

BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

In the Matter of:

MAXIMILIAN RUIZ
(Claimant)

PRECEDENT
BENEFIT DECISION
No. P-B-474
Case No. 92-00449

EMPLOYMENT DEVELOPMENT DEPARTMENT

Office of Appeals No. LA-47568

The Department appealed from those portions of the decision of the administrative law judge which held the claimant not disqualified for benefits under section 1257(a) of the Unemployment Insurance Code, and that the claimant was not liable under section 1375.1 of the code for a penalty assessment of \$102.60.

No appeal was taken from that portion of the decision which found that the claimant was ineligible for benefits under section 1253.5 and 1253(c) of the code, and was overpaid \$342 and liable for the repayment thereof under code section 1375.

The claimant's eligibility under section 1253(e) of the code was deemed moot and not decided.

STATEMENT OF FACTS

The claimant sustained an injury on June 19, 1991, but continued to work until August 3, 1991. The claimant felt able to work from August 3, 1991, until September 10, 1991. On September 10, 1991, the claimant felt incapable of performing full-time work. He shortly thereafter consulted a physician, and the physician certified the claimant was disabled as of September 10, 1991.

The claimant had applied for unemployment insurance benefits effective August 4, 1991. The claimant does not read or write English, but did watch a movie in Spanish that explained how to fill out a continued claim form. The claimant knew that in order to be eligible for unemployment benefits, he must certify that he was able and available for work pursuant to section 1253(c) of the code. The claimant also knew that he could not collect disability insurance benefits and unemployment insurance benefits at the same time.

The claimant submitted continued claim forms for the weeks ending September 14, 21 and 29, 1991 and October 5 and 12, 1991, which stated that the claimant was physically capable of performing full-time work during that period of time. These same continued claim forms indicated that the claimant had also looked for work during the period between September 8, 1991 and October 12, 1991.

The Department received information that the claimant had filed a claim for disability insurance with an effective date of September 10, 1991. In an interview with a Department representative on October 23, 1991, the claimant said that he saw a doctor on September 10, 1991, and filed a disability claim on that date. The claimant further indicated that he had not looked for work, and that he was incapable of performing full-time work as of September 10, 1991.

Since the claimant does not read or write English, the claimant had hired someone else to complete the continued claim forms for him. The claimant told the agent simply that he wanted to get unemployment insurance benefits. The claimant did not make any statement to the agent that the claimant was unable to work as of September 10, 1991. The claimant's only communication with the agent was to express that he wanted unemployment insurance benefits, and an inquiry as to how much the agent charged for filling out the form.

The claimant testified that he did not intend to say that he could work when he was not physically capable of doing so, but that he did intend to receive unemployment insurance benefits until he began to receive disability benefits.

As a result of the statement to the Department interviewer that he was not able and available for work as of September 10, 1991, and because he had certified that he was able and available to work on that day and for the next four weeks while he continued to receive unemployment benefits, the Department assessed a disqualification for benefits under section 1257(a) beginning November 3, 1991, and lasting for ten weeks in which the claimant would otherwise be eligible for benefits. Furthermore, the Department assessed an overpayment in the amount of \$342 and assessed a penalty of \$102.60 under section 1375.1 of the code.

REASONS FOR DECISION

Section 1257(a) of the Unemployment Insurance Code provides that an individual is disqualified for benefits if, for the purpose of obtaining benefits, he or she either wilfully made a false statement or representation, with actual knowledge of the falsity thereof, or wilfully failed to report a material fact.

A disqualification under section 1257(a) of the code of an individual who was paid any benefits as a result of his or her false statement or wilful omission to report a material fact cannot be less than five nor more than fifteen weeks (Unemployment Insurance Code, section 1260(d)).

Weeks of disqualification under section 1257 (a) of the code are weeks in which the claimant is otherwise fully eligible for benefits, beginning with the week of mailing or personal service of the adverse determination (Unemployment Insurance Code, section 1260).

"Wilful" means intending the result which actually comes to pass, and does not imply any malice or wrong. To do a thing wilfully is simply to do it knowingly. (Precedent Decision P-B-72).

The materiality of withheld information does not depend upon whether providing such information would have resulted in ineligibility or disqualification of the claimant. It is sufficient that the claimant believed, or should have known, that the information withheld would raise a question as to his or her entitlement to benefits. (Precedent Decision P-B-72).

Knowledge of a falsity may be established by a showing either 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, 11 Cal. App. 2d 926, 930).

In Precedent Decision P-B-418, the claimant was a carpenter who spoke no English. The claimant's claim forms were signed by the claimant, but were filled out and completed by a fellow carpenter. The claimant's agent gave incorrect information on the form, and the Department assessed a disqualification under section 1257(a) of the code. The Board ruled, however, that because the claimant could not read or write English, and that he did not know what the agent wrote down, the claimant did not make a false statement with actual knowledge of the falsity thereof. Therefore, the claimant's disqualification for benefits under section 1257(a) of the code was lifted.

Furthermore, the Board held that the claimant in filing the continued claim forms with the incorrect information had not shown fraud, misrepresentation, or wilful nondisclosure on his part.

Here, the claimant was aware that he could not receive unemployment benefits and disability benefits at the same time. Furthermore, he understood that he was to certify on a weekly basis that he was able and available for work. The claimant gave no indication to his agent that he was not able to work.

We are persuaded that Precedent Decision P-B-418, while providing protection for those whose lack of English may innocently expose them to liability for a false statement, has been read too broadly. So read, anyone who does not speak English and who willingly delegates the responsibility of filling out continued claim forms to someone else, may be shielded from violating section 1257(a) of the code. We do not believe that code section 1257(a) was meant to provide such blanket protection. The claimant here had a duty to ascertain, to the best of his ability, that the forms were filled out truthfully. This he did not do. He gave no direction to his agent, nor did he avail himself of Department resources to check that the forms were completely accurate. Indeed, the claimant withheld information from the agent by not disclosing his injury and inability to work. Furthermore, the direction by the claimant to the agent that the latter fill out the form so as to ensure that the claimant received unemployment benefits, was in essence a request that the agent lie, if necessary, on the form for the claimant.

That the claimant has limited English skills is not disputed. We do not wish to discourage people with language difficulties from using agents if necessary. But using an agent should not protect a claimant from disqualification in situations where the false statement arises directly out of the claimant's lack of attention and failure to disclose the truth to the agent. Such action amounts to a reckless disregard for the truth.

Therefore, we shall impute the claimant had "actual knowledge" of the falsity of his statements, because of his careless and reckless actions, and the disqualification under section 1257(a) of the code shall be reimposed. Furthermore, because the claimant made a wilful false statement, the penalty of \$102.60 imposed under section 1375.1 of the code is appropriate.

DECISION

The appealed portions of the administrative law judge's decision are reversed. The claimant is disqualified for benefits under section 1257(a) of the code beginning November 3, 1991 until he has filed a claim in each of ten weeks in which he is otherwise eligible. The claimant is liable for the penalty assessment of \$102.60.

Sacramento, California, December 15, 1992.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

ROBERT L. HARVEY, Chairman

LOUIS WM. BARNETT

GEORGE E. MEESE

JAMES S. STOCKDALE

INGRID C. AZVEDO

DISSENTING - Written Opinion Attached:

DEBRA A. BERG

ART AGNOS

DISSENTING OPINION

We respectfully dissent.

Here, the claimant was illiterate in both English and Spanish. He not unreasonably relied upon an agent that he paid to fill out the claim statement. Although the claimant might have been aware that he had to certify he was able and available to work, he had no means by which to understand what it was the claim form specifically was asking, or more importantly what answer was given by his agent.

Precedent Decision P-B-418 recognizes that the legislature intended to narrow the scope of Unemployment Insurance Code section 1257(a) by requiring that a false statement be made with "actual knowledge of the falsity thereof." There is no evidence in the record that this claimant had actual knowledge of what his agent put on the continued claim form.

We regard the Board's action today not as overruling P-B-418 but narrowing its scope by affirming that a claimant is not always disassociated from the acts of his agent.

In this case, the claimant told the agent that he wanted to get unemployment insurance benefits. We do not think this, standing alone, can be interpreted as authorizing the agent to make a false statement for the claimant. However, we share the majority's concern that an agent could be directed by a principal to make a false statement, and if this were proven it would be as if the claimant made a false statement.

We also understand the majority's concern that the claimant may bear some responsibility for the false statement because he told his agent that he wanted benefits. In our view this is not enough to find that the claimant had actual knowledge of the falsity of the statement made by his agent. The claimant's statement can be interpreted many ways, and most likely was his desire to obtain benefits in accordance with provisions of law. We should not assume, in the absence of more facts, that the claimant intended to obtain benefits even if he had to violate a statute.

We therefore consider this case to fall squarely within the same analysis as Precedent Decision P-B-418. The claimant had no understanding of what his agent had written. Therefore, he could have no appreciation for the wrongfulness of the statement. Since the claimant had no knowledge of the false statement, he had no appropriate mens rea for the offense which he is charged.

Because the claimant had no means to check the accuracy of the agent's statements, there was no actual knowledge of the falsity that would run afoul of section 1257(a) of the code.

While the use of an agent does not always and in every case shield a claimant from a disqualification under code section 1257(a), here the claimant's lack of education and overall illiteracy does provide such a defense. We would affirm the administrative law judge's finding that the claimant was not disqualified under section 1257(a), and would cancel the penalty assessment.

DEBRA A. BERG

ART AGNOS