

BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

In the Matter of:

DONALD L BLACKWELL
(Claimant)

ANCHOR GLASS
(Employer)

PRECEDENT
BENEFIT DECISION
No. P-B-465
Case No. 89-01157

EMPLOYMENT DEVELOPMENT DEPARTMENT

Office of Appeals No. OAK-03059

The Department appealed from that portion of the decision of the administrative law judge which held that the claimant was not ineligible to receive unemployment insurance benefits under section 1256.5 of the Unemployment Insurance Code beginning January 3, 1989.

STATEMENT OF FACTS

The claimant admits he is an alcoholic. He had received verbal and written warnings from the employer for absences from work. Following the claimant's completion of a rehabilitation program, he was placed on probation. While on probation, the claimant was scheduled to begin work at 7 a.m. on October 28, 1988. He drank until 3 a.m. that day, slept until 5:30 a.m., and reported to work under the influence of alcohol. Consequently, he was discharged.

The claimant filed a claim for unemployment insurance benefits. The Department issued a determination which held the claimant was not eligible to receive benefits under section 1256.5 of the code beginning October 23, 1988 and continuing until the claimant returns to work and earns \$830 in bona fide employment or until a physician or authorized treatment program administrator certifies the claimant is continuing in, or has completed, a treatment program for his condition and is able to return to employment and the claimant reopens his claim. The claimant appealed to an administrative law judge.

On December 29, 1988, in response to a Department questionnaire which asked the claimant's doctor if the claimant was or had been enrolled in an alcohol or drug treatment program, the doctor certified that the claimant had "started AA program" on November 24, 1988, was continuing in that program, and was able to return to work as of January 3, 1989. Based on this information, the administrative law judge held the claimant was not ineligible for benefits under section 1256.5 of the code beginning January 3, 1989.

Pursuant to section 5109. Title 22, Code of Regulations, the Appeals Board has accepted as additional evidence, Appeals Board Exhibits Nos. 1, 2 and 3. The exhibits are publications of Alcoholics Anonymous with the following titles:

1. "This is A.A."
2. "A.A. as a Resource for the Medical Profession"
3. "Information on Alcoholics Anonymous"

The additional evidence was served on the parties who were given the opportunity to submit rebuttal. Only rebuttal from the Department has been received within the time allowed. From the additional evidence and rebuttal we make the following additional findings of fact.

Alcoholics Anonymous (A.A.) is an international fellowship of men and women who share their experience, strength, and hope with each other that they may solve their common problem and help others to recover from alcoholism. The primary purpose of A.A. is to stay sober and help other alcoholics to achieve sobriety. It has helped over one million persons participating in over 67,000 A.A. fellowship groups in 114 countries recover from alcoholism. A.A. members share their experience with anyone seeking help with a drinking problem; they give person-to-person service or "sponsorship" to the alcoholic coming to A.A. from any source.

The A.A. program, set forth in its Twelve Steps, offers the alcoholic a way to develop a satisfying life without alcohol. This program is discussed at A.A. group step meetings. At speaker meetings A.A. members describe their experiences with alcohol, how they came to A.A., and how their lives have changed as a result of A.A. At discussion meetings, one member speaks briefly about his or her drinking experience and then leads a discussion on A.A. recovery or any drinking-related problem anyone brings up. A.A. does not furnish initial motivation for alcoholics to recover; make medical or psychological diagnosis or prognosis; provide drying out or nursing services, hospitalization, drugs, or any medical or psychiatric treatment; or, engage in education about alcohol.

The Twelve Steps of A.A. are:

1. We admitted we were powerless over alcohol -- that our lives had become unmanageable.
2. Came to believe that a Power greater than ourselves could restore us to sanity.
3. Made a decision to turn our will and our lives over to the care of God as we understood Him.
4. Made a searching and fearless moral inventory of ourselves.
5. Admitted to God, to ourselves and to another human being the exact nature of our wrongs.
6. Were entirely ready to have God remove all these defects of character.
7. Humbly asked Him to remove our shortcomings.
8. Made a list of all persons we had harmed, and became willing to make amends to them all.
9. Made direct amends to such people wherever possible, except when to do so would injure them or others.
10. Continued to take personal inventory and when we were wrong promptly admitted it.

11. Sought through prayer and meditation to improve our conscious contact with God, as we understood Him, praying only for knowledge of His will for us and the power to carry that out.

12. Having had a spiritual awakening as the result of these steps, we tried to carry this message to alcoholics, and to practice these principles in all our affairs.

A clinical professor of medicine at Mt. Sinai School of Medicine in New York and Chairperson of the Committee on Alcoholism of the Medical Society of the State of New York has stated, "A.A. is the most effective means of teaching an alcoholic how to stop drinking that I know of."

The director of the Alcohol, Drug Abuse and Mental Health Administration has stated that with respect to controlling alcoholism, "A.A. by and large works better than anything we have been able to devise with all our science and all our money and all our efforts."

The American Medical Society on Alcoholism has noted that, ". . . [S]elf-help groups, particularly Alcoholics Anonymous, have been a tremendous help in recovery to many thousands of alcoholics, their friends and families"

REASONS FOR DECISION

Section 1256.5 of the Unemployment Insurance Code states:

"(a) An individual is disqualified for unemployment compensation benefits if either of the following occur:

(1) The director finds that he or she was discharged from his or her most recent work for chronic absenteeism due to intoxication or reporting to work while intoxicated or using intoxicants on the job, or gross neglect of duty while intoxicated, when any of these incidents is caused by an irresistible compulsion to use or consume intoxicants, including alcoholic beverages.

(2) He or she otherwise left his or her most recent employment for reasons caused by an irresistible compulsion to use or consume intoxicants, including alcoholic beverages.

(b) An individual disqualified under this section, under a determination transmitted to him or her by the department, is ineligible to receive unemployment compensation benefits under this part for the week in which the separation occurs, and continuing until he or she has performed service in bona fide employment for which remuneration is received equal to or in excess of five times his or her weekly benefit amount, or until a physician or authorized treatment program administrator certifies that the individual has entered into and is continuing in, or has completed, a treatment program for his or her condition and is able to return to employment.

(c) The department shall advise each individual disqualified under this section of the benefits available under Part 2 (commencing with Section 2601), and, if assistance in locating an appropriate treatment program is requested, refer the individual to the appropriate county drug or alcohol program administrator."

The issue presented by the Department's appeal is whether or not participation in Alcoholics Anonymous constitutes entering into and continuing in a "treatment program" for the condition of alcoholism, within the meaning of section 1256.5 of the code. We hold it does.

The Department notes that attending an Alcoholics Anonymous fellowship group does not include entry evaluations, medically supervised detoxification, nor professional counseling. Hence, the Department contends such attendance does not constitute entering into and continuing in an "authorized treatment program" under section 1256.5 of the code.

We cannot say the Department's contention is totally without support. Section 1256.5(c) of the code does require the Department to advise claimants disqualified under that section of benefits available under the state disability insurance program. As part of that program, section 2626.1 of the code provides:

"(a) An individual who is a resident in an alcoholic recovery home pursuant to referral or recommendation by a physician shall be eligible for disability benefits for a period not in excess of 30 days in any disability benefit period while receiving resident services, if an authorized representative of the alcoholic recovery home certifies that the individual is a resident participating in an alcoholic recovery program which has been certified by the State Department of Alcohol and Drug Program. The individual shall be eligible for disability benefits for an additional period not in excess of 60 days if the referring physician certifies to the need of the individual for continuing resident services.

(b) The department shall reimburse the State Department of Alcohol and Drug Programs from the Disability Fund, in a reasonable amount as determined by the department, for the expense of reviewing any alcoholic recovery program, as required by the department in the administration of subdivision (a) which is not funded in the county alcohol program plan provided for in Article 3 (commencing with Section 11810) or Article 4 (commencing with Section 11830) of Part 2 of Division 10.5 of the Health and Safety Code.

(c) Outside the State of California, an individual who is a resident in an alcohol recovery home pursuant to referral or recommendation by a physician shall be eligible for disability benefits for a period not in excess of 30 days in any disability benefit period while receiving resident services, if an authorized representative of the alcoholic recovery home certifies that the individual is a resident participating in an alcoholic recovery program, licensed by or satisfying a program review by the state in which the facility is located. The individual shall be eligible for disability benefits for an additional period not in excess of 60 days if the referring physician certifies to the need of the individual for continuing resident services."

Section 2626.2 of the code has similar provisions pertaining to residents of drug-free residential facilities.

Thus, it can be argued that the "treatment program" for alcoholism and other drug addictions referred to in code section 1256.5(b) means a state certified program as described in code sections 2626.1 and 2626.2. However, if this had been the intention of the legislature in enacting section 1256.5(b) of the code, it would seem that it would have been an easy matter for the legislature to so state. Instead, the legislature merely imposed upon the Department the requirement to advise unemployment insurance claimants disqualified under section 1256.5 of the benefits potentially available pursuant to the state disability insurance program if they meet the requirements of sections 2626.1 and 2626.2 of the code. Consequently, we hold a "treatment program" as referred to in section 1256.5 of the code is not limited to those programs described in sections 2626.1 and 2626.2. Therefore, we must consider whether or not a "treatment program" is limited to one that includes entry evaluations, medically supervised detoxification, and professional counseling as the Department contends.

Webster's Third New International Dictionary (1961) contains the following definitions. The definition of "treatment" includes "the action or manner of treating". To "treat" includes "to seek cure or relief of (as a disease)". A "program" includes "a schedule or system under which action may be taken toward a desired goal".

In our opinion, Alcoholics Anonymous is a system by which action is taken toward the goal of causing an alcoholic to refrain from the use of alcohol and thereby relieve the disease of alcoholism. It is therefore a "treatment program" for the condition of alcoholism. It is a well respected and successful "treatment program". The Department has cited no authority, and we have found none, that requires a "treatment program" as referred to in section 1256.5 of the code to include entry evaluations, medically supervised detoxification, and professional counseling. Accordingly, we hold Alcoholics Anonymous is a "treatment program" for the condition of alcoholism within the meaning of that code section.

Since a physician has certified the claimant has entered into and is continuing in a "treatment program" for his condition and that he is able to return to work as of January 3, 1989, the claimant has purged the disqualification under section 1256.5 of the code effective that date.

DECISION

The appealed portion of the decision of the administrative law judge is affirmed. The claimant is not ineligible for benefits under section 1256.5 of the code beginning January 3, 1989.

Sacramento, California, April 27, 1989.

ROBERT L. HARVEY, Chairman

GEORGE E. MEESE

LORETTA A. WALKER

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