

BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

In the Matter of:

SAVINO LOPEZ
(Claimant)

EMPLOYMENT DEVELOPMENT DEPARTMENT

PRECEDENT
DISABILITY DECISION
No. P-D-434
Case No. D-82-218

Office of Appeals No. LB-D-28883

The Department appealed from the decision of the administrative law judge which held that the claimant was entitled to backdate his claim for disability benefits.

STATEMENT OF FACTS

The claimant last worked on March 12, 1982. On March 15, 1982, the claimant reported for work. He was sent home because he was unable to perform his job duties due to an injured knee.

On March 17, 1982 the claimant completed a claim for disability benefits indicating the first day he was too sick to work was March 15, 1982, because of the work-related injury to his knee. He was unable to make an appointment with an orthopedic surgeon prior to March 30, 1982. The appointment had been made by a law firm on or about February 24, 1982 and he was unable to be seen at an earlier date.

The orthopedic surgeon to whom the claimant was referred completed a doctor's certificate on April 5, 1982 indicating he had treated the claimant from March 30, 1982. The diagnosis was shown as "1. Degenerative arthritis, both knees, worse on right side. 2. Status four years post medial meniscectomy, right knee" and that his disability began on March 15, 1982.

On April 14, 1982 the Department mailed a Notice of Claim Date Adjustment to the claimant. This notice advised him that the beginning date of his claim had been adjusted to March 23, 1982. The Department determined that the beginning date could not be more than seven days before the first date he was examined by or under the care of a doctor pursuant to section 2706-1(a), Title 22, California Administrative Code.

On April 19, 1982 the claimant informed a Department representative he had seen a doctor after his last day of work and prior to March 30, 1982. The claimant was given a doctor's certificate to have completed by the doctor who treated him prior to March 30, 1982. The certificate was not completed by that doctor as he had not treated the claimant after March 12, 1982. The certificate was subsequently completed by the same orthopedic surgeon who had completed the initial doctor's certificate. The orthopedic surgeon again indicated he first attended the claimant on March 30, 1982, but that the disability commenced on March 12, 1982 and the claimant would be disabled until at least March 30, 1982.

The claimant acknowledged that he had not seen a doctor after March 12, 1982 until March 30, 1982 when he was examined by the orthopedic surgeon.

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 2708 of the Unemployment Insurance Code provides in pertinent part:

"The director shall require for each uninterrupted period of disability that the first claim for disability benefits be supported by the certificate of a physician as defined in Section 3209.3 of the Labor Code The certificate shall contain a statement of the medical facts within his knowledge, his conclusion with respect to the disability of the claimant and his opinion with respect to probable duration of the disability. . . ."

Section 2706 of the Unemployment Insurance Code provides in pertinent part:

"Claims for disability benefits shall be made in accordance with authorized regulations of the Director of Employment Development. . . ."

Section 2706-1, Title 22, California Administrative Code, provides:

"Any person or his authorized representative may file a first claim for disability benefits who:

"(a) Has been continuously unemployed and disabled for a period of eight consecutive days, provided that a claimant has been examined by or under the care of a physician or practitioner during some portion of such period"

Section 2626 of the Unemployment Insurance Code provides in part that an individual shall be deemed disabled on any day in which, because of his or her physical or mental condition, he or she is unable to perform his or her regular or customary work.

We recognize that section 2706-1(a) of Title 22, California Administrative Code, sets forth mandatory requirements for establishing a first claim for disability benefits and that claims must be filed in accordance with authorized regulations of the Director of the Employment Development Department. This claimant was in fact disabled on March 15, 1982. He had been referred to an orthopedic surgeon prior to that date but was unable to secure an appointment with that orthopedic surgeon to be examined before March 30, 1982. Thus, he was unable to comply with the requirement

of section 2706-1(a), Title 22, California Administrative Code, solely for that reason and through no fault of his own.

The claimant's doctor certified the claimant's disability was the result of an industrial accident or occupational disease. The claimant had no choice but to follow the instructions with respect to the medical examination required by the insurance company and legal representatives involved.

The express purpose of the payment of disability benefits is to compensate in part for the wage loss sustained by individuals unemployed because of sickness or injury. The provisions of the code with respect to the payment of disability benefits require liberal construction in aid of the declared purpose to mitigate the evils and burdens which fall on the unemployed and disabled worker.

Under the particular circumstances involved herein, the Department regulation as applied to this claimant places him in the position of being disabled yet unable to comply with the requirements necessary to establish his claim at the time he became disabled solely through circumstances beyond his control. This is not a case where a claimant simply failed to comply with the necessary requirements to establish the beginning date of his claim through negligence, procrastination, or for any other reason within his control.

Where, through force of circumstances beyond his or her control, an admittedly disabled worker cannot technically comply with all of the initial requirements to establish the beginning date of his or her claim within the time proscribed by valid regulations, the declared purpose of the system to compensate in part for the wage loss suffered by a disabled worker is effectively frustrated.

Section 11342.2 of the Government Code provides:

"Whenever by the express or implied terms of any statute a state agency has authority to adopt regulations to implement, interpret, make specific or otherwise carry out the provisions of the statute, no regulation adopted is valid or effective unless consistent and not in conflict with the statute and reasonably necessary to effectuate the purpose of the statute."

It is well established that the rule-making power granted to an agency may not be so exercised as to alter or amend the statute or enlarge or impair its scope (California Employment Commission v. Butte County Rice Growers Association (1944), 25 Cal.2d 624, 154 P.2d 892; Whitcomb Hotel, Inc. v. California Employment Commission (1944), 24 Cal.2d 753, 151 P.2d 917; La Societe Francaise de Bienfaisance Mutuelle v. California Employment Commission (1943), 56 C.A.2d 534, 113 P.2d 47).

In the situation presented to us in this appeal, section 2706-1(a), Title 22, California Administrative Code, obviates compliance with the express purpose of the statute it was adopted to implement by denying benefits beginning at the onset of disability to an otherwise eligible claimant who is prevented from strict compliance with such regulation due to circumstances beyond his or her control.

Therefore, where the medical evidence of record is indisputable that a claimant was in fact unemployed and disabled as of a specific date, the claimant's doctor has promptly provided a certificate certifying the claimant was disabled as of that specific date, the claimant sought treatment or examination for the disability at the earliest possible date but such treatment or examination was temporarily delayed through no fault of the claimant, the requirement in section 2706-1(a), Title 22, California Administrative Code, that a claimant must be under the care of or examined by a physician within eight days prior to filing a claim is inconsistent and in conflict with the purpose of the statute providing for the payment of disability benefits to otherwise eligible claimants.

Consequently, we conclude that under such circumstances where it is clearly established that treatment or examination by a doctor is delayed due solely for reasons beyond the control of the individual and not due to procrastination, negligence, or failure to diligently pursue a claim for disability benefits, a claimant may backdate his or her otherwise valid claim, as in the instant case. We stress that it is only under the limited circumstances set forth above that section 2706-1(a), Title 22, California Administrative Code, conflicts with the purpose expressed in section 2601 of the Unemployment Insurance Code for the establishment of disability claims.

DECISION

The decision of the administrative law judge is affirmed. The claimant may backdate the beginning date of his claim for disability benefits to March 15, 1982.

Sacramento, California, July 26, 1983.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

DON BLEWETT, Chairman

MARILYN H. GRACE

HERBERT RHODES

LORETTA A. WALKER

JAMES J. HAGARTY

CHET WRAY

OSBORNE A. PEARSON