

BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

THIS DECISION DESIGNATES FORMER DISABILITY
DECISION NO. 268 AS A PRECEDENT
DECISION PURSUANT TO SECTION
409 OF THE UNEMPLOYMENT
INSURANCE CODE.

In the Matter of:

PRECEDENT
DISABILITY DECISION
No. P-D-389

FORMERLY DISABILITY DECISION No. 268
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The claimant on March 18, 1949, appealed from the decision of a Referee (LA-DI-1112) which held that she was ineligible for unemployment compensation disability benefits under the provisions of Section 201 of the Unemployment Insurance Act [now section 2626 of the Unemployment Insurance Code].

Based on the record before us, our statement of fact, reason for decision, and decision are as follows:

STATEMENT OF FACT

The claimant, a saleswoman and manager, last worked for ten years in a health food store and cafeteria in Los Angeles. She left on or about October 1, 1948, because of a disability.

As of October 8, 1948, the claimant filed a claim for unemployment compensation disability benefits in the Los Angeles office of the Department of Employment. On February 1, 1949, the Department issued a determination which held that the claimant was ineligible for benefits beginning

January 17, 1949, under Section 201 of the Act [now section 2626 of the Unemployment Insurance Code] on the ground that she was then able to perform her regular or customary work.

The claimant's physician on December 14, 1948, certified that the claimant would be disabled until January 1, 1949, because of brachial plexis neuralgia. On January 11, 1949, the Department received a further statement from this physician which stated that the claimant had been under his care "since October 26, 1948, for cervical neuritis, migraine type headaches, and associated climacteric disorders. She is still receiving treatments and is not in condition to return to work yet."

On January 17, 1949, the claimant was examined by a physician to whom she had been referred by the Department. He reported that a complete physical examination revealed no definite objective findings, or definite evidence of any organic pathology and that in his opinion the claimant could perform her regular occupation as a salesclerk.

At the time of the hearing before the Referee on March 3, 1949, the claimant submitted another report from her physician which stated: "(The claimant) is suffering from a variety of complaints due to functional hypo-ovarianism attendant to the menopause. The chief symptoms are: Severe, recurrent migraine and cervical neuralgia. These symptoms incapacitate her from work."

The claimant testified that she was receiving treatment weekly and although her condition varied so that it was better at times, she was not able to work. She stated that a fibroid condition existed which gave her pain and that on January 4, 1949, she began having migraine headaches and as of the date of the hearing on March 3, 1949, other symptoms had developed. The claimant's daughter-in-law, with whom she lives, testified that the claimant had dizzy spells daily, that she planned to be available to help her out of bed for fear she would black out, and that the claimant had pain.

In her appeal to this Board, the claimant submitted a statement from another physician who examined her on March 15, 1949, and found her disabled because of menopausal arthritis, neurocirculatory asthenia, uterine tumor for which surgery was indicated, and hypothyroidism, and estimated she could not resume work prior to July 1, 1949. This statement is not in evidence.

REASON FOR DECISION

The issue is whether the claimant continued to be disabled on and after January 17, 1949. In our opinion the evidence as a whole is sufficient to support a conclusion that the claimant was unable on and after January 17, 1949, to perform her regular or customary work because of a disability within the meaning of Section 201 [now section 2626 of Unemployment Insurance Code].

There is no provision in the Unemployment Insurance Act, or the regulations adopted pursuant thereto, which requires that a new first claim supported by another certificate of a physician must be filed during an uninterrupted period of disability. In such cases, it is sufficient to establish the existence of the disabling condition by proper medical evidence, or statement from the practitioner, and to prove that the period of disability has not been interrupted.

In this case, even assuming that the claimant's disability on and after January 17, 1949, was due to a new illness, a new claim supported by a physician's certificate is unnecessary since the period of disability was uninterrupted. As a matter of fact, however, the claimant's disability for the entire period was due to the same basic cause although there were some variations in the symptoms reported.

DECISION

The decision of the Referee is reversed. Benefits are allowed on and after January 17, 1949, provided the claimant is otherwise eligible.

Sacramento, California, May 27, 1949.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

MICHAEL B. KUNZ, Chairman

GLENN V. WALLS

PETER E. MITCHELL

Pursuant to section 409 of the Unemployment Insurance Code, the above Disability Decision No. 268 is hereby designated as Precedent Decision No. P-D-389.

Sacramento, California, May 16, 1978.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

DON BLEWETT, Chairperson

MARILYN H. GRACE

HARRY K. GRAFE

RICHARD H. MARRIOTT

HERBERT RHODES