

BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD
BENEFIT DECISION

PRECEDENT
BENEFIT DECISION
P-B-476
CASE NO. 93-02072

In the Matter of:

TONI Z KALEM
(Claimant)

EMPLOYMENT DEVELOPMENT DEPARTMENT

Office of Appeals No. ING-65065

On January 26, 1993, this Board removed to itself for review and decision pursuant to section 413(a)(2) of the Unemployment Insurance Code the decision of the administrative law judge. In this case, an administrative law judge held that the claimant was not entitled to recover interest on unemployment insurance compensation benefits which had been previously denied by the Employment Development Department (EDD).

STATEMENT OF FACTS

The claimant filed a valid claim for unemployment insurance compensation benefits effective February 2, 1992. She requested that her claim be backdated. However, EDD denied the request to backdate her claim.

The claimant appealed EDD's denial of her request to backdate her claim. On July 31, 1992, the decision of the administrative law judge in Office of Appeals Case ING-57097 reversed the Department's determination and ordered backdating for the ten weeks ending January 25, 1992.

The claimant thereafter requested that interest be paid on the ten weeks of benefits.

REASONS FOR DECISION

In the case of Aguilar v. California Unemployment Insurance Appeals Board (1990) 223 Cal.App.3d 239, the court held that claimants of unemployment insurance compensation benefits were entitled to recover interest on unpaid unemployment insurance compensation benefits as part of the damages awarded in a superior court action under section 3287(a) of the Civil Code. Damages sought by the plaintiffs in Aguilar were defined as "interest in a mandamus action against the state." (Id. at 240.)

The Aguilar court based its decision on a number of court decisions which had allowed the recovery of interest as part of the damages awarded in various court actions. (Tripp v. Swoap (1976) 17 Cal.3d 671 overruled on other grounds in Frink v. Prod (1982) 31 Cal.3d 166, 180; Mass v. Board of Education (1964) 61 Cal.2d 612; Olson v. Cory (1983) 35 Cal.3d 390; Austin v. Board of Retirement (1989) 209 Cal.App.3d 1528.) However, neither Aguilar nor the decisions relied upon therein addressed the question posed in this case, whether section 3287(a) of the Civil Code applies to administrative proceedings before the California Unemployment Insurance Appeals Board.

A distinction must be drawn between interest, which is an element of damages recoverable in certain judicial actions, and the benefits to be awarded in proceedings before the California Unemployment Insurance Appeals Board. (See, e.g., Tripp v. Swoap, supra; 7 Witkin, California Procedure, Judgment, section 182.)

As stated in Aguilar:

"In Mass v. Board of Education [citations omitted], we construed this statute as providing for prejudgment interest in actions based upon a general underlying monetary obligation, including the obligation of a governmental entity determined by way of mandamus. Since Mass our courts on numerous occasions have awarded prejudgment interest in mandamus proceedings brought to recover sums of money pursuant to a statutory obligation." (Aguilar v. California Unemployment Insurance Appeals Board, supra, at 242; quoting from Tripp v. Swoap, supra, at 681-682; emphasis added.)

The Aguilar decision applies solely to the recovery of interest as an element of damages in a judicial action.¹

However, the question whether section 3287(a) of the Civil Code applies to quasi-judicial actions such as those pending before the California Unemployment Insurance Appeals Board appears to be a question of first impression.² We note that the Aguilar court did not answer the question. (Aguilar v. California Unemployment Insurance Appeals Board, *supra*, at 246, n. 4.)

Section 3287(a) of the Civil Code applies to judicial actions. Section 3287(a) provides, in part:

"(a) Every person who is entitled to recover damages certain, or capable of being made certain by calculation, and the right to recover which is vested in him on a particular day, is entitled to also recover interest thereon."

¹ A number of decisions followed Mass v. Board of Education, *supra*, holding that plaintiffs are entitled to recover interest as an element of damages in judicial actions. (Mass v. Board of Education, *supra* [backpay and retirement benefits]; Sanders v. City of Los Angeles (1970) 3 Cal.3d 252 [retroactive pay increase]; Tripp v. Swoap, *supra* [welfare benefits]; Olson v. Cory, *supra* and Austin v. Board of Retirement, *supra* [unpaid pension benefits]; Todd Shipyards Corp. v. City of Los Angeles (1982) 130 Cal.App.3d 222 and ITT Gilfillan, Inc. v. City of Los Angeles (1982) 136 Cal.App.3d 581 [overpaid taxes].

Implicit in the decision of Mass v. Board of Education, *supra* and the cases disapproved therein on other grounds, is the accepted principle that interest is not recoverable in the absence of a money judgment. (cf. Sheehan v. Board of Police Comrs. (1922) 188 Cal. 525; Benson v. City of Los Angeles, *supra*.)

² We are not persuaded that the question was at issue or resolved in Goldfarb v. Civil Service Com. (1990) 225 Cal.App.3d 633.

The term "damages" appearing in section 3287(a) is defined in Civil Code section 3281. (Benson v. City of Los Angeles (1963) 60 Cal.2d 355, 365-6.) These statutes concern judicial remedies and do not contemplate or concern administrative proceedings. (see, e.g., California Code of Civil Procedure secs. 21 and 22; Sandrini Brothers v. Agricultural Labor Relations Board (1984) 156 Cal.App.3d 878.) For the same reasons, we are unpersuaded that subdivision (b) of Civil Code section 3287 dictates a contrary conclusion.³

In the absence of statutory authority either under section 3287(a) of the Civil Code, or under any other authorizing statute, the California Unemployment Insurance Appeals Board is without statutory authority to award interest on unpaid unemployment insurance compensation benefits.

It is well-settled that an administrative agency such as this Board may not exceed the scope of its statutory authority. (California Employment Com. v. Kovacevich (1946) 27 Cal.2d 546, 553; Cal. Portland Cement Co. v. Cal. Unemployment Ins. Appeals Board (1960) 178 Cal.App.2d 263, 271.) With respect to its quasi-judicial powers, the Board may not exercise those judicial powers which are reserved to the courts. (See, e.g. Strumsky v. San Diego County Employees Retirement Assn. (1974) 11 Cal.3d 28, 35-36.)

The California Unemployment Insurance Appeals Board is not statutorily authorized to award damages. The Board's legal authority is limited to a grant of unemployment insurance compensation benefits. These benefits are defined as "money payments payable to an individual, pursuant to this division, with respect to his unemployment and includes unemployment insurance compensation benefits, federal-state extended benefits, or extended duration benefits, or disability benefits, or all of them."

³ Section 3287(b) of the Civil Code provides:

"Every person who is entitled under any judgment to receive damages based upon a cause of action in contract where the claim was unliquidated, may also recover interest thereon from a date prior to the entry of judgment as the court may, in its discretion, fix, but in no event earlier than the date the action was filed."

(Unemployment Insurance Code section 128.) Such "compensation" is defined in federal law as "cash benefits payable to individuals with respect to their unemployment." (26 U.S.C. section 3306(h).) The unemployment compensation benefit award shall be computed and based upon wages paid in the base period. (Unemployment Insurance Code section 1275.) Interest on unpaid benefits is not included in the amount awardable under the Unemployment Insurance Code.

Pursuant to section 5110(a), Title 22, California Code of Regulations we take official notice that the United States Department of Labor issued Unemployment Insurance Program Letter No. 11-92. In that letter, the federal department which administers the federal-state unemployment insurance program stated that the payment of interest on late payments of unemployment insurance compensation may not be paid from the Federal Unemployment Tax Act (FUTA) fund. (26 U.S.C. sections 3304 and 3306.) We infer from the Department of Labor's position in this matter that FUTA prohibits the payment of interest in unemployment insurance benefit cases.

We are also unpersuaded by the argument that our refusal to order EDD to pay interest on past due unemployment benefits reaches an anomalous result. It has been argued that unfairness results when interest is awardable in a court action but not in an administrative proceeding. This argument was rejected in the case of Dyna-Med, Inc. v. Fair Employment and Housing Com. (1987) 43 Cal.3d 1379. In that case, the question was whether the Fair Employment and Housing Act granted to the commission responsible for its administration the authority to award punitive damages. In reaching the conclusion that punitive damages could not be awarded, the Supreme Court observed that "an administrative agency cannot by its own regulations create a remedy which the Legislature has withheld." (Id. at 1389.) The court then rejected the argument that the failure to allow identical remedies in the judicial and quasi-judicial forums amounted to a denial of equal protection. The court observed: "neither policy considerations nor equal protection concerns require that the administrative and judicial remedies be identical. To the contrary, the separate avenues justify different remedies." (Id. at 1402.)

For the reasons set forth above, we conclude that, as no specific statutory authority exists for the award of interest on unpaid benefits by the California Unemployment Insurance Appeals Board, section 3287(a) of the Civil Code does not authorize the payment of such interest by this Board.

DECISION

The decision of the administrative law judge is affirmed. The claimant is not entitled to the recovery of interest on unemployment insurance compensation benefits which were previously denied by the Employment Development Department.

Sacramento, California, September 14, 1993.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

ROBERT L. HARVEY

LOUIS WM. BARNETT

DEBRA A. BERG

GEORGE E. MEESE

JAMES S. STOCKDALE

INGRID C. AZVEDO

TOM BANE