BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

In the Matter of:

DONALD DELUCAS
(Claimant)

SUPERIOR INDUSTRIES
(Employer)

PRECEDENT
BENEFIT DECISION
No. P-B-424
Case No. 81-1913

Office of Appeals No. VN-14281

The employer appealed from that portion of the decision of the administrative law judge which held the employer's reserve account was not relieved of benefit charges under section 1030(c) of the California Unemployment Insurance Code.

STATEMENT OF FACTS

The claimant registered in the local office of the Department to establish a claim for benefits, effective July 13, 1980. Following an investigation by the Department, a determination and ruling were issued holding the claimant to be disqualified from benefits and the employer's reserve account relieved of charges under the separation provisions of the code. The claimant appealed from such determination on August 12, 1980.

During the course of the hearing which was conducted October 30, 1980, it was established that the claimant has worked for the above employer for approximately two years through May 30, 1980. The claimant immediately thereafter began working for another employer; work which apparently continued for six weeks only, prior to establishing the claim for benefits. As a result of the hearing, the determination of the Department was vacated and the claimant's eligibility for benefits referred back to the Department for further consideration. The administrative law judge, however, proceeded to consider the respondent-employer's entitlement to a favorable ruling and held the employer liable for benefit charges. The employer has appealed to this Board.

REASONS FOR DECISION

The issue presented herein is procedural in scope; specifically, where it is found that the determination under appeal by a claimant erroneously refers to other than a last employer and is vacated, does the administrative law judge have jurisdiction to consider the merits of the ruling related thereto?

Section 1030 of the code, insofar as relevant, provides as follows:

> "(a) Any employer who is entitled under Section 1327 to receive notice of the filing of a new or additional claim may, within 10 days after mailing of such notice, submit to the department any facts within its possession disclosing whether the claimant left such employer's employ voluntarily and without good cause or was discharged from such employment for misconduct connected with his or her work, or whether the claimant was a student employed on a temporary basis and whose employment began within, and ended with his or her leaving to return to school at the close of, his or her vacation period, or whether the claimant left such employer's employ to accompany his or her spouse to or join her or him at a place from which it is impractical to commute to such employment, to which a transfer of the claimant by the employer is not available, and at which the spouse has secured employment. The period during which the employer may submit such facts may be extended by the director for good cause.
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> "(b) Any base period employer who is not entitled under Section 1327 to receive notice of the filing of a new or additional claim and is entitled under Section 1329 to receive notice of computation may, within 15 days after mailing of such notice of computation, submit to the department any facts within its possession disclosing whether the claimant left such employer's employ voluntarily and without good cause or was discharged from such employment for misconduct connected with his or her work, or whether the claimant was a student employed on a temporary basis and whose employment began within,

and ended with his or her leaving to return to school at the close of, his or her vacation period, or whether the claimant left such employer's employ to accompany his or her spouse to or join her or him at a place from which it is impractical to commute to such employment, to which a transfer of the claimant by the employer is not available, and at which the spouse has secured employment. The period during which the employer may submit such facts may be extended by the director for good cause.

"(c) The department shall consider such facts together with any information in its possession and promptly notify the employer of its ruling as to the cause of the termination of the claimant's employment. The employer may appeal from a ruling or reconsidered ruling to a referee within 20 days after mailing or personal service of notice of the ruling or reconsidered ruling. The 20-day period may be extended for good cause, which shall include, but not be limited to, mistake, inadvertence, surprise, or excusable neglect. The director shall be an interested party to any appeal. The department may for good cause reconsider any ruling or reconsidered ruling within either five days after the date an appeal to a referee is filed or, if no appeal is filed, within 20 days after mailing or personal service of notice of the ruling or reconsidered ruling, except that any ruling or reconsidered ruling which relates to a determination which is reconsidered pursuant to subdivision (a) of Section 1332 may also be reconsidered by the department within the time provided for reconsideration of such determination." (Emphasis ours)

* * *

An equally pertinent provision of the code reads as follows:

"1031. No ruling made under Section 1030 may constitute a basis for the disqualification of any claimant but a determination by the department made under the provisions of Section 1328 may constitute a ruling under Section 1030."

It is clear from the literal reading of the foregoing provisions that where a claimant's entitlement to benefits is questioned under section 1327 of the code, an appeal by the claimant will of necessity place in issue an employer's corresponding ruling which was issued pursuant to section 1030(a) of the code. However, section 1030 essentially provides that notice of a ruling shall be issued only to the employer unless directly related to the determination involving the claimant. Where an employer is not the last employer but rather a base period employer only, the Department issues a ruling to such employer only. The claimant is not entitled to any such notice of ruling and has no rights of appeal.

In the circumstances under review the claimant's entitlement to benefits could not be decided at the time of the hearing inasmuch as the Department had proceeded under a misconception as to the proper last employer (section 1256.3, California Unemployment Insurance Code). With the vacating of the determination relating to the claimant's eligibility, the claimant had no right of appeal and the ruling of the Department, irrespective of the basis upon which it was issued, was no longer in issue. Without reference to the correctness or incorrectness of such ruling the administrative law judge was without jurisdiction to consider the merits, inasmuch as there was no appeal then pending. The propriety of vacating the determination and referring the question of the claimant's eligibility back to the Department is unquestioned. The rights of the employer and the claimant, however, are severable and vacating the determination would have no bearing upon the ruling, irrespective of whether such ruling is set forth as a part of the determination or was issued as a separate document (Appeals Board Decision No. P-B-421).

In purporting to consider the merits of the ruling therefor, the administrative law judge assumed jurisdiction which had never been granted and the decision purporting to reverse such ruling is a nullity.

To permit the instant decision to stand would in effect confer upon the claimant the right to appeal any ruling issued to any employer, a right which was never intended by the legislature in a matter beyond the interest of the claimant.

DECISION

That portion of the decision under appeal is vacated. The ruling of the Department as issued shall stand.

Sacramento, California, June 3, 1982.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

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