized agent whenever the records of the Appeals Division indicate that a party is so represented. "Party" would include either claimant or employer.

The reason the Los Angeles Office of Appeals did not send a notice of the second hearing to the employer's representative was because through inadvertence its records showed no representation. Under such circumstances we hold that the employer was not given "a reasonable opportunity for a fair hearing" in accordance with the Unemployment Insurance Code and the Appeals Board's rules because of the failure to notify the employer's agent of the second hearing. Therefore, the decision of the administrative law judge must be set aside.

The Los Angeles County Department of Public Social Services, having elected reimbursable employer status, does not have a reserve account. Accordingly, the Department's issuance of a ruling was in error. The ruling is set aside.

DECISION

The decision of the administrative law judge is set aside, as is the ruling issued by the Department. The case is remanded to an administrative law judge for hearing and decision on the merits.

Sacramento, California, August 28, 1980.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

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