

BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

In the Matter of:

CHRISTINA TIN
(Claimant)

Office of Appeals No. SJ-18591

PRECEDENT
BENEFIT DECISION
No. P-B-436
Case No. 84-4571

The claimant appealed from the decision of the administrative law judge which held her disqualified for benefits under section 1257(a) of the Unemployment Insurance Code for five weeks beginning January 22, 1984; that she had been overpaid benefits in the amount of \$200 and was liable under section 1375 of the code for the repayment thereof; and was further liable under section 1375.1 of the code for a penalty assessment of \$60.

STATEMENT OF FACTS

On August 26, 1983 the claimant filed a Claimant Missing Check Incident Report in which she stated that she had not received, lost after receipt, endorsed, or authorized another to endorse, nor had she received monies or benefits from Check No. 23746493 issued on June 30, 1983 for the weeks ending June 18, 1983 and June 25, 1983. She also executed an Affidavit for Issuance of Replacement Check for this check, and requested that a new check be issued. The claimant was issued replacement check No. 23770247 on August 26, 1983 for \$200. The claimant endorsed and cashed this check on September 7, 1983. It was subsequently discovered that Check No. 23746493 had been endorsed and cashed on July 6, 1983. The claimant admitted that she had endorsed both checks. The claimant could offer no explanation for applying for duplicate benefits when she had already received and cashed the benefit check for the weeks in question.

On January 26, 1984 the Department mailed the claimant a determination disqualifying her for benefits on the grounds that she had made a false statement in claiming benefits in that the claimant, when she made application for duplicate benefits, had failed to disclose that she had previously received and cashed the original check. The Department also mailed the claimant a notice of overpayment of \$200 on the grounds that duplicate benefits had been paid for the weeks in question. The notice of overpayment included a 30 percent penalty of \$60 assessed on the ground that the overpayment was the result of the claimant's false statement.

REASONS FOR DECISION

Section 1257(a) of the Unemployment Insurance Code provides that an individual is also disqualified for unemployment compensation benefits if he or she wilfully, 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.

Knowledge of a falsity may be established by a showing either that the declarant had actual knowledge of the falsity, lacked an honest belief in its truth, or made the statement carelessly or recklessly in a manner not warranted by the information available to the declarant (Wishnick v. Frye, 111 C.A.2d 926, 930).

To knowingly give incorrect information to the Department for the purpose of claiming unemployment benefits is to "wilfully" make a "false statement" within the meaning of section 1257(a) of the code.

At the time she applied for duplicate benefits, the claimant provided the Department with incorrect information. She explained that at the time of making the application she could not recall having received and cashed the original check and her records, upon which she relied, were not accurate.

In providing information to the Department for the purpose of obtaining benefits, the claimant had an obligation to know the accuracy of that information. By certifying as true, information which was untrue, but of which she had no present recollection, the claimant made a wilful false statement. Accordingly, she is disqualified for benefits under section 1257(a) of the code.

Section 1375 of the code provides that:

"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 wilful 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."

The evidence herein establishes that the claimant received duplicate benefits for the two weeks ending June 25, 1983 resulting in an overpayment of \$200. Since we find that this overpayment resulted from the claimant's false statement, the overpayment cannot be waived and she is accordingly liable for the repayment of \$200 (Appeals Board Decision No. P-B-361). In addition to the overpayment, however, the Department assessed a penalty of \$60 under section 1375.1 of the code and it is to the propriety of this assessment that we now direct our attention.

Section 1375.1 of the Unemployment Insurance Code enacted during the regular legislative session of 1983 provides, in pertinent part, as follows:

"If the director finds that an individual has been overpaid unemployment compensation benefits because 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, the director shall assess against the individual an amount equal to 30 percent of the overpayment amount."

Statutes of this nature enacted during a regular legislative session and which are not designated urgency statutes, go into effect on January 1 next following a 90-day period from the date of enactment (see Constitution Article IV section 8). Since the statute was enacted during the 1983 regular session of the legislature, and was not urgency legislation, it became effective on January 1, 1984.

We must determine whether section 1375.1 can or should operate so as to affect past transactions, that is, whether it should be applied retroactively. Except for the prohibitions contained in the state and federal constitution regarding laws dealing with criminal matters (i.e. ex post facto laws), contractual and property rights and certain vested rights, the legislature has the power to enact retroactive statutes. Because section 1375.1 imposes a civil and not a criminal penalty, it does not come within the ex post facto proscription contained in the Constitution. The other subject areas are not pertinent herein.

While concluding that the legislature has the power to give section 1375.1 retroactive effect, we must further determine whether the legislature intended retrospective application.

There is a general rule of construction applicable to codes and other statutes that presumes prospective rather than retrospective application, unless an intention to the contrary clearly appears from the act itself (Carr v. State, 58 C.A.3d 139) or retrospective application is necessary to fulfill the legislative purpose in enacting the statute. The necessity must be clearly shown (Balen v. Peralta Junior College District, (11 C.3d 821). This general presumption against retroactive effect has been held to include a specific duty to avoid, if possible, the retrospective imposition of increased liabilities (Western and Southern Life Ins. Co. v. State Board of Equalization, 4 C.A.3d 21). Further, the principle that laws which create new penalties because of past transactions are universally disfavored in the law is well established (see Pignaz v. Burnett, 119 C. 157; Helm v. Bollman, 176 C.A.2d 838).

In accordance with these principles, we find that because section 1375.1 of the code imposes a new civil penalty where none previously existed, it may not be given retroactive effect but should only be applied prospectively. In short, the penalty may be assessed only when the operative event or transaction to which it applies occurs after the effective date of the legislation.

Implicit in this conclusion is our finding that legislative intent to the contrary is neither expressed in nor apparent from the language of the statute. Further, to give this statute retroactive effect would be contrary to the cited judicial principles and the rules of statutory construction.

Having reached this conclusion we must now determine the operative event or transaction that requires the application of section 1375.1 of the code in this case.

It is important to note that the initial benefit payment, the false statement, and the duplicate benefit payment all occurred prior to January 1, 1984, the effective date of section 1375.1. The only event that occurred after this date was the issuance of the Department's determination and notice of overpayment.

Apparently the Department concluded that the operative event that permitted the imposition of section 1375.1 was the issuance of the Notice of Overpayment, since that was the only event that occurred after the effective date of the statute. We discern nothing in the statute to support the Department's position in this regard. Also, we find no basis for concluding that the date of overpayment is controlling.

Section 1375 is concerned with the liability for repayment based in part upon the fault or innocence of a claimant in receiving the overpayment. The distinguishing feature of section 1375.1 is the assessment of a penalty, because of a claimant's wilful and knowing false statement or nondisclosure of material information in obtaining the overpayment. In the absence of this proscribed act, committed by a claimant, no penalty is imposed. It is apparent that the operative event giving rise to the penalty is the culpable false statement and it is the date of this event that is controlling. We conclude, therefore, that a penalty may be imposed only when the false statement occurs on or after the date that section 1375.1 became effective. Since the false statement herein was made prior to January 1, 1984, the effective date of section 1375.1 of the code, it was inappropriate to assess a 30 percent penalty of \$60 and the assessment must be set aside.

DECISION

The decision of the administrative law judge is affirmed as modified. The claimant is disqualified for benefits under section 1257(a) of the code beginning January 22, 1984 until she has filed claims in each of five weeks in which she is otherwise eligible for benefits. The claimant is liable under section 1375 of the code for the overpayment of \$200. The penalty of \$60 assessed under section 1375.1 of the code is cancelled.

Sacramento, California, September 4, 1984.

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