BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

THIS DECISION DESIGNATES FORMER DISABILITY DECISION NO. 315 AS A PRECEDENT DECISION PURSUANT TO SECTION 409 OF THE UNEMPLOYMENT INSURANCE CODE.

In the Matter of:

CALIFORNIA WESTERN STATES
LIFE INSURANCE COMPANY
(Insurer)

PRECEDENT
DISABILITY DECISION
No. P-D-390

FORMERLY
DISABILITY DECISION
No. 315

The insurer on December 20, 1949, appealed from the decision of a Referee (LA-DI-1611 and 1612) which held that the claimant was eligible for unemployment compensation disability benefits under Voluntary Plan No. XXX-XXXX.

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

STATEMENT OF FACT

The claimant was last employed as a cleanup man by a pipeline and engineering company. This employment was terminated on April 11, 1949.

On June 20, 1949, the claimant filed a claim against the Disability Fund for disability insurance benefits in the Long Beach office of the Department of Employment which was made effective May 24, 1949. On August 9, 1949, the Department determined that the claimant was ineligible for benefits on the ground that he was covered by a voluntary plan. Subsequently the claimant filed a claim for benefits against the insurer, who, on August 23, 1949,

issued a determination that the claimant was ineligible for benefits under the voluntary plan on the ground that the claimant's disability was caused by an industrial injury. The claimant appealed to a Referee from each of the determinations. The Referee affirmed the determination of the Department and reversed the determination of the carrier.

Prior to June 15, 1947, the claimant was employed by the pipeline and engineering company as a laborer, operating a jackhammer, digging ditches and laying pipe. On the above date the claimant suffered an industrial injury involving fractures of a hand, a foot, and three ribs. The injury resulted in a permanent disability. One physician estimated that the claimant would be able to resume work as a laborer approximately one year after June 20, 1949. A second physician indicated that he was unable to predict when the claimant would be able to resume the work he was doing prior to the accident. The claimant is sixty-one years of age.

On November 2, 1949, the Industrial Accident Commission issued an award to the claimant in connection with the above injuries in which it was found that the claimant's temporary disability had terminated July 3, 1948, and that his remaining disability was a permanent one.

Subsequent to the aforementioned injury, the employer employed the claimant as a cleanup man for the months of April, May, and June, 1948. From July 1948 through September 1948 the claimant was employed regularly by the employer as a night watchman. This work ended, and the claimant was again employed as a cleanup man by the employer, working on an average of from eight to nine days a month. On April 11, 1949, this employment ended. The claimant was able at that time to continue working either as a cleanup man or as a night watchman. On June 1, 1949, prior to filing a claim for disability benefits, the claimant registered for work and filed a claim for unemployment insurance benefits. He certified that he was available for work and received benefit payments for four weeks.

REASON FOR DECISION

The insurer contends on appeal that the claimant is not disabled within the meaning of Section 201 of the Unemployment Insurance Act [now section 2626 of the Unemployment Insurance Code] because he is able to continue the work at which he was last employed. This contention raises the issue of whether work as a laborer, which was the claimant's regular and customary work at the time he was injured, continued to be his regular and customary work within the meaning of the Act [now code] or whether it has been replaced

by the less strenuous work at which the claimant was subsequently employed (See Disability Decision No. D-300-420).

In Disability Decision No. D-52-66 we rejected the so-called "light work" concept and held that it was immaterial that a claimant was able to perform "light work" so long as he remained unable to perform his regular or customary work. However, we held in Disability Decision No. D-60-42 that where a claimant, no longer able because of a disability to perform the heavy work at which he formerly had been employed, had most recently been employed at less strenuous work and had been paid unemployment insurance benefits on the grounds that he was able to perform the less strenuous work, he had acquired a new field of regular work and was not disabled within the meaning of the Act [now code].

In the present case the claimant has been employed at new work for a period of approximately one year. In view of this work experience, and in view of the fact that the claimant certified that he was available for such work in connection with a claim for unemployment insurance benefits, we conclude that the claimant's regular work is the work at which he was last employed. Since the claimant is admittedly able to perform that work, we hold that the claimant is not disabled within the meaning of Section 201 of the Act [now section 2626 of the Unemployment Insurance Code].

DECISION

The decision of the Referee is reversed. The claimant is ineligible under Section 201 of the Act [now section 2626 of the Unemployment Insurance Code] for benefits under either Voluntary Plan No. XXX-XXXX or the State Plan. Benefits are denied accordingly.

Sacramento, California, May 12, 1950.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

MICHAEL B. KUNZ, Chairman

GLENN V. WALLS (Absent)

PETER E. MITCHELL

P-D-390

Pursuant to section 409 of the Unemployment Insurance Code, the above Disability Decision No. 315 is hereby designated as Precedent Decision No. P-D-390.

Sacramento, California, May 16, 1978.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

DON BLEWETT, Chairperson

MARILYN H. GRACE

HARRY K. GRAFE

RICHARD H. MARRIOTT

HERBERT RHODES