

BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

In the Matter of:

PERRY R. FERGUSON
(Claimant)

Office of Appeals No. OAK-02321

PRECEDENT
BENEFIT DECISION
No. P-B-448
Case No. 86-451

The claimant appealed from the decision of the administrative law judge which held that he was ineligible for benefits under section 1253 (a) of the Unemployment Insurance Code for the four-week period from September 29, 1985 through October 26, 1985.

STATEMENT OF FACTS

The claimant filed an additional claim for benefits effective May 19, 1985 and began claiming and receiving benefits from that date. While in continued claim status, he filed an initial claim, establishing a new benefit year beginning September 1, 1985.

On October 2, 1985, the Department received the claimant's continued claim statement for the two-week period ending September 28, 1985. On that date, the Department mailed to the claimant a benefit check for that two-week period along with a continued claims statement for the two-week period ending October 12, 1985. On October 28, 1985 the claimant signed the continued claims statement. He then mailed it to the Department in an envelope postmarked October 29, 1985.

When the Department asked why the claimant delayed submitting the continued claims statement, the claimant stated that he simply forgot about it. At the hearing, the claimant explained that he misplaced the form and that he was preoccupied with other matters, including a marital dissolution. When he finally found the form he completed and mailed it.

The Department determined that the claimant did not have good cause for the delay in filing his continued claims statement, and reopened his claim effective to the nearest Sunday to October 29, 1985, the date the claim for October 12 was submitted. Thus, the claimant was denied benefits not only for the two weeks for which he was late but also the two-week period between that time and the time he submitted his claim form.

REASONS FOR DECISION

Section 1253 (a), Unemployment Insurance Code, provides an individual is eligible for unemployment benefits with respect to any week only if the individual files a claim for that week in accordance with authorized regulations.

The authorized regulations of the Unemployment Insurance Code are set forth in Title 22 of the California Administrative Code.

Section 1326-6(c), Title 22, California Administrative Code, provides that in order to maintain eligibility for benefits during a continuous period of unemployment, an individual shall file continued claims at intervals of not more than two weeks, or such other interval as the Department shall require, unless good cause for the delay in filing the continued claim is shown.

In the present case, although the continued claim statement is dated October 28, the envelope in which it was mailed is postmarked October 29, 1985. Therefore, we must assume that it was mailed on that date. The claim was for the two-week period ending October 12, 1985. Fourteen days past that date would have been October 26, 1985, a Saturday.

Section 6707 of the Government Code provides:

"When the last day for filing any instrument or other document with a state agency falls upon a Saturday or holiday, such act may be performed upon the next business day with the same effect as if it had been performed upon the day appointed."

As the final day for the claimant to submit timely his continued claims statement fell on a Saturday, in accordance with the above-cited Government Code section, he had until the next business day to submit the form, in this case October 28, 1985. As the form was not submitted until October 29, it was not timely.

We now consider whether the claimant had good cause for the untimely submission.

Good cause for late filing includes mistake, inadvertence, surprise, or excusable neglect, but does not include negligence, carelessness, or procrastination (section 1326-10, Title 22, CAC).

In Appeals Board Decision No. P-B-84, the California Unemployment Insurance Appeals Board held that claimants who do not attend to their claims with reasonable diligence may have their right to claim benefits cut off. This includes the forgetful, careless, procrastinating or otherwise imprudent claimant who overlooks, neglects, or disregards the responsibilities of a benefit claimant. In evaluating good cause we consider both the reasons (if any) for the delay and the length of the delay. Normally, the longer the delay, the more substantial must be the reason shown.

Here, the claimant stated that he was distracted because of personal events and misplaced his continued claims statement. When he found it, he completed it and mailed it. However, there is nothing to indicate that the claimant acted with care or diligence in attending to his claim. He was apparently the person who misplaced the claim form. He did not act promptly to locate it. Nor did he contact the Department to obtain a replacement. Inasmuch as the claimant did not show any care, we find that he did not have good cause for the delay in filing his continued claim despite the minimal nature of the delay.

We will now consider the claimant's contention that, even if he did not have good cause for the delay in filing, he should not be penalized for the two weeks immediately following, weeks for which his claim would have been timely.

The Department's determination held the claimant ineligible for a four-week period. Benefits were denied for the first two weeks because the claimant did not have good cause for the delay in filing, and for the second two weeks because the Department treated the claimant's delayed filing as a reopened claim and a request for backdating the reopened claim to the Sunday following the two-week period for which he was late. Using this approach, the request for backdating was considered on the same facts as was the delayed filing. As no good cause was found for the delay, good cause was automatically not found for backdating, and the claimant was held ineligible for the interim two weeks as well.

It follows that the Department did not consider the claimant to have been in continued claim status for the second two-week period, but that he had abandoned his claim. The Department representative testified at the hearing that when a claimant fails to maintain contact with the Department through the timely submission of claim forms, that the claim will be reopened effective to the nearest Sunday that the claimant resumes contact. Thus, the issue is presented whether the statute and regulations authorize the action that the Department took with respect to the interim weeks, weeks for which the claimant would have timely claimed but for the fact that the Department treated the claimant's untimely submission for the prior two weeks as an application to reopen.

Section 1326-5 of Title 22, California Administrative Code, supports the action of the Department in this case. In pertinent part it provides:

"(a) 'Reopened claim' means an application which certifies to the beginning date of a period of unemployment; . . . (2) Which follows any of the following:
(A) A period of one or more weeks for which the claimant failed to file a continued claim or partial claim and during which the claimant did not perform services in employment."

If the regulation is consistent with the statute, the claimant was correctly denied benefits for the entire period. We will now consider whether this regulation correctly implements the statute. Section 100 of the code provides in part as follows:

"The Legislature . . . declares that in its considered judgment the public good and the general welfare of the citizens of the State require the enactment of this measure under the police power of the State, for the compulsory setting aside of funds to be used for a system of unemployment insurance providing benefits for persons unemployed through no fault of their own, and to reduce involuntary unemployment and the suffering caused thereby to a minimum."

The purpose of the program of unemployment compensation is to alleviate the burden on the unemployed resulting from indigence due to involuntary unemployment through no fault of the claimant, and to reduce unemployment and suffering caused thereby to a minimum (California Portland Cement Company v. California Unemployment Insurance Appeals Board (1960), 178 Cal.App.2d 263). The objective is to reduce the hardships incidental to unemployment, and that the program is to be administered informally without resort to technicalities that might deprive the unsophisticated applicant of his or her right to benefits (Gibson v. California Unemployment Insurance Appeals Board (1973), 9 Cal.3d 494). In California Employment Commission v. Butte County Rice Growers Association (1944), 25 Cal.2d 624, the court stated that the purpose of provisions for unemployment insurance contributions is broader than the mere raising of revenue, and therefore such provisions should not be narrowly construed in defeat of the law's beneficent purpose, and exceptions not clearly justified by their language should not be engrafted upon them by judicial interpretation.

It is well settled that the rule-making power granted to an agency may not be so exercised as to alter or amend the statute or enlarge or impair its scope (California Employment Commission v. Butte County Rice Growers Association, supra; Whitcomb Hotel, Inc. v. California Employment Commission (1944), 24 Cal.2d 753; La Societe Francaise de Bienfaisance Mutuelle v. California Employment Commission (1943), 56 Cal.App.2d 534).

In Precedent Decision No. P-B-84, the Appeals Board held that it is well established that a tribunal of appropriate jurisdiction is empowered to set aside an administrative regulation which is improper in the sense that it is not in accordance with constitutional or general law or the specific statutory enactment it purports to implement. The Board stated that it is equally well established that such a tribunal may set aside a regulation which is arbitrary, unreasonable or discriminatory, because such a regulation is, in the legal use of the term, an abuse of administrative discretion and, accordingly, an unlawful exercise of administrative power (also see Appeals Board Decision No. P-D-434).

The intent of the Department in promulgating regulations such as section 1326-5 and others, prescribing the procedures for filing for and claiming benefits, is to help insure the prompt payment of benefits to claimants who attend to their claims with reasonable diligence. Because the right to claim benefits must at some point in time be brought to an end if eventual clogging of the claims process by a congestion of stale claims is to be avoided, another purpose is to cut off the right to claim benefits of claimants who have not attended to their claims with reasonable diligence (Appeals Board Decision No. P-B-84). However, it is not the purpose of these particular regulations to address the fundamental questions of whether or not a claimant is entitled to benefits. These regulations are strictly procedural in nature and designed to expedite the claims-taking process.

Here, the claimant filed his continued claims statement one day past the date on which the Department would have accepted it as timely. Had he filed it on the day before, the Department would not have questioned his entitlement for those two weeks and for the succeeding two weeks. However, the claim was not submitted in a timely fashion and, as we have already noted, the claimant did not in this particular instance establish good cause for the delay. Nevertheless, it does not follow that the claimant should also be denied benefits for the succeeding two weeks. He was not late for those weeks. There is nothing to indicate that he did not intend to claim benefits for those two weeks. The Department's purposes in promulgating these procedural regulations do not apply to these weeks. Nor can we discern any reason for denying the claimant benefits for those weeks except for the regulation itself.

Section 1326-5(a)(2)(A) is an unacceptably rigid construction of sections 1253(a) and 1326 of the code which tends to defeat rather than further the purposes of the Unemployment Insurance Code as expressed in section 100 of the code. It is apparent to us that section 1326-5(a)(2)(A) is arbitrary and capricious and an unlawful exercise by the Department of its rule-making authority. Therefore, we declare that regulation invalid to the extent that it would deny continued claim status to claims which are filed during a period of unemployment and there is a short break in claim status in which the claimant was not employed.

Given the facts of this case, we hold that the claimant is not ineligible for benefits for the weeks ending October 19 and October 26, 1985, weeks for which his claim would have been timely filed. However, the question will arise as to how late a claimant might be and still be entitled to claim benefits for the most recent two weeks. We do not intend to limit our holding to instances where the claimant is only one day late, as in this case. However, we do intend to confine it to situations where the delay is relatively brief and the claimant clearly intended to and would have continued claiming benefits but for his or her own inexcusable neglect. It is not our purpose to extend this ruling to situations where the claimant has abandoned his claim as indicated by a protracted delay, accompanied by an excuse which would indicate that the claimant did not intend to continue claiming benefits. Such abandonment could be indicated where the cause of the delay is due to employment or situations in which the claimant would be considered unavailable for work within the meaning of section 1253(c) of the code.

DECISION

The decision of the administrative law judge is modified. The claimant is not ineligible for benefits under section 1253(a) of the Unemployment insurance Code for the weeks ending October 19 and October 26, 1985. The claimant is ineligible for benefits under section 1253(a) of the code for the weeks ending October 5 and October 12, 1985.

Sacramento, California, July 15, 1986.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

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