

BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

In the Matter of:

VERNA M. TIDMORE
(Claimant)

PRECEDENT
BENEFIT DECISION
No. P-B-71
Case No. 69-4971

DEPARTMENT OF HUMAN
RESOURCES DEVELOPMENT

The Department appealed from Referee's Decision No. LA-28435 which held that a claim for unemployment insurance benefits which was effective July 29, 1969 met the provisions of sections 1277 and 1277.5 of the Unemployment Insurance Code and was a valid claim. The Department and the claimant submitted written argument.

STATEMENT OF FACTS

The claimant established a valid claim for unemployment insurance benefits which was effective June 30, 1968. A subsequent claim for unemployment insurance benefits was filed with an effective date of July 27, 1969.

The claimant had no earnings in the 12-month period following June 30, 1968. However, the claimant had filed a claim for disability insurance benefits during that 12-month period which was valid and had a maximum award of \$650. The claimant was paid the sum of \$242.86 only on that claim.

The issue involved in this case is whether the claim filed effective July 27, 1969 is a valid claim.

REASONS FOR DECISION

Section 1277 of the Unemployment Insurance Code provides:

"1277. Wages paid prior to the filing of a valid claim and not used in the computation of the award may be used for the purpose of computing the amount of any other award only if within the 12-month period following the date of the filing of the valid claim the individual was paid sufficient wages to meet the eligibility requirement under Section 1281. For the purpose of this section only the term 'wages' includes any and all compensation for personal services performed as an employee for the purpose of meeting the eligibility requirement under Section 1281. This section is not applicable to the computation of an award for disability benefits but the establishment of a valid claim for disability benefits shall not constitute a valid claim for unemployment compensation benefits unless the claimant has sufficient wages to entitle the claimant to an award under this section."

Section 1277.5 of the code provides:

"1277.5. In determining, under Section 1277, whether wages paid prior to the filing of a valid claim may be used in computing the amount of any other award, twice the amount which an individual was entitled to receive under Part 2 (commencing with Section 2601) of this division or under Division 4 (commencing with Section 3201) of the Labor Code during the 12-month period following the filing of the valid claim, shall be considered as wages paid to the individual during that 12-month period for purposes of meeting the eligibility requirements of Section 1281. The amounts so included shall not be considered wages for the purpose of computing the weekly benefit amount of the individual under Section 1280."

Section 1281(a) of the code provides:

"1281. (a) An individual cannot establish a valid claim or a benefit year during which any benefits are payable unless he has during his base period been paid wages for employment by employers of not less than seven hundred twenty dollars (\$720)."

Section 1277 of the code imposes the \$720 wage requirement during the 12-month period following the date of the filing of the valid claim. Section 1277.5 of the code permits "twice the amount which an individual was entitled to receive under Part 2 [Disability Compensation] of this division . . . during the 12-month period following the filing of the valid claim" to be "considered as wages paid to the individual during that 12-month period for purposes of meeting the eligibility requirements of Section 1281." (emphasis added)

Whether the claim filed effective July 27, 1969 is a valid claim depends upon whether the claimant was "entitled to receive" \$1,300 (twice the maximum amount of award) or \$485.72 (twice the amount paid) on her disability claim within the 12-month period following the date of the filing of the valid claim.

The Supreme Court of the State of Minnesota considered a case where a statute provided that any person who by means of wilful false representation aids or abets any other person to obtain an old age assistance certificate to which he is not "entitled" shall be guilty of a gross misdemeanor. The indictment charged that the defendant by means of false representation aided and abetted another to obtain old age assistance, she being at the time not "eligible" for old age assistance. The court held the offense was sufficiently charged, since the word "eligible" was, under the circumstances, the equivalent of the word "entitled." The court stated:

"Defendant's contention that the amendment was not permissible is based upon the claim that in effect it charged a new offense rather than amended the original one. The original indictment charged defendant with aiding and abetting Miss Danials, by means of false representations, to obtain old age assistance for which she was not 'eligible,' she not having attained the age of 65 years. The offense is charged in the language of the statute, except that the indictment uses the word 'eligible' and the statute the word 'entitled.' A person is not entitled to assistance unless he is 65 years of age. He must be 65 years of age, in other words, to be eligible therefor. The word 'eligible' is under the circumstances the equivalent of the word 'entitled.' It is sufficient that the charging words are equivalent in meaning to those of the statute." (State v. Jansen (1940), 207 Minn. 250 at 252, 290 N.W. 557 at 559)

Black's Law Dictionary, Fourth Edition, defines the word "entitle" as follows:

"ENTITLED. . . . To qualify for; to furnish with proper grounds for seeking or claiming. *Fitts v. Terminal Warehousing Corporation*, 170 Tenn. 198, 93 S.W. 2d 1265, 1267. In re *Graves*, 325 Mo. 888, 30 S.W. 2d 149, 151. . . ."

Section 2626 of the Unemployment Insurance Code defines the term "disability" or "disabled," and section 2627 provides that only a disabled individual is eligible to receive disability benefits. Whether we interpret the term "entitled to receive" as meaning "eligible to receive" or interpret that term as conferring a right to seek or claim benefits under the disability claim, it is apparent that the claimant was either not disabled to the extent that she was eligible to draw benefits in the maximum amount of the award or she did not follow the proper procedure for seeking or claiming benefits to the extent of the maximum amount of the award. It is apparent that the claimant was paid only the sum of \$242.86 in benefits and therefore was either not eligible for additional benefits or did not seek or claim such benefits. Therefore, we hold the claimant was "entitled to receive" the sum of \$242.86 only on her disability claim, and, inasmuch as twice that amount is less than the requirement of \$720 within the meaning of section 1277.5 of the code, the claim filed effective July 27, 1969 is invalid.

DECISION

The decision of the referee is reversed. The claim filed effective July 29, 1969 is invalid under the provisions of code sections 1277 and 1277.5. Benefits are denied.

Sacramento, California, May 5, 1970.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

ROBERT W. SIGG, Chairman

LOWELL NELSON

CLAUDE MINARD

JOHN B. WEISS

DON BLEWETT