

BEFORE THE  
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

In the Matter of:

JOHN P. McMICKIN  
(Claimant)

PRECEDENT  
DISABILITY DECISION  
No. P-D-435  
Case No. D-83-163

EMPLOYMENT DEVELOPMENT DEPARTMENT

Office of Appeals No. SF-D-7813

The Department appealed from the decision of an Administrative Law Judge which remanded the case to the Department for the purpose of determining whether the claimant is entitled to disability insurance benefits under section 2656 of the Unemployment Insurance Code. The decision had set aside the Department's determination which disallowed benefits to the claimant under section 2629 of the code.

STATEMENT OF FACTS

The claimant has been employed as a sales person by Byron's Shoes for 18 years. He normally works 60 hours a month, last earning an average weekly wage of \$262. Byron's participates in the State unemployment compensation disability program, and the claimant has made contributions to the disability insurance fund based upon his earnings as a sales person. During the last 10 of these 18 years, the claimant has also worked full time as a teacher for the San Francisco Unified School District. His average weekly wage as a teacher is \$500. The school district does not participate in the unemployment compensation disability program. On January 25, 1983, while in the course of his employment with the school district, the claimant suffered a disabling injury for which he filed a claim under the employer's liability law governing the school district.

The San Francisco Unified School District provides workers' compensation benefits through the San Francisco City and County Retirement System. In response to the Department's request for workers' compensation information, the City and County of San Francisco reported that the claimant was being paid workers' compensation temporary disability benefits at a weekly rate equivalent to his full salary beginning January 26, 1983.

On February 2, 1983, the claimant filed a claim for State unemployment compensation disability benefits, identifying Byron's Shoes as his last employer and describing the injuries suffered by him on January 25. A physician's report accompanying this claim showed that the claimant was incapable of performing his regular work beginning January 25, 1983, and that his disability would probably continue until March 7, 1983. Upon learning of the claimant's receipt of workers' compensation benefits from the City and County of San Francisco, the Department disallowed the claim for unemployment compensation disability benefits.

The claimant's potential disability insurance award is \$152 per week.

### REASONS FOR DECISION

The novel issues before us require an examination into the entire disability insurance program. We note at the outset that section 140.5 of the Unemployment Insurance Code provides that unemployment compensation disability benefits are payments to an eligible unemployed individual with respect to wage losses sustained due to unemployment resulting from illness or other disability. In line with this concept of wage loss, the code disallows benefits to a disabled individual who is in receipt of certain income from other sources.

Code section 2628 reads as follows:

"An individual is not eligible for disability benefits with respect to any period for which the director finds that he has received or is entitled to receive unemployment compensation benefits under Part 1 of this division or under an unemployment compensation act of any other state or of the Federal Government."

An individual is not entitled to disability benefits if he or she receives unemployment compensation, regardless of the amount of such unemployment insurance benefits.

Code section 2629 provides:

"(a) Except as provided in this section, an individual is not eligible for disability benefits under this part for any day of unemployment and disability for which he has received, or is entitled to receive 'other benefits' in the form of cash payments."

"Other benefits" are defined as temporary disability benefits received under any workers' compensation law or employer's liability law. Subsection (c) provides that if such "other benefits" are less than the amount an individual would otherwise receive as disability benefits, he or she shall be entitled to receive disability benefits reduced by the amount of such "other benefits." Unlike section 2628 which totally denies benefits if an individual receives unemployment compensation, this section permits the payment of disability benefits as long as "other benefits" do not exceed the claimant's disability benefit amount.

A third method of handling income received by a disabled individual is provided in code section 2656. It provides:

"An individual eligible to receive disability benefits who receives wages or regular wages from his or her employer during the period of his or her disability shall be paid disability benefits for any day in an amount not to exceed his or her maximum daily amount which together with the wages or regular wages does not exceed for such day one-seventh of his or her weekly wage, exclusive of wages paid for overtime work, immediately prior to the commencement of his or her disability."

This circuitous adjuration simply means that a disabled worker can receive both wages and disability benefits as long as the combined amount does not exceed the worker's average daily wage. Under this section, a disabled individual who suffers a loss of wages may receive disability benefits even though that portion of wages paid to him exceeds his disability benefit amount. This result is in keeping with the instruction contained in section 140.5 that benefits should be paid "with respect to" wage losses resulting from a worker's disability. The administrative law judge took cognizance of this mandate in remanding the matter to the Department for redetermination.

We now turn to the question of whether the income received by the claimant during his disability was wages or "other benefits." The administrative law judge concluded that the payments received from the school district were not workers' compensation or benefits received under an employer's liability law merely because the payments are substantially greater than the maximum amount payable under the workers' compensation law, now \$196 weekly (Labor Code sections 4460 and 4463). This conclusion cannot be sustained when we consider the claimant's injury was job related and the employer acknowledges that the monies paid to the claimant is workers' compensation. It is also likely that the City and County of San Francisco provides its teachers with the same benefits received by members of the State Teachers Retirement System which permits payment of disability benefits at a rate equal to the disabled person's regular salary (Government Code section 19869 through 19877).

The weight of the evidence establishes that the payments received by the claimant from Ills school district employer were workers' compensation and, consequently, his entitlement to benefits rests upon section 2629 of the code. Accordingly, we must turn to the facts of this case and consider what effect that section has upon the claimant's entitlement to disability benefits.

As a teacher, the claimant earns wages, the loss of which is not protected by the unemployment compensation disability program. The claimant is also a sales person earning \$262 a week. He has taken the precaution (albeit involuntarily) of providing insurance against the loss of those wages. Does the code prevent the claimant from realizing the benefit of his foresightedness? We think not.

If the claimant were employed only by the school district prior to his becoming disabled, there would be little doubt that he is precluded from receiving disability benefits simply because he suffered no loss of insured wages. The fact is, he did suffer a wage loss, and a substantial one, \$262 a week. None of that loss was reduced by the claimant's receipt of indemnity under a workers' compensation or employers' liability law. The loss was one against which the claimant had insured himself. The fact that he had no loss of his uninsured wages should no more prevent him from collecting on his insurance policy than would the income from inheritance, investment, rents and profits.

After careful review of the pertinent section of the Unemployment Insurance Code, we conclude that the purpose of the disability program is to compensate in part for wage loss suffered by a disabled individual. Were we to construe section 2629 of the code as denying benefits under circumstances here present, that purpose would be defeated. Consequently, we hold that a disabled individual who suffers a loss of wages from two or more sources is entitled to receive disability insurance benefits with respect to that portion of the wage loss which is not reduced by the receipt of workers' compensation or employers' liability payments.

DECISION

The decision of the administrative law judge is modified. The claimant is not ineligible for disability insurance benefits under code section 2629. Benefits are payable and the Department need not make a determination with respect to the claimant's eligibility under section 2656 of the code.

Sacramento, California, May 22, 1984.

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