

BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

In the Matter of:

MARY E. BROWN
(Claimant)

PRECEDENT
BENEFIT DECISION
No. P-B-72
Case No. 69-4339

The claimant appealed from Referee's Decision No. LB-22287 which held that she was disqualified and ineligible for unemployment insurance benefits for two weeks beginning August 17, 1969 on the ground that she wilfully failed to reveal a material fact in order to obtain benefits.

STATEMENT OF FACTS

The claimant was registered for employment at a local office of the Department but in order to enhance her employment opportunities she registered with an employment agency. On or about August 7, 1969 she was referred by the agency to a job as a machine operator at a hardware store. She was to be paid \$1.80 per hour and she agreed to accept employment to begin August 11, 1969.

On August 8 she called the individual who had offered her employment and informed him that because of a change in circumstances in a family situation that had occurred, she was forced to decline the opportunity for employment. She had agreed to pay \$156 to the employment agency for the job and believed that because of her change in circumstances the job would not be financially practical.

When the claimant claimed benefits for the week ending August 9, 1969 she answered each of the questions "Was any work offered you that week?" and "Did any person in this office or anywhere else offer you a referral to a job that week?" by writing "no." The claimant contended she did not make a misstatement by answering in this fashion since she had attempted to buy a job and that, in her opinion, no work was offered to her.

The claimant had a handbook that was given to her at the time she filed her claim for benefits and stated that she had read and understood the handbook. It contained instructions that the claimant when claiming benefits should report to the Department any failures to accept work even if it was work which she would not do.

The Department considered the issue under section 1257(b) of the code and found that the claimant had good cause for refusing the employment but no written determination on this point was issued. The claimant was paid benefits for the weeks ending August 9 and 16, 1969.

REASONS FOR DECISION

The issue under section 1257(b) of the Unemployment Insurance Code has become final. This issue is not before us and we specifically give no consideration to it in this decision. However, this is not determinative of the question of whether the claimant is subject to disqualification under section 1257(a) of the code.

Section 1257(a) of the Unemployment Insurance Code provides:

"1257. An individual is also disqualified for unemployment compensation benefits if:

"(a) He wilfully made a false statement or representation or wilfully failed to report a material fact to obtain any unemployment compensation benefits under this division."

Section 1260(d) of the code provides:

"(d) An individual disqualified under subdivision (a) of Section 1257, under a determination transmitted to him by the department, is ineligible to receive unemployment compensation benefits for the week in which the determination is mailed to or personally served upon him, or any subsequent week, for which he is first otherwise in all respects eligible for unemployment compensation benefits"

In order for the Department to properly perform its statutory duty of determining a claimant's eligibility for benefits it must have in its possession all

of the facts which reasonably bear upon that eligibility. While in a particular case, as here, the fact withheld may not, as a matter of law, affect the ultimate outcome, it is only after careful consideration of that fact, together with the other facts in the case, that a proper determination can be made. To hold otherwise would, in effect, allow a claimant to determine his own eligibility for benefits based upon his opinion of what is material and what is not.

The claimant herein did withhold information with respect to the job offer at the time she filed her continued claim. The question then arises as to whether her failure to inform the Department was wilful. The term wilful has been defined by the California courts as follows:

"After indulging in this mental process, if an act is done as the result of it, it is a wilful act." (People v. Sheldon (1886), 68 Cal. 434, 9 P. 457)

"To do a thing wilfully is to do it knowingly." (People v. Swiggy, 69 Cal. App. 574, 581, 232 P. 174; 4 Words and Phrases, Second Series, p. 1304; Pen. Code, section 7 subds. 1 and 5; People v. Calvert (1928), 93 Cal. App. 569, 269 P. 969)

"'Wilful' ordinarily signifies intentional, and that, we think, is its signification here. It does not imply any malice or wrong toward the other party." (Benkert v. Benkert (1867), 32 Cal. 467)

In the present matter it is inferable that the claimant deliberately withheld information from the Department at the time she filed her continued claim. Her explanation that she did not think she was referred to work because she had attempted to buy a job may be explanatory for her failure to disclose the pertinent information but, nevertheless, the action was taken deliberately and intentionally and thus wilfully.

As to the materiality of the information withheld, it is our opinion that the application of section 1257(a) is not dependent upon whether the information withheld would have necessarily resulted in ineligibility or disqualification for benefits under other appropriate sections of the code. It is sufficient that the claimant believed, or should have known, that the facts withheld would raise a question as to her entitlement to benefits.

The claimant did give consideration to informing the Department but because she decided she was attempting to buy a job by accepting the referral by the private employment agency she did not consider it to be information which she should have reported to the Department. However, she knew, or should have realized, that the withholding of such information might raise a question as to her entitlement to benefits. Under such circumstances the disqualification under code section 1257(a) and the period of ineligibility under section 1260(d) were appropriate.

DECISION

The decision of the referee is affirmed. The claimant is disqualified and ineligible for benefits under sections 1257(a) and 1260(d) of the code.

Sacramento, California, May 5, 1970

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

ROBERT W, SIGG. Chairman

LOWELL NELSON

CLAUDE MINARD

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