

BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

In the Matter of:

DOROTHY G. EDWARDS
(Claimant-Respondent)

PRECEDENT
DISABILITY DECISION
No. P-D-12
Case No. D-68-14

DEPARTMENT OF EMPLOYMENT
(Appellant)

The Department of Employment appealed from Referee's Decision No. SD-D-1874 which held the claimant entitled to basic and hospital benefits for her period of disability commencing April 4, 1967.

STATEMENT OF FACTS

The claimant was first examined on February 17, 1967 by her physician, who found a nodule in the right breast and concluded that surgery was in order. On March 16, 1967 the physician arranged with a hospital in San Diego for the claimant to enter the hospital on the morning of April 4 to undergo excision of a "Benign hemangioma of the right breast."

It apparently was not anticipated that there would be any complications and as a consequence she was assigned to an emergency room. She was in surgery and in the emergency room between approximately 8 a.m. and 6:30 or 7 p.m. on April 4. At that point it was apparently determined that she was feeling well enough to return home and she left the hospital. She remained out of work from April 4 until April 10, 1967 when she returned to work.

The hospital charged her \$15, plus a small amount for supplies, which rate is applicable to patients staying in the emergency room for a period of from four to eight hours. She was not a registered bed patient, since apparently the minor surgery which was anticipated did not require that she be admitted as a "regular bed patient." Had the latter situation applied she would have been assigned to a room where the rate would have been \$22 for a four to eight hour stay and \$44 for a stay exceeding eight hours. The primary

question presented in this case calls for the definition of the word "day" as it is used in relation to the receipt of hospital benefits.

REASONS FOR DECISION

Section 2627 of the Unemployment Insurance Code provides in part:

"A disabled individual is eligible to receive disability benefits equal to one-seventh of his weekly benefit amount for each full day during which he is unemployed due to a disability only if the director finds that:

* * *

"(b) He has been unemployed and disabled for a waiting period of seven consecutive days during each disability benefit period with respect to which waiting period no benefits are payable; . . . "

Section 2801 of the code provides:

"During confinement in a hospital, an individual eligible for benefits under this part is entitled to receive in addition to all benefits otherwise provided in this division and irrespective of his receipt of remuneration from his employer, the amount of twelve dollars (\$12) for each day not in excess of 20 days in any one disability benefit period, during which he is so confined pursuant to orders of his physician." (Emphasis added)

Section 2802 of the code provides:

"An individual eligible for additional benefits under this chapter shall not be subject to any waiting period requirement as a condition precedent to the receipt of any benefits under this part during the disability which caused the confinement."

Section 2803 of the code provides:

" 'Day' as used in section 2801 means any 24-hour period of time during which the claimant is in a hospital, or any 24-hour period or any part thereof for which a hospital charges a patient a full day's rate."

In 1949 the California state legislature amended the Unemployment Insurance Act and included section 209. That section read as follows:

"Commencing January 1, 1950, any disabled individual eligible for benefits under Article 10 of this act shall, during his confinement in a hospital, be entitled to receive in addition to all benefits otherwise provided in this act, the amount of eight dollars (\$8) for each day not in excess of twelve (12) days in any one benefit year, during which he is so confined pursuant to orders of his physician; and any such individual shall not be subject to any waiting period requirement as a condition precedent to the receipt of any benefits under Article 10 of this act during the disability which caused such confinement."

At that time the legislature did not define the word "day" as used in section 209. However in 1951 the legislature corrected this omission by adding section 210 to the Unemployment Insurance Act. This section read substantially the same as section 2803 of the Unemployment Insurance Code quoted above.

The general rule of statutory construction is that if the language is unambiguous and the statute's meaning is clear, the statute must be accorded the expressed meaning without deviation since any departure would constitute an invasion of the province of the legislature (Crawford, Statutory Construction, 249).

A clear and unambiguous statute must be literally construed (Miller v. Bank of America, 166 F. 2d 415).

Mere inconvenience resulting from a construction according to the clear meaning of a statute will not justify the courts in ignoring its terms. Where the meaning is clear, the courts must take a statute as they find it. If its operation will result in inequality or hardship in some cases, the remedy lies with the legislature (45 Cal. Jur. 2d, Statutes § 122).

In our opinion the language used in section 2803 of the code is unambiguous and its meaning is clear. A careful reading of this section of the code convinces us that it was the purpose of the legislature, in amending the statute in 1951, to provide hospital benefits to those

disabled individuals who were confined to a hospital for at least a 24-hour period or who were confined for less than a 24-hour period if the hospital charged them at the rate usually charged for a 24-hour stay.

In this case the claimant was not confined to a hospital for a 24-hour period nor did the hospital charge her a full day's rate. Therefore she is not entitled to hospital benefits and is subject to the waiting period requirement contained in section 2627(b) of the code. Since she was not disabled for seven consecutive days, she is not entitled to disability benefits.

DECISION

The decision of the referee is reversed. Disability benefits and hospital benefits are denied commencing April 4, 1967.

Sacramento, California, April 12, 1968.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

ROBERT W. SIGG, Chairman

GERALD F. MAHER

CLAUDE MINARD

LOWELL NELSON

JOHN B. WEISS