

BEFORE THE  
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

In the Matter of:

ELFRIEDE B. WILL  
(Claimant)

DEPARTMENT OF HUMAN  
RESOURCES DEVELOPMENT

PRECEDENT  
DISABILITY DECISION  
No. P-D-132  
Case No. D-70-246

The Department of Human Resources Development appealed from Referee's Decision No. SF-D-1436 which held that the claimant was not ineligible for benefits commencing July 8, 1970 and continuing for 28 days thereafter under section 2626 of the Unemployment Insurance Code. Written argument has been submitted to this board by the claimant and the Department.

STATEMENT OF FACTS

The claimant submitted a claim for disability benefits for a period beginning July 8, 1970. The claim was accompanied by a physician's certification indicating the claimant entered a hospital on July 7, 1970 for surgery which occurred on July 8, 1970 consisting of a therapeutic abortion by means of a dilation and curettment and sterilization by means of a tubal ligation. The sterilization was done to avoid future pregnancy. The sterilization could have been performed at another time. It was performed on July 8, 1970 for convenience sake since the abortion was to be performed on that date. The pregnancy, which was in the third month, was terminated on July 8, 1970. The claimant was released by her doctor to return, and she did return, to her regular or customary work on August 3, 1970. Had she not undergone sterilization the claimant's disability would have lasted only four days rather than until and including August 2, 1970.

REASONS FOR DECISION

Section 2601 of the Unemployment Insurance Code provides:

"The purpose of this part is to compensate in part for the wage loss sustained by individuals unemployed because of sickness or injury and to reduce to a minimum the suffering caused by unemployment resulting therefrom. This part shall be construed liberally in aid of its declared purpose to mitigate the evils and burdens which fall on the unemployed and disabled worker and his family."

Section 2626 of the code provides:

"'Disability' or 'disabled' includes both mental or physical illness and mental or physical injury. An individual shall be deemed disabled in any day in which, because of his physical or mental condition, he is unable to perform his regular or customary work. In no case shall the term 'disability' or 'disabled' include any injury or illness caused by or arising in connection with pregnancy up to the termination of such pregnancy and for a period of 28 days thereafter."

Under section 2626 of the code the legislature has set the outer limit of the period of ineligibility for injuries or illnesses caused by or arising in connection with pregnancy. If such an injury or illness lasts beyond 28 days, disability benefits are payable at that time.

Since only the outer limit of the period of ineligibility has been set by the legislature under section 2626 of the code, if a claimant has an injury or illness caused by or arising in connection with pregnancy which lasts less than 29 days, the period of ineligibility will cease with the last day of such injury or illness. Therefore, if a claimant has a disabling condition, independent of the pregnancy as of such last day, disability benefit eligibility will then commence for the disabling condition.

In the instant case the claimant's injury or illness due to the pregnancy lasted four days. At that time the claimant was disabled from a condition (the sterilization) independent of the pregnancy. It is obvious that the sterilization surgery resulted in the claimant being sick or injured since she was not able to work from July 12, 1970 to and including August 2, 1970. Since the claimant's injury or illness due to pregnancy lasted only four days, she is ineligible for benefits under section 2626 of the code for those days. Since the claimant was disabled thereafter and until August 2, 1970 from a condition independent

of the pregnancy, disability benefits are payable for the latter period if she is otherwise eligible.

DECISION

The decision of the referee is modified. The claimant is ineligible for benefits for four days commencing July 8, 1970 under section 2626 of the code. Benefits are payable thereafter to and including August 2, 1970 if the claimant is otherwise eligible.

Sacramento, California, February 24, 1972

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

ROBERT W. SIGG, Chairman

CLAUDE MINARD

DON BLEWETT

CARL A. BRITSCHGI

DISSENTING IN PART - Written Opinion Attached

JOHN B. WEISS

## SEPARATE OPINION

## CONCURRING IN PART - DISSENTING IN PART

While I join my Board associates in their reasoning and conclusion as to disqualification of the claimant under code section 2626 for the four days attributable to the therapeutic abortion, I vigorously disagree with their reasoning and conclusion that the claimant is eligible for benefits to cover additional disability arising out of concurrent purely elective surgery for sterilization. In my opinion their decision completely evades the basic underlying social insurance nature of the state's program, and places an unconscionable burden upon the broad mass of covered wage earners in this state who here directly bear the costs in the form of a tax upon their wages.

Section 100 of the code provides in part:

"As a guide to the interpretation and application of this division the public policy of this State is declared as follows:

\* \* \*

"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."

The Legislature intended that section 100 of the code applies to the disability provisions of the code which comprise Part 2 of "this division." In this regard, section 2602 provides in part:

"Except as otherwise provided, the provisions and definitions of Part 1 (commencing with Section 100) of this division apply to this part [Part 2]. In case of any conflict between the provisions of Part 1 and the provisions of this part, the provisions of this part shall prevail with respect to

unemployment compensation disability benefits, and the provisions of Part 1 prevail with respect to unemployment compensation benefits."

In California workmen's compensation, unemployment insurance, and unemployment compensation disability insurance are part of a ". . . comprehensive, integrated program of social insurance which, operating in their respective spheres, are calculated to alleviate the burden of a loss of wages by a protected employee during a particular period of time. . . ." California Compensation Insurance Company v. Industrial Accident Commission (1954), 128 C.A. 2d 797, 276 P. 2d 148, 277 P. 2d 442. The uniform purpose of the three types of social insurance is to reimburse, in part, persons suffering a wage loss because of unemployment. This concept applies in the same manner to each of the three types of legislation.

In determining which, if any, of the pieces of legislation applies, the cause of the unemployment must be examined. Although the "exact phraseology" of section 100 of the code and the disability benefit provisions of the code lack "the perfect meshing of a uniform act" as stated in the California Compensation case, I see no conflict between the principle above quoted from section 100 of the code and the provisions of Part 2 of the code. The concept of "unemployment" is the same, and the facts and circumstances which go into arriving at that status are the same, under the three programs. This is particularly so in regard to unemployment benefits and disability benefits, in my judgment, since both types of legislation are in the same code, and many concepts and sections in the code apply by specific design to both types of social legislation. I believe that the above quotation of section 100 of the code therefore applies to Part 2 of the code. Consequently, where the cause of the unemployment is the "fault" (and under the reasoning of Sherman/Bertram Inc. v. California Department of Employment (1962), 202 C.A. 2d 733, 21 Cal. Rptr. 130, I do not interpret the word "fault" to necessarily imply a meaning of criminality or wrongdoing but, rather, to mean being responsible for the status or condition resulting from a volitional act) of the claimant, I do not believe it was the intent of the Legislature that benefits be paid.

Section 2601 of the code provides:

"The purpose of this part is to compensate in part for the wage loss sustained by individuals unemployed because of sickness or injury and to reduce to a minimum the suffering

caused by unemployment resulting therefrom. This part shall be construed liberally in aid of its declared purpose to mitigate the evils and burdens which fall on the unemployed and disabled worker and his family." (Emphasis added)

In the instant case the claimant did not become unemployed "because of sickness or injury." When she entered the hospital on July 7, 1970 she was not disabled. She became voluntarily unemployed because of an act of volition on her part to undergo purely elective surgery for an abortion and sterilization. Since the claimant was responsible for, and was the cause of her voluntary unemployment as a result of this volitional act, rather than as a result of a sickness or an injury, it cannot be said that she was unemployed through no "fault" of her own. The claimant should therefore be ineligible for unemployment disability benefits.

In my opinion, the holding by the majority that the claimant is entitled to benefits because she is disabled or sick as a consequence of the elective sterilization operation, ignoring completely the purely voluntary nature of that operation, evades what I consider to have been the clear intent of the Legislature in setting up the social insurance program. In effect the majority is legislating, and legislating a result incompatible with the insurance nature of the program. It approves payment of unemployment disability benefits for disabilities or sickness resulting from such diversely volitional situations as self-inflicted wounds or injuries, purely volitional cosmetic surgery including the silicone injection fad of recent memory, and wounds received during criminal acts. In fact, anything not specifically prohibited by the code. It abandons any pretense at insurance principles. Perhaps most cruelly, it places added burdens on the Unemployment Compensation Disability Fund to be shared and paid for by all covered wage earners of the state. Apparently forgotten is the unpleasant period in 1965 when the Unemployment Compensation Disability Fund was so depleted that wage earners suddenly found in their hour of need that legitimate unemployment compensation disability hospital benefits could not be paid. Not until eight months later when the Legislature raised the taxes could these unfortunates resume receiving benefits. The Unemployment Compensation Disability Fund is not a bottomless well capable of being painlessly tapped to satisfy all social medical concepts. It was not so intended. I believe it is a social insurance program, and I would keep it so, denying benefits for disability resulting from purely elective surgery unrelated to a medical need.

JOHN B. WEISS