

BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

THIS DECISION DESIGNATES FORMER DISABILITY
DECISION NO. 621 AS A PRECEDENT
DECISION PURSUANT TO SECTION
409 OF THE UNEMPLOYMENT
INSURANCE CODE

PRECEDENT
DISABILITY DECISION
No. P-D-387

FORMERLY DISABILITY DECISION No. 621
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STATEMENT OF FACTS

The claimant appealed from Referee's Decision No. LA-D-9614 which held that the claimant was not entitled to benefits under the Unemployment Insurance Code. The matter was orally argued on August 27, 1958 at Los Angeles.

The claimant, a rotary driller helper, was disabled from performing his work in August 1956 by acute lumbosacral sprain. He filed a claim for disability benefits under a voluntary plan and was paid the maximum award of 26 weeks of benefits through February 9, 1957. The claimant remained under medical care and was advised by his physician to avoid the heavy work required as a helper in rotary drilling and to try to find "light" work.

Effective February 10, 1957, the claimant registered for light work with the Department of Employment and filed a claim for unemployment insurance benefits. Except for two interruptions, one to serve a period of disqualification and the other to work for approximately four weeks ending October 5, 1957 at his regular and customary work of rotary driller helper, the claimant remained in a claims status until he exhausted his award on November 9, 1957.

Effective January 21, 1958, the claimant filed a claim for disability benefits with the Department of Employment. He alleged that he was first disabled on October 6, 1957 by a ruptured disc. His physician certified he first treated him for "ruptured L-4 disc" on January 23, 1958 and that the claimant had been disabled from October 6, 1957 and would not be able to resume work prior to July 1, 1958. In a subsequent medical report, this physician certified that he had treated the claimant since June 1953 for "left ligament strain Possible Herniated L-3 disc" and that the claimant was disabled by this condition from October 5, 1957 and would be disabled to November 1, 1958. On April 14, 1958, this physician reported to the department that, since February 9, 1957, the claimant was able to work as a light truck driver and that he had recommended to the claimant that he no longer engage in heavy work as a rotary driller. Meanwhile, on March 25, 1958, the department issued a determination which held that the claimant was not entitled to benefits beginning January 21, 1958 under section 2653 of the code.

Due to economic necessity, the claimant undertook the performance of his regular work in September 1957 despite his physician's recommendation that he avoid such heavy work. The claimant testified that the pain had become so severe that he could not do any work presently and had to take pain-relieving medicine. He expected he would have to undergo surgery as indicated by his physician.

REASONS FOR DECISION

Section 2608 of the Unemployment Insurance Code provides as follows:

" '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 2608-1 of title 22 of the California Administrative Code provides in pertinent part as follows:

"Continuous Period of Unemployment and Disability. A continuous period of unemployment and disability ends:

(a) When an individual returns to and is able to perform his regular or customary work for a period of more than fourteen (14) days or . . ."

In this case the claimant was first disabled by a possible herniated "L-3" disc in August 1956; and at no time thereafter did his physician consider him able to perform his regular or customary work of rotary driller helper. Because of this disability, the claimant was paid maximum benefits under a voluntary plan. His present disability is related to a herniated "L-4" disc; and, according to both the claimant and his physician, it commenced in early October 1957, after he was employed at his regular and customary work for approximately four weeks. It is unnecessary for us to decide whether the claimant's disabilities were related because, inasmuch as he returned to and was able to perform his customary work in excess of fourteen days, we must hold under section 2608-1(a) of title 22 of the California Administrative Code that the disability for which he had received maximum benefits had ended.

DECISION

The decision of the referee is reversed. Benefits are payable provided the claimant is otherwise eligible.

Sacramento, California, October 24, 1958.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

GLENN V. WALLS, Chairman

ARNOLD L. MORSE

ERNEST B. WEBB

Pursuant to section 409 of the Unemployment Insurance Code, the above Disability Decision No. 621 is hereby designated as Precedent Decision No. P-D-387.

Sacramento, California, May 2, 1978.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

DON BLEWETT, Chairperson

MARILYN H. GRACE

HARRY K. GRAFE

RICHARD H. MARRIOTT

HERBERT RHODES