

BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

THIS DECISION DESIGNATES FORMER DISABILITY
DECISION NO. 584 AS A PRECEDENT
DECISION PURSUANT TO SECTION
409 OF THE UNEMPLOYMENT
INSURANCE CODE

SEARS, ROEBUCK & COMPANY
(Employer)

SEARS, ROEBUCK & COMPANY
(Insurer-Appellant)

DEPARTMENT OF EMPLOYMENT
(Respondent)

PRECEDENT
DISABILITY DECISION
No. P-D-386

FORMERLY DISABILITY DECISION No. 584
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STATEMENT OF FACTS

The insurer appealed to the Appeals Board from the decision of a referee which held the insurer liable for payment of unemployment compensation disability benefits to the claimant under Voluntary Plan No. XX-XXXX.

Prior to the period involved herein, the claimant was employed as a PBX operator by a hospital in Los Angeles. The claimant last worked in such employment on May 25, 1955 and left because of a disability. Thereafter, the claimant filed a claim for disability benefits with the State Disability Fund and received benefits through June 22, 1955 after serving a seven-day waiting period ending on June 10, 1955. On June 23, 1955, the claimant became employed by this employer. The claimant worked for this employer through June 28, 1955 when she left such employment because of a recurrence of her original disability.

On July 28, 1955, the department transferred the claim to this insurer and requested that coverage be accepted on a simultaneous coverage basis beginning June 29, 1955. On August 1, 1955, the insurer accepted coverage on a simultaneous coverage basis beginning July 6, 1955 but declined to accept any liability for benefits for the first seven days of the claim.

The department paid disability benefits to the claimant at the full weekly benefit rate of \$24 for the week ending July 5, 1955. Thereafter, benefits were paid to the claimant on a simultaneous coverage basis by the Disability Fund and the self-insurer.

The insurer's voluntary plan policy contained the following provisions:

"D. DISABILITY BENEFITS: Any employee while covered under this plan who becomes disabled by any physical or mental illness or injury, except as hereinafter excluded, so as to prevent him from performing his regular or customary work, shall be paid benefits for each period of such disability by this plan. . . .

"(c) Two consecutive periods of disability due to the same or related cause or condition and separated by a period of not more than 14 days shall be considered as one continuous period of disability. . . .

"3. Waiting Period: Benefits as set forth in paragraph D 1 (a) above are payable beginning with the eighth consecutive day of disability. . . .

"5. Proration of Benefits: For any period of disability for which an employee, entitled to benefits hereunder, is simultaneously covered by one or more other plans (including voluntary plans and the State Disability Fund) and accordingly is entitled to other Unemployment Compensation Disability Benefits on account of the same disability, the amount payable for such period shall be:

"(a) The amount, if any, by which the benefits to which the employee otherwise would have been entitled under this plan exceed the benefits to which he would have been entitled under the California Unemployment Insurance Code if he were not covered by any voluntary plan, plus

"(b) The quotient of the amount of benefits to which the employee would have been entitled under the California Unemployment Insurance Code if he were not covered by any voluntary plan divided by the number of plans (including voluntary plans and the State Disability Fund) under which he is simultaneously entitled to benefits."

The voluntary plan contends that it is not liable for benefits during the first seven days of the claim which was filed effective June 29, 1955 on the ground that the voluntary plan policy provided for the payment of benefits beginning on the eighth day of disability. It further contends that the Disability Fund is liable for benefits in the full weekly amount during the period from June 29, 1955 through July 5, 1955.

The issue before us is whether the insurer is liable for benefits on a simultaneous coverage basis for such period.

REASONS FOR DECISION

Section 2627(b) of the California Unemployment Insurance provided:

"2627. 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 2608 of the code provided:

"2608. 'Disability benefit period,' with respect to any individual, means the continuous period of unemployment and disability beginning with the first day with respect to which the individual files a valid claim for unemployment compensation disability benefits. For the purposes of this part, two consecutive periods of disability due to the same or related cause or condition and separated by a period of not more than 14 days shall be considered as one disability benefit period."

Section 3254-1(c) of title 22 of the California Administrative Code provided:

"3254-1. Minimum Required Provisions for a Voluntary Plan. To be approved by the department a voluntary plan must meet each of the following minimum provisions and in addition provide to the employees covered thereby rights greater than those provided in Part 2 of Chapters 1 through 5 inclusive of the code: . . .

"(c) No voluntary plan may impose restrictions on or exclusions from eligibility for benefits in respect to individuals covered by such plans in such manner as to deny benefits which would be payable to the individual from the Disability Fund but for his inclusion in the voluntary plan."

Section 3254-2(h) of title 22, California Administrative Code provided:

"3254-2. General Provisions for a Voluntary Plan. . . .

"(h) A voluntary plan may provide for the proration of benefits on account of simultaneous coverage. Simultaneous coverage is deemed to exist when an individual is covered by and entitled to benefits from more than one plan (including voluntary plans and/or the Disability Fund). When a voluntary plan provides for proration of unemployment compensation disability benefits because an individual is simultaneously covered by more than one plan (including one or more voluntary plans and/or the Disability Fund) such unemployment compensation disability benefits cannot be less than the quotient obtained by dividing the sum of the unemployment compensation disability benefits to which the individual would be entitled if he were covered only by the Disability Fund by the number of plans under which the individual is simultaneously covered."

The evidence establishes that the claimant was first disabled on May 26, 1955 and had a recurrence of such disability on June 29, 1955 after working for a period of less than 14 days. Therefore, the disability was continuous and constituted one disability benefit period beginning May 26, 1955 within the meaning of section 2608 of the code (Disputed Coverage Decision No. DC-115). It follows that the claimant was entitled to benefits on June 29, 1955 and was not required to serve a waiting period upon the recurrence of her disability, she having previously served a waiting period ending on June 10, 1955 (Disability Decision No. 300).

The voluntary plan having accepted liability on a simultaneous coverage basis, we must determine when the liability became effective.

An analysis of section 3254-1(c) of title 22 of the California Administrative Code discloses that the voluntary plan must provide benefits to a claimant at least equal to the amount payable by the Disability Fund. We assume that such was the intent of the voluntary plan policy in this case (Disputed Coverage Decision No. DC-43).

In our opinion, the claimant was entitled to benefits from the voluntary plan on June 29, 1955 as she had already served the initial waiting period prescribed by the code and was not required to serve another waiting period.

We conclude that the insurer became liable for benefits on a simultaneous coverage basis beginning June 29, 1955.

DECISION

The decision of the referee is affirmed. The voluntary plan is liable for payment of benefits on a simultaneous basis beginning June 29, 1955. Reimbursement shall be made by the voluntary plan to the Disability Fund as provided in section 2712 of the code.

Sacramento, California, March 30, 1956.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

MICHAEL B. KUNZ, Chairman

GLENN V. WALLS

ARNOLD L. MORSE

Pursuant to section 409 of the Unemployment Insurance Code, the above Disability Decision No. 584 is hereby designated as Precedent Decision No. P-D-386.

Sacramento, California, May 2, 1978.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

DON BLEWETT, Chairperson

MARILYN H. GRACE

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