

BEFORE THE  
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

In the Matter of:  
RANDALL FRED  
(Claimant)

PRECEDENT  
BENEFIT DECISION  
No. P-B-84  
Case No. 70-1317

The claimant appealed from Referee's Decision No. BK-24605 which held that he was ineligible for benefits for the week ending November 22, 1969 on the ground that he had not filed his continued claim for benefits for that week in accordance with authorized regulations.

STATEMENT OF FACTS

On November 19, 1969 the claimant was given a continued claim for the week ending November 22. He was next scheduled to report on November 26. However, on November 24 he left Los Angeles, California to go on a vacation in Aspen, Colorado.

He had been issued a claimant's handbook by the Department and had read that portion of the handbook which stated that if for any reason he missed his report day he was to contact the local office as soon as he could. Further instructions were to the effect that if he could not report to the local office within 14 days from the report day he missed, he was to complete the continued claim and explain on the reverse side thereof why he had missed the report day and to mail the card to the local office. Although the claimant was aware of the procedures required by the Department, he did not mail the continued claim to the Department or contact the Department for advice or assistance because he wanted to explain in person when he returned to Los Angeles.

He returned to Los Angeles on or about December 16 and filed his continued claim on December 18, 1969.

## REASONS FOR DECISION

Section 1253 of the Unemployment Insurance Code establishes the conditions which must be met by a claimant to become eligible to receive benefits with respect to any week of unemployment. One of these statutory conditions is that a claim for benefits with respect to such a week has been made "in accordance with authorized regulations." This provision is implemented in part by Director's Regulations 1253-5 (Section 1253-5, Title 22, California Administrative Code), and 1326-4(b) (Section 1326-4(b), Title 22, California Administrative Code). These sections read as follows:

"1253-5. Week--Failure to Report. An individual who fails to file his claim for a week of continued unemployment on his regular report day may file such claim within 14 days of his report date, providing good cause for such failure is found to exist and that such good cause existed throughout the period during which such individual failed to report."

"1326-4. (b) In order to maintain eligibility for filing continued claims for benefits during a continuous period of unemployment, the claimant must file continued claims at intervals of not more than one week, or such other interval as the Department shall require, unless the claimant shows good cause for his delay in filing his continued claim."

Section 309 of the Unemployment Insurance Code empowers the Appeals Board to entertain a protest to a proposed Director's Regulation and to approve or reject it after a hearing. In Disability Decision No. D-329 the question whether the Appeals Board has power to invalidate a Director's existing Regulation in a proceeding other than the special one established by section 309 was considered exhaustively. It was determined that the board did have such power. It was there concluded:

". . . we think it necessarily follows from the obligation imposed upon the Board to decide disputes in such manner as to ascertain the substantial rights of the parties, that if a particular rule or regulation of the Director is found to impinge upon those rights, the implied power must be vested in this Appeals Board to declare such rule invalid . . . it is our considered conclusion that the Appeals Board has the power, authority and duty to declare the subject section of the Administrative Code defining a hospital to be unreasonable, invalid and in derogation of the rights of this particular claimant under the Act, should it so find."

It is well settled that a tribunal of appropriate jurisdiction is empowered to set aside an administrative regulation which is illegal in the sense that it is not in accordance with constitutional or general law (2 Am. Jur. 2d 496, Adm. Law, sec. 646), or the specific statutory enactment it purports to implement. (Whitcomb Hotel v. California Employment Commission (1944), 24 Cal. 2d 753, 151 P. 2d 233) It is also established that such a tribunal may set aside a regulation which is arbitrary, unreasonable or discriminatory, because such a regulation is, in the legal usage of the term, an abuse of administrative discretion and, accordingly, an unlawful exercise of administrative power. (2 Am. Jur. 2d 131, Adm. Law, sec. 303) In our opinion, neither Regulation 1253-5 nor Regulation 1326-4(b) are illegal in the sense first above stated, nor is Regulation 1326-4(b) unlawful in the second stated sense, but we do consider 1253-5 unlawful in such second sense and therefore invalid.

On the basis of a comprehensive review of the case law in the United States, it has been said of administrative regulations and their legality and propriety:

"Administrative agencies may not act arbitrarily and capriciously in the enactment of rules and regulations in the exercise of their delegated powers. . . . an administrative regulation must be reasonable in order to be valid. Regulations which are arbitrary or unreasonable will not be sustained or enforced but will be set aside by the courts." (2 Am. Jur. 2d 131, Adm. Law, sec. 303)

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"The question whether a specific act is or is not arbitrary, capricious, unreasonable, or an abuse of discretion can only be determined in light of the particular functions and powers of the specific agency involved and the totality of the particular fact situation. . . ." (2 Am. Jur. 2d 507, Adm. Law, sec. 651)

California follows the general rule that an unreasonable administrative regulation is unlawful and may be invalidated by a tribunal of appropriate jurisdiction. In Sandstrom v. California Horse Racing Board (1948), 31 Cal. 2d 401; 189 P. 2d 17, the California Supreme Court said:

"Whether the regulation is reasonable depends on the character or nature of the condition to be met or overcome."

Regulation 1253-5 and Regulation 1326-4(b) have two purposes which are well within the intendment of section 1253 of the Unemployment Insurance Code. One of these purposes is to assure prompt payment of benefits to claimants who attend to their benefit claims with reasonable diligence. Because the right to claim benefits must at some point of time be brought to an end if eventual clogging of the claims process by a congestion of stale claims is to be avoided, the other purpose is to cut off the right to claim benefits of claimants who have not attended to their claims with reasonable diligence. In this view, Regulations 1253-5 and 1326-4(b) are aimed at the forgetful, careless, procrastinating, or otherwise imprudent claimant who overlooks, neglects, or disregards his responsibilities as a benefit claimant. It is not directed against the claimant mindful of those responsibilities and ready and willing to comply with them, but prevented from doing so by force of circumstances which he cannot overcome.

It is apparent to this board that Regulation 1253-5 is arbitrary and unreasonable. It arbitrarily fixes at 14 days the period for which good cause will excuse delay in filing a continued claim. Such a limitation, if upheld, would serve as an absolute bar to the receipt of benefits by claimants who had absolutely no means of filing a claim within the prescribed time. An example might be an individual who, due to injuries incurred in an accident while driving to a department office on his weekly report date, remained in a coma for 15 days thereafter. We cannot sanction such a result, and we conclude that Regulation 1253-5 is invalid and that it must be and is hereby set aside.

Although we have found the regulation to be invalid by placing an absolute limitation of 14 days within which the continued claim must be filed, it is necessary to determine whether the claimant has shown good cause for his delay in filing the claim under the provisions of section 1326-4(b) of the regulations. Good cause is not defined in the code. The courts have not pressed a rigorous definition of it. For example, in Merritt-Chapman & Scott Corporation v. Industrial Accident Commission (1936), 6 Cal. 2d 314 at 317 the court stated: "What constitutes 'good cause' depends largely upon the circumstances of each case. The term is relative."

In Syrek v. California Unemployment Insurance Appeals Board, 54 C. 2d 519 at 529, the court stated: "We believe that the term good cause as used in the statute means an adequate cause, a cause that comports with the purpose of the Unemployment Insurance Code and with other laws."

In California Portland Cement Company v. California Unemployment Insurance Appeals Board (1960), 178 C.A. 2d 263, the court stated: "Good cause cannot be determined in the abstract any more than can any other legal conclusion. It can be determined only in relation to a set of facts."

The claimant was aware of the requirements that he either report within the stipulated time or mail his continued claim card in. He failed to do either because he wanted to discuss his request in person with the representative of the Department. We believe that he fails to show reasonable diligence with respect to his benefit claim.

We find that this claimant has not established good cause for his delay in filing his continued claim and is ineligible for benefits for the week ending November 22, 1969.

#### DECISION

The decision of the referee is affirmed. The continued claim for benefits filed by the claimant for the week ended November 22, 1969 is invalid.

Sacramento, California, August 25, 1970

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

ROBERT W. SIGG, Chairman

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CLAUDE MINARD

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