

BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

In the Matter of:

JIM A. LEWELLEN
(Claimant)

PRECEDENT
BENEFIT DECISION
No. P-B-50
Case No. 69-2351

MARK STEEL STAMP CORPORATION
(Employer)

The employer appealed from Referee's Decision No. BK-19440 which held the claimant disqualified for benefits under section 1256 of the Unemployment Insurance Code, but which further held its reserve account not relieved of benefit charges under sections 1030 and 1032 of the code and set aside a departmental notice of ruling which had been issued to the employer.

STATEMENT OF FACTS

The record before us discloses these facts: The claimant worked for the employer as a machinist trainee from February 8, 1968, until October 16, 1968. His salary at the time of termination was \$2.10 an hour for a 40-hour week. His employment ended under the following circumstances.

In late 1966 the claimant was arrested and pleaded guilty to a misdemeanor charge of joyriding in a Northern California community. He was given a 90-day suspended sentence and was placed on five years' probation.

In May 1967 the claimant was arrested on a theft of check charge in Nebraska. No action was taken on the charge until August 1968 when the claimant was tried and found guilty. He was given four years' probation, but no mention was made of a sentence. The employer had granted the claimant a two-week leave of absence to face the charge.

As a result of the Nebraska trial, the claimant's probation stemming from the California charge was revoked. A warrant was issued for his arrest, and he was ordered to Sacramento to serve the 90-day sentence.

The claimant did not advise the employer that he was leaving work. He told the employer he was taking a few days off after October 16, 1968 because his mother was ill and he was required to drive his mother to Sacramento so she could enter a hospital in that city. He testified that he did so because he believed the employer would terminate him if it knew of the jail sentence. He did not ask if his job could be held open.

Three days later when he realized he would probably have to serve the original sentence, he instructed his brother to telephone the employer and advise it of the claimant's incarceration. The claimant did not know what the employer told his brother. The claimant did not return to the employer to see if he still had a job at the end of his sentence because he was without funds.

The claimant filed his initial claim for benefits effective February 23, 1969. He gave as his reason for no longer working - "laid off, fired." Notice of the new claim filed was mailed to the employer on February 26, 1969. The notice was returned with a postmark date of March 3, 1969. It carried on the department form the employer's typewritten return address. On the informational portion of the form there appeared the following:

"Probation officer informed Bob Rogers, plant superintendent, that Lewellen is presently incarcerated in Sacramento and after serving his sentence, will move with his family to Santa Maria."

No date was given in reply to a request for the date the claimant last worked. The notice of claim bore nothing else, neither the name, account number, signature of the employer, date, nor the employer's telephone number.

On March 11, 1969 the department determined that the claimant left his work voluntarily without good cause and mailed a notice of determination and favorable ruling to the employer.

REASONS FOR DECISION

Section 1256 of the California Unemployment Insurance Code provides that a claimant shall be disqualified for benefits if he left his most recent work voluntarily and without good cause. Under such circumstances his last employer's reserve account may be relieved of benefit charges in accordance with sections 1030 and 1032 of the code.

We have recently held in Appeals Board Decision No. P-B-27 that good cause for a claimant's voluntary leaving of work exists where it is found that there was a real, substantial and compelling reason to leave work, a reason of such nature as to cause a reasonable person under similar circumstances and who was genuinely desirous of retaining his job to voluntarily take the irrevocable step of quitting gainful employment.

We have further held in Benefit Decision No. 5421 that a "constructive quit" occurs where the employment contract is terminated when it can no longer be fulfilled because of the voluntary action of the employee, although a constructive quit does not occur if the employee is ready, willing and able to continue to render services to the employer even though unsatisfactory. Thus, a constructive quit occurred where an employee was replaced by the employer due to absence because of incarceration for an offense committed by the employee (Benefit Decision No. 6694).

In the latter decision the claimant was indicted in 1959 on a narcotics charge. He had been out of the state and unaware of the charge when he returned to California and obtained work in October 1961. He was arrested and incarcerated on February 16, 1962. We held it was immaterial that the illegal act was committed long prior to his current employment.

In the instant case, the claimant left his work in response to a warrant for his arrest resulting from a violation of the terms of his probation. He pleaded guilty to the offense which led to the probation. He was found guilty of the offense which resulted in revocation of his probation. It is immaterial that both offenses occurred prior to the employment herein. He made no attempt to protect his employment by advising the employer of his problem. Therefore, the claimant was responsible for the chain of events which resulted in his unemployment. In accordance with the reasoning in Benefit Decision No. 6694, the claimant "constructively quit" his employment and his leaving of work was without good cause within the meaning of section 1256 of the code.

Based upon this conclusion we must further hold that the employer is entitled to a ruling relieving its reserve account of benefit charges under sections 1030 and 1032 of the code, unless its failure to comply with the requirements for a valid protest set forth in the department's regulations divest it of standing to protest the charging of its reserve account. It is therefore fitting that we examine the record in the present case to determine whether there has been "substantial compliance" by the employer with procedural requirements imposed upon it by the department, so as to make it a proper party to these proceedings.

Section 1030 of the code provides in pertinent part:

"1030. (a) Any employer who is entitled under Section 1327 to receive notice of the filing of a new or additional claim may, within 10 days after mailing of such notice, submit to the department any facts within its possession disclosing whether the claimant left such employer's employ voluntarily and without good cause or was discharged from such employment for misconduct connected with his work. . . . The period during which the employer may submit such facts may be extended by the director for good cause." (Emphasis added)

* * *

"(c) The department shall consider such facts together with any information in its possession and promptly notify the employer of its ruling as to the cause of the termination of the claimant's employment. . . ."

Section 1327 of the code states:

"1327. A notice of the filing of a new or additional claim shall be given to the employing unit by which the claimant was last employed immediately preceding the filing of such claim, and the employing unit so notified shall submit within 10 days after the mailing of such notice any facts then known which may affect the claimant's eligibility for benefits."

It is provided in section 1328 of the code as follows:

"1328. The facts submitted by an employer pursuant to Section 1327 shall be considered and a determination made as to the claimant's eligibility for benefits. The claimant and any employer who prior to the determination has submitted any facts or given any notice pursuant to Section 1327 and authorized regulations shall be promptly notified of the determination and the reasons therefor and may appeal therefrom to a referee within 10 days from mailing or personal service of notice of the determination. The 10-day period may be extended for good cause. The director shall be an interested party to all appeals." (Emphasis added)

We reiterate for emphasis the last sentence providing that "The director [of the Department of Employment] shall be an interested party to all appeals."

In Benefit Decision No. 652 this board used significant language in discussing both the rights and duties of an employer who wishes to protect its reserve account from chargeability - and the department's responsibility in insuring that an employer's account is relieved of benefit charges under appropriate circumstances.

"We do not construe section 1030 of the code as requiring an employer to submit within the time limit all of the facts in its possession in order to become entitled to a ruling (Ruling Decision No. 66). It is sufficient if the employer alleges the existence of facts which reasonably place the department on notice that a particular claimant may have left the employer's employ voluntarily and without good cause or may have been discharged for misconduct connected with his work. As we construe section 1030 of the code, when an employer has established a right to a ruling, the department has the statutory duty of issuing a ruling based not only on the facts submitted by such employer but also on any additional information the department may possess (Ruling Decision No. 72)." (Emphasis added)

In subdivisions (a), (c) and (d) to section 1030-1 of Title 22, California Administrative Code, the department has implemented its legislative mandate.

"1030-1. Required Form and Method of Filing Notices Pursuant to Sections 1030, 1031 and 1032 of the Code.

(a) Any employer who is entitled under Section 1327 of the code to receive notice of the filing of a new or additional claim may, within 10 days after mailing of such notice, submit to the department any facts within its possession disclosing whether the claimant left such employer's employ voluntarily and without good cause or was discharged from such employment for misconduct connected with his work, and request a ruling pursuant to Sections 1030, 1031 and 1032 of the code.

* * *

"(c) Every such request for ruling shall relate to a single claimant and shall be filed with the local office in which such claim was filed and shall contain the following:

- (1) Employer's name;
- (2) Employer's address;
- (3) Employer's account number;
- (4) Name of claimant;
- (5) Claimant's social security account number;

- (6) Date claim was filed;
- (7) Date of separation;
- (8) Facts relating to the reason for or the circumstances resulting in the claimant's separation where it is alleged that he voluntarily quit without good cause, or was discharged for misconduct connected with his work.

"(d) Each statement of facts submitted under the provisions of subdivision (c)(8) above shall be supported by a statement signed by the person or persons having knowledge of or business records reflecting such facts."

A similar provision was wrongfully invoked by the department to deny an employer a notice of ruling in Ruling Decision No. 6. The employer there had submitted information and had requested a ruling with respect to the claimant's termination of employment; however, it failed to submit the amount of wages earned by the claimant in the calendar quarter of separation. For this failure the department refused to issue a ruling on the ground that the employer had failed to furnish such information as required by its regulations, then section 232 of Title 22, California Administrative Code.

After setting forth pertinent portions of the statute, we discussed the propriety of the department's interpretation of its implementing regulation.

"It has been said that in construing whether a statute is mandatory or directory, most statutes of a comprehensive and detailed nature are likely to contain many requirements which pertain to minor or nonessential particulars. The basic test by which to determine whether the requirement is essential or not, is to consider the consequences of the failure to follow the statute. In this way, the importance of the requirement will be revealed. If the requirement is revealed to be important it may logically be assumed that the Legislature intended that it be met; if found to be unimportant, that it need not be met. (Crawford, Statutory Construction, Section 261; Francis v. Superior Court (1935), 3 C (2d) 19, 43 P (2d) 300.)

"We are here dealing with a regulation which is of a comprehensive and detailed nature. The basic test to determine whether the requirement of subsection (d) (1) of Section 232 of Title 22 of the California Administrative Code is essential is to consider the consequences of the failure to comply with the subsection. As we view it, the requirement to furnish such information relating to wages in the quarter of separation relates primarily to accounting problems within the

Department in the event a ruling favorable to the employer is made, and does not affect the basic requirement and purpose of the regulation and section 39.1 of the Act [now section 1030 of the code] which is to assure the submission of facts relating to the reason for or the circumstances resulting in the claimant's separation from work in order that a ruling may be made. While it may be that the failure to furnish such information upon specific request by the department will affect the employer's right to a ruling on the merits, or to relief from charges to its account even though a ruling favorable to the employer be made on the merits, it is our opinion that the failure to furnish such information when making the initial request for a ruling should not deprive the employer of its right to a ruling on the merits provided it has substantially complied with the regulation as to all facts essential to the making of a ruling." (Emphasis added)

We observe in connection with this principle of "substantial compliance" that the requirement for certification of information found in section 1030-1(d) of the department's regulations with respect to rulings is not repeated in section 1333-2 of the regulations with respect to determinations. We thus appear to be dealing with a permissive rather than a mandatory implementation of legislative intent. This conclusion is fortified by a department practice discussed hereinbelow of returning deficient protests to employers so as to afford them reasonable opportunity to correct deficiencies (see section 1333-3 of Title 22, California Administrative Code, which allows an employer additional time and a reasonable opportunity to correct deficiencies in the submission of information).

We are of the opinion that this generous and equitable treatment is but a parallel to the equally liberal treatment accorded any party to amend civil pleadings, a practice which even allows for the amendment of verified pleadings, and is fully in keeping with modern administrative procedure which carries on in the code tradition of notice pleading (see 1 Davis, Administrative Law, section 8.04 et seq., and particularly note 13 at page 526).

While we find it unnecessary to consider the department's "Notice of New Claim Filed" and "Notice of Additional Claim Filed" as a "pleading," information related by an employer on either document frames the termination issue for the first time. Where there is substantial compliance and the submission of jurisdictional facts as contemplated by the legislature, this board in following its preference for substance over form will not insist on formalities when dealing with any party who fails to comply strictly with those

requirements which are solely procedural. This reasoning should apply with equal force to notices of determination as to notices of ruling since a determination may constitute a ruling (section 1031 of the Unemployment Insurance Code; Ruling Decision No. 145).

This reasoning is evident from a reading of Ruling Decision No. 78, a case distinguishable on its facts from those in the case now before us. The employer in that case had failed to supply the department with any written information relating to the claimant's termination of employment. Instead, its representative merely telephoned the department's local office and informed an employee of the circumstances surrounding the claimant's termination of employment. The department's employee who received the information agreed to note that the employer had telephoned, but requested confirmation in writing of the information orally submitted. The employer agreed. However, when it failed to do so within the time allowed, a determination was issued holding that the employer was not entitled to either a notice of determination of eligibility or a notice of ruling of chargeability.

We affirmed this decision, noting that the employer had failed to establish good cause for extending the time limits within which to submit information and, more significantly, held that its failure to submit the original information in writing was in clear contravention of legislative intent. We did not hold in that decision that a submission of information in writing, but which did not set forth with specificity the matters required by the department's regulation, was defective and must result ipso facto in a denial of ruling.

We believe that the employer in the instant case substantially complied with the provisions of subdivisions (c) and (d) of section 1030-1, Title 22, California Administrative Code. The department obviously was of the same opinion. The quintessence of its practice may be seen in the following

language contained in a policy statement regarding unsigned employer protests:

"It is true that regulations require an employer to submit certain information including account number and signature to obtain a ruling. The Appeals Board has adopted a lenient attitude toward technical details of ruling requests and has held a ruling is proper if information is submitted about VQ or discharge even if the account number is omitted. We believe we should follow the same reasoning in this matter. If the employer has submitted information about the separation but through oversight has not signed the ruling request, we should

make the ruling." (Amendment No. 110, dated March 7, 1966, to Manual of Determinations, Rulings and Appeals, section 4030.7.)

This salutary statement was, as implied, foreshadowed by our opinion in Regulation Decision No. 17 (November 23, 1951), which exemplifies the distinction we have made herein: Nothing in the statute (or its predecessor) requires firsthand knowledge by the employer of the facts submitted; there is nothing in the statute (or its predecessor) which prescribes any limitations with respect to the person who may submit such facts; and, there is nothing in the statute (or its predecessor) which requires "any certification of any kind from the person submitting such facts." As we made clear in Regulation Decision No. 17 –

" . . . There appears to be no valid objection to permitting the facts to be submitted . . . for whatever value they may have in assisting the department to carry out its administrative obligation to 'consider such facts together with any information in its possession and promptly issue to the employer its ruling as to the cause of the termination of the claimant's employment.' " (Emphasis added)

We are now of the further opinion that the essentials of due process as well as equitable considerations would otherwise be defeated if notices of administrative action were not issued to an employer under these circumstances, for the employer would then lose its one opportunity to take timely action to protect its reserve account. Such performance of official duty would be arbitrary and an abuse of discretion. In reviewing such action this board would be obliged to apply that well-known rule for the construction of administrative regulations which requires that great weight be given to the interpretation previously given them by the public officials charged with their administration (Whitcomb Hotel, Inc. v. California Employment Commission (1944), 24 Cal. 2d 753, 151 Pac. 2d 232). In other words, we would be loath to invoke procedural niceties promulgated for administrative convenience at the expense of denying a substantive right granted to employers by statute, again, so long as jurisdiction has attached by "substantial compliance" with those regulations.

"The Legislature therefore 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."

This unimpeachable declaration of public policy and bedrock guide to a proper interpretation of the Unemployment Insurance Code looks toward the broadest participation of both claimant and employer in a determination of eligibility for benefits. Only when all parties are permitted to contribute to a decision on the merits can that decision truly reflect a claimant's entitlement to partake of the benefits provided by this program of social insurance.

DECISION

The decision of the referee is modified. The claimant is disqualified from receiving benefits under section 1256 of the Unemployment Insurance Code. The employer is entitled to relief of its reserve account of benefit charges under sections 1030 and 1032 of the code.

Sacramento, California, August 29, 1969.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

ROBERT W. SIGG, Chairman

LOWELL NELSON

CLAUDE MINARD

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