

BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

In the Matter of:

YVAN STEBLINA
(Claimant)

Office of Appeals No. OAK-5913

PRECEDENT
BENEFIT DECISION
No. P-B-418
Case No. 80-2816

Pursuant to the provisions of section 413 of the California Unemployment Insurance Code, the Appeals Board assumed jurisdiction of this case subsequent to the issuance of the administrative law judge's decision which held that the claimant is ineligible for benefits for one week beginning January 21, 1979 under section 1252 of the Unemployment Insurance Code; disqualified for benefits for two weeks beginning February 10, 1980 under section 1257(a) of the code; and liable for an overpayment in the sum of \$104 for the week ending January 27, 1979.

STATEMENT OF FACT

The claimant is a carpenter by trade. He had established a claim for unemployment insurance benefits effective December 10, 1978.

The claimant is of Ukrainian extraction and cannot read or write English. He filed claims for benefits for the weeks ending January 20, 1979 and January 27, 1979. In the week ending January 20, 1979 he had no work and no earnings. In the week ending January 27, 1979 he worked 40 hours and earned \$548, but reported that he had no work and no earnings.

With regard to filing the above claims, although the claimant signed the claim card he did not fill it out. The card was completed by a fellow carpenter, unknown to the claimant by name. The claimant could offer no explanation as to why the fellow worker had put down the wrong information.

Concerning the issue of whether the claimant could repay the overpayment, the testimony was extremely limited. After the claimant testified at the hearing that he was now working, the following question was asked and answered:

"If you had to pay back that \$104, would it cause you an unreasonable hardship?"

"A. I don't know."

REASONS FOR DECISION

Section 1252 of the California Unemployment Insurance Code provides in part that an individual is "unemployed" in any week during which he or she performs no services and with respect to which no wages are payable to him or her or in any week of less than fulltime work.

In the week ending January 27, 1979 the claimant worked full time and earned \$548. Accordingly, he was not an unemployed individual within the meaning of section 1252 of the code and therefore not entitled to benefits for that week.

Section 1257(a) of the code, effective January 1, 1980, provides:

"An individual is also disqualified for unemployment compensation benefits if:

"(a) He or she willfully, for the purpose of obtaining unemployment compensation benefits, either made a false statement or representation, with actual knowledge of the falsity thereof, or withheld a material fact in order to obtain any unemployment compensation benefits under this division."
(underscoring added)

This amendment to section 1257(a) of the code was contained in Assembly Bill No. 1394, which was approved by the Governor on September 21, 1979, and filed by the Secretary of State on September 22, 1979, as Chapter 890 of the Statutes of 1979. Section 3, of Statutes of 1979, Chapter 890, provides:

"The amendment of these sections made at the 1979-80 Regular Session of the Legislature does not constitute a change in, but is declaratory of, the existing law, and is intended to overrule the California Unemployment Appeals Board Precedent Benefit Decision No. 379."

In Appeals Board Decision No. P-B-379, the claimant did not speak or understand English. Her English-speaking daughter dealt with the Department from the inception of the claim, and the claimant was paid benefits as a result of the daughter's preparation of claim forms. In addition, the employer customarily contacted the claimant through the daughter, who transmitted the information to the claimant in Spanish. The employer offered jobs to the claimant and the daughter, the latter taking the telephone call. The claimant was not notified of the offer because of an oversight. The daughter prepared claims for benefits for the week and did not disclose the offer on the claimant's claim form. The Appeals Board then held that an agency relationship was established through the conduct of the parties and that the claimant, as principal, was bound by the acts of her daughter. It was further held that the claimant improperly withheld material facts and was subject to disqualification under sections 1257(a) and 1260(d) of the code since it is the claimant's responsibility to report any factor which bears on eligibility, and inability to understand or write the English language is no excuse.

The legislature has spoken and has expressed the legislative intent in clear language. To constitute a false statement or representation which is disqualifying under section 1257(a) of the code, the statement or representation must be made "with actual knowledge of the falsity thereof." By declaring that actual knowledge of falsity is a necessary element in benefit preclusion cases under the above statute, the legislature has chosen to provide a shield for those claimants whose ignorance, illiteracy or unfamiliarity with fine points of law, innocently exposes them to forfeiture of unemployment insurance benefits.

In this case the claimant's agent was a fellow carpenter unknown to the claimant by name. The claimant cannot read or write English. Under the circumstances we find the claimant did not make a false statement with actual knowledge of the falsity thereof, and is not disqualified for benefits under section 1257(a) of the code.

Section 1375 of the Unemployment Insurance Code provides:

"Any person who is overpaid any amount as benefits under this part is liable for the amount overpaid unless:

"(a) the overpayment was not due to fraud, misrepresentation or willful nondisclosure on the part of the recipient, and

"(b) The overpayment was received without fault on the part of the recipient, and its recovery would be against equity and good conscience."

It is clear that the claimant has met the requirements of subdivision (a), i.e., there was no fraud, misrepresentation, or willful nondisclosure on the part of the claimant. Further, we find that under the circumstances there was no fault on the claimant's part and thus, the issue before the Board is whether under subdivision (b) it would be against equity and good conscience to recover the overpayment.

In Gilles v. Department of Human Resources Development (1974), 11 Cal.3d 313, 113 Cal. Rptr. 374, the California Supreme 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 program.

In view of the limited testimony on the question of whether it would be against equity and good conscience to recover the overpayment, this issue must be remanded to an administrative law judge for hearing and decision.

DECISION

The decision of the administrative law judge is modified. The claimant is ineligible for benefits for one week beginning January 21, 1979 under section 1252 of the code. The claimant is not disqualified for benefits under section 1257(a) of the code. The issue of whether it would be against equity and good conscience to require the claimant to repay the overpayment is remanded to an administrative law judge for hearing and decision. Insofar as Appeals Board Decision No. P-B-379 is inconsistent with this decision, it is overruled.

Sacramento, California, January 6, 1981.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

MARILYN H. GRACE

HERBERT RHODES - NotVoting

LORETTA A. WALKER

RAFAEL A. ARREOLA

SEPARATE OPINION ATTACHED:

DON BLEWETT, Chairperson

SEPARATE OPINION

I dissent in part. I agree that the claimant is not subject to disqualification under section 1257(a) of the code, because he lacked any actual knowledge of the false information entered on the claim form because he had a language problem and had to rely upon another person to fill out that form. However, I cannot agree that there was no fault on the claimant's part so that he could be relieved of the overpayment. I believe that the claimant has a duty to make certain that the Department is provided with the correct information necessary for it to make a determination of eligibility. Although the claimant had no actual knowledge that his work and earnings were not correctly reported to the Department, he nevertheless did not provide the correct information and this resulted in the overpayment.

In Appeals Board Decision No. P-B-368 it is stated:

". . . fault is something less than fraud, misrepresentation, or wilful nondisclosure, and implies a degree of negligence or blame attributable to the receipt of erroneous payments such as, for example, failure to disclose to the Department facts within the recipient's knowledge which were known, or should have been known, to be material in determining eligibility for benefits. Fault does not signify wilful Intent or evil design; rather fault results from negligence, an error of judgment, or inadvertence due to lack of care or carelessness."

The basic premise of unemployment insurance as set out in section 100 of the code is that benefits are to be paid to individuals who are unemployed through no fault of their own. It is universally known that you cannot be employed full time and still receive benefits. The claimant herein, although because of his language problem may not have known what was written on the claim forms, did know that he had worked 40 hours and earned \$548 during the week in question and yet he was paid his full benefits for that week of \$104. He made no Inquiry of the Department to ascertain if the payment was in error.

To say that there is no fault on the claimant's part in this case is to open the door wide to all kinds of schemes to obtain unemployment insurance benefits unlawfully and at the same time provide immunity from resulting overpayments. This puts a tremendous burden on the Department to investigate all claims and does away with the present practice of the Department's relying upon information furnished by claimants. Further, the majority decision discriminates against those claimants who have communicative problems but do not speak a foreign language.

DON BLEWETT