

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD
P O Box 944275
SACRAMENTO CA 94244-2750

JUAN CEJA
Claimant-Appellant

Precedent Benefit
Decision No. P-D-513

DECISION

Attached is the Appeals Board decision in the above-captioned case issued by Board Panel members:

MARTY BLOCK

ROBERT DRESSER

ELLEN CORBETT

MICHAEL ALLEN

Pursuant to section 409 of the California Unemployment Insurance Code, AO-389480 (D) is hereby designated as Precedent Decision No. P-D-513.

Adopted as Precedent: February 22, 2017

Case No.: AO-389480
Claimant: JUAN CEJA

The claimant appealed from the decision of the administrative law judge affirming the Employment Development Department (EDD) determination holding the claimant not eligible for disability benefits under section 140.5 of the Unemployment Insurance Code¹ beginning January 26, 2016. The administrative law judge found that the claimant was not suffering a wage loss due to disability because, as a seasonal worker, he would not normally be working at the time the disability commenced.

ISSUE STATEMENT

Given that the claimant was a seasonal worker whose disability commenced in the off-season, did the claimant suffer a wage loss due to a disability under code section 140.5?

FINDINGS OF FACT

The claimant is a seasonal agricultural worker who has been working for the employer from approximately April to November for 20 years. Prior to filing his claim for disability benefits the claimant last worked from March 25, 2015 to November 14, 2015 and was laid off at the end of the season.

After he was laid off, the claimant filed a claim for unemployment insurance benefits and received benefits through January 9, 2016. In order to receive unemployment insurance benefits, EDD requires claimants to certify weekly that they are able and available for work and also to register for work with CalJOBS². The claimant met these requirements while receiving unemployment insurance benefits.

On or about February 24, 2016, the claimant filed a claim for state disability insurance benefits because he was diagnosed with Type II Diabetes Mellitus and hyperglycemia. The claimant's doctor certified that the period of disability began on January 29, 2016. EDD provided the claimant with a disability claim effective date of January 26, 2016. EDD, however, disallowed the claim based on the determination that the claimant did not suffer a wage loss due to disability or

¹ Unless otherwise indicated, all code references are to California's Unemployment Insurance Code.

² The CalJOBS system is California's on-line resource to help job-seekers and employers navigate the state's workforce services.

illness because he was unavailable for work. EDD made this determination based on the claimant's history of seasonal work, and concluded, based on a seasonal pattern in the wages and the time his past unemployment insurance claims were filed, that he was not working because the season had ended. Based on its conclusion that the wage loss was not due to the disability, but rather to the seasonal work ending, EDD found the claimant ineligible for disability benefits.

The claimant was called back to work in April, 2016. The claimant did not return to work at that time due to his medical condition. As of the hearing date of May 2, 2016, the claimant's doctor had not yet released the claimant back to work³.

REASONS FOR DECISION

Code section 140.5 defines "disability benefits" as money payable to an eligible unemployed individual with respect to wage loss due to unemployment as a result of illness or other disability which makes an individual unavailable or unable to work. (Unemployment Insurance Code, section 140.5.)

- I. Under code section 140.5, whether a claimant has withdrawn from the labor market prior to the onset of the disability or illness is crucial to the initial determination of whether the claimant is ineligible for disability benefits.
 - A. The length of time of unemployment prior to the onset of disability impacts the evaluation as to whether a claimant has withdrawn from the labor market. (Cal. Code Regs., Title 22, section 2601-1, subd. (u).)

Cal. Code Regs., Title 22, section 2601-1, subd. (u) provides:

For the purposes of Section 140.5 of the code no individual shall be deemed eligible for disability benefits for any week of unemployment unless such unemployment is due to a disability.

- (1) If an individual has been neither employed nor registered for work at a public employment office or other place approved by the director for more than three months immediately preceding the beginning of a period of disability, he or she is not eligible for

³ As of the time of the hearing, EDD had not determined whether the claimant was otherwise eligible for disability benefits, including whether the claimant had a qualifying disability for purposes of eligibility for disability insurance benefits. The claimant was found ineligible for disability benefits solely under the provisions of code section 140.5.

benefits unless the department finds that the unemployment for which he or she claims benefits is due to a disability and is not due to his or her previous withdrawal from the labor market.

Thus, where the disability or illness occurs more than three months after a claimant has been unemployed and not registered for work, this regulation establishes, in effect, a presumption that the claimant has previously withdrawn from the labor market and that the wage loss is not due to illness or other disability. The claimant is ineligible for disability benefits unless it is found that the wage loss from unemployment is due to a disability rather than a previous withdrawal from the labor market.

If, however, the claimant last worked or was registered for work within the three months preceding the onset of the disabling condition, then no presumption arises under the regulation. (Cal. Code Regs., Title 22, section 2601-1, subd. (u).) If there is no presumption, the claimant is not ineligible under code section 140.5, unless EDD finds that during the three month period of unemployment the claimant withdrew from the labor market for reasons other than illness or disability (e.g. for personal reasons⁴ or to start a business⁵, etc.). In such a case, EDD may find the claimant ineligible for disability benefits under code section 140.5 because the wage loss was not caused by the disability or illness.

In this case, the claimant last worked on November 14, 2015. His doctor certified he was disabled on January 29, 2016, less than three months from the date he last worked. The presumption of ineligibility under 22 California Code of Regulations, section 2601-1, subd. (u) does not apply because the claimant worked less than three months prior to the onset of his disability. He also received unemployment benefits until 17 days prior to the onset of his disability, which is evidence that he continued to be registered for work and certify to his availability to work up to that time. Therefore, within the three months preceding the onset of his medical condition, the claimant had worked in his seasonal job and was registered for work while receiving unemployment benefits. Thus, EDD cannot presume that the claimant's wage loss was caused by his previous withdrawal from the labor market. Instead, to find the claimant ineligible for benefits, EDD must determine whether the claimant's wage loss was caused by his unavailability for work due to his medical condition or was he "unavailable" prior to his disability onset for other reasons.

B. Unemployment insurance law establishes that a lack of work for seasonal workers does not necessarily preclude their eligibility for

⁴ Precedent Decision P-D-381

⁵ Precedent Decision P-D-402

unemployment insurance benefits; the rationale of that law can be applied to disability cases.

In this case, in determining whether the claimant is ineligible for disability benefits, EDD relied on the claimant's history of lack of work in the off-season to conclude that the claimant's loss of wages was caused by the claimant's lay-off at the end of the season. Therefore, EDD determined that the claimant had withdrawn from the labor market due to being unavailable for work in the off-season.

The language of code section 140.5 defines "disability benefits" as benefits paid to an individual whose wage loss is due to "unemployment as a result of illness or other disability, resulting in that individual being unavailable or unable to work" as opposed to unemployment that occurs as a result of some other circumstance.

The issue of eligibility for benefits for seasonal workers during their off-season has been examined in unemployment insurance cases. As set forth below, unemployment as a result of lack of work for seasonal workers during the off-season does not mean they are "unavailable or unable to work" and does not preclude their eligibility for unemployment insurance benefits.

In unemployment insurance cases, in general, the claimant has to be able and available for work to be eligible for benefits. (Unemployment Insurance Code, section 1253, subd. (c).) When interpreting the phrase "unavailable . . . to work" in section 140.5, a code section governing disability benefits, the issue is whether we should consider the courts' well-established interpretation of the phrase "available for work" under code section 1253, subd. (c), a code section regulating unemployment insurance benefits.

"Availability for work" within the meaning of code section 1253, subdivision (c), requires no more than (1) that an individual claimant be willing to accept suitable work which he has no good cause for refusing and (2) that the claimant thereby make himself available to a substantial field of employment.

(Sanchez v. Unemployment Insurance Appeals Board (1977) 20 Cal.3d 55, 67.)

Furthermore, "once a claimant has shown he is available for suitable work which he has no good cause for refusing, the burden of proof on the issue of whether he is available to a 'substantial field of employment' lies with the department." *(Glick v. Unemployment Insurance Appeals Board (1979) 23 Cal. 3d 493, 505, quoting, Sanchez v. Unemployment Ins. Appeals Board, supra, at p. 71.)*

In California, the courts, the legislature, and this Board have recognized that the hardships of seasonal agricultural labor support a liberal interpretation of the unemployment laws. The law is well settled that, like other out-of-work employees, so long as they are able and available for work during their off season, seasonal workers are generally entitled to unemployment insurance benefits because they are unemployed through no fault of their own. (See *Rios v. Employment Dev. Dep't* (1986) 187 Cal.App.3d 489; Unemployment Insurance Code, section 2601 (The disability provisions “shall be construed liberally in aid of its declared purpose to mitigate the evils and burdens that fall on the unemployed worker and his or her family.”); (Precedent Decision P-B-200.)⁶

Specifically, in *Rios*, the Court rejected the argument “that migrant workers must remain mobile” in order to be considered available for work. (*Rios v. Employment Dev. Dep't, supra*, 187 Cal.App.3d at p. 495.) The *Rios* Court held that the migrant workers had good cause to terminate their migratory condition because they are not required to “live as unwilling nomads, in a state of perpetual migration, in order to be eligible for unemployment benefits”. (*Ibid.*) Furthermore, the Court noted the migrant farm workers who worked in California several months each year, and then, in the off-season, returned to their permanent homes in Texas, were available for work for purposes of unemployment insurance benefits (*Id.* at p. 492). The Court reasoned that: 1) the simultaneous loss of employment and affordable housing supported a finding they had good cause to return to their permanent homes in Texas (*Id.* at p. 494.); and 2) it was “irrelevant whether there was actually a demand for the farmworkers’ labor in Texas” as long as the claimants made themselves “available for employment by more than a minimal number of employers. . . .” (*Id.* at p. 496, citing, *Glick v. Unemployment Ins. Appeals Board, supra*, 23 Cal.3d at p. 503.) Instead, “the test of availability may not be predicated upon the lack of openings for a claimant, but rather must be based upon whether there is a potential employment field.” (*Rios v. Employment Dev. Dep't, supra*, at p. 496, citing, *Sanchez v. California Unemployment Insurance Appeals Board, supra*, 20 Cal.3d at p. 67, fn. 11 (internal citations omitted.)

Additionally, in Precedent Decision P-B-200, this Board found that a seasonal worker in a resort town, who was unemployed because there was no work after the resort season ended, was eligible for unemployment insurance benefits because she was able and available for work and had not withdrawn from the labor market. The Board held that “the claimant’s unemployment was due, not to her withdrawal from the labor market but rather to the failure of industry to offer

⁶ But see *Swaby v. Unemployment Ins. Appeals Bd.* (1978) 85 Cal.App.3d 264, a case where a migrant worker unreasonably restricted his labor market to a single grape field, which limited his availability to an insubstantial field of employment, making him unavailable for work. (*Rios v. Employment Dev. Dep't, supra*, 187 Cal.App.3d at p. 495.)

her employment.” The Board held that the seasonal nature of the claimant’s work did not affect her eligibility for unemployment insurance benefits.

These cases establish that, for purposes of unemployment insurance, the fact that a claimant is a seasonal employee in the off-season, and may be unlikely to find work, does not preclude that claimant from receiving unemployment insurance benefits. The same rationale should apply in cases where seasonal workers seek disability benefits in the off-season.

C. Code section 140.5 should be interpreted to further the interrelated purposes of the unemployment insurance and disability insurance programs so that a seasonal worker is not precluded from receiving disability insurance in the off-season unless he had made himself unavailable for work.

The history and purposes of these interrelated programs is helpful to our analysis. Wage-loss protection legislation began with the worker’s compensation laws. The theory underlying worker’s compensation “legislation is, succinctly stated, that industry should bear, in large measure, the burden of industrial accidents.” (*California Compensation Ins. Co. v. Industrial Acci. Com.* (1954) 128 Cal.App.2d 797, 805.) Unemployment Insurance was to provide benefits to eligible workers deprived of wages due to unemployment, to “cushion the impact of . . . seasonal, cyclical, and technological idleness”. (*Ibid.*, citing *Chrysler Corp. v. California Employment Stabilization Com.* (1953) 116 Cal.App. 2d 8, 16.)

State disability insurance benefits were implemented in 1946 under the Unemployment Compensation Disability Act. (*California Compensation Ins. Co., supra*, 128 Cal.App.2d at p. 805 (internal citations omitted).) The Unemployment Compensation Disability Act is “designed to provide benefits for loss of wages by an employee while disabled under conditions not entitling him to the protection of the Workmen's Compensation Act.” (*Ibid.*)

Moreover, the purpose of disability benefits 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 from disability. (Unemployment Insurance Code, section 2601.) The disability compensation part of the code must be construed liberally in furtherance of its declared purpose. (*Ibid.*)

Thus, disability insurance and unemployment insurance benefits are part of a comprehensive, integrated program of social insurance which, together with workers' compensation insurance, is designed to alleviate the burden of a loss of

wages by a particular employee during a particular period of time. (*Bryant v. Industrial Acci. Com.* (1951) 37 Cal.2d 215, 218; Precedent Decision P-B-369.)

These programs are interrelated by the common principle of permitting only a single recovery of benefits at one time. (Precedent Decision, P-B-369, citing, *California Compensation Ins. Co. v. Industrial Acci.Com.*, *supra*, 128 Cal.App.2d at p. 806.)

Significantly, an individual not eligible for unemployment insurance benefits because that individual cannot meet the requirement of being able and available for work may be eligible for disability insurance benefits. (Unemployment Insurance Code, sections 1253, subd. (c) and 2628.)⁷ Disability insurance is also available to an employee if that employee experiences wage loss under conditions either not entitling him to the protection of the Worker's Compensation Act at all, or not providing adequate compensation (See e.g., *Bryant v. Industrial Acci. Com.* (1951) 37 Cal.2d 215).

To ensure protection for individuals who are unemployed through no fault of their own, a claimant's efforts to secure unemployment insurance benefits and disability insurance benefits in the same time frame should be considered as one transaction. (Precedent Decision P-B-398.)⁸ That is, the claimant's ineligibility for unemployment insurance benefits under code section 1253, subdivision (c) because of an inability to work, raises the issue of the claimant's eligibility for disability benefits.

D. Just as seasonal workers are not considered unavailable for work during their off-season for purposes of eligibility for unemployment benefits, neither should they be considered unavailable for work and ineligible for disability benefits just because their disability arose during the off-season.

⁷ "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." (Unemployment Insurance Code, section 2628.)

⁸ Specifically, the Board stated in Precedent Decision P-B-398 as follows:

Since the unemployment insurance and the unemployment compensation disability programs are interrelated, we are of the opinion that, where it appears that the claimant might be entitled to benefits under any provision of the Unemployment Insurance Code but the question is which program should pay the benefits, the claimant's eligibility for both types of benefits should be considered. Thus, if it is held that he is not entitled to one, he may be able to receive the other. Where the department is put upon notice that a claimant may have misjudged the type of claim he should file, there appears to be no reason why the department should not withhold its determination on the first claim until the other kind of claim is filed and evaluated so that proper determinations may be based upon full consideration of all factors that will affect the claimant's entitlement to appropriate benefits.

If a seasonal worker is considered available for work in the off-season for purposes of the unemployment insurance program, then the seasonal worker has not withdrawn from the labor market. Thus, if the worker then becomes disabled due to injury or illness, it follows that the seasonal worker would not be considered withdrawn from the labor market simply because it is off-season.

As discussed above, code section 140.5 must be read within the context of the liberal interpretation required by code section 2601, as well as the comprehensive statutory scheme designed to mitigate the burdens of unemployment whether caused by layoff, injury or illness.

Thus, if seasonal workers are unable to work because of illness or disability, they are ineligible for unemployment insurance benefits because they are not able and available for work. (Unemployment Insurance Code, section 1253, subd. (c).) Depriving seasonal workers, who become disabled during the off-season, of disability benefits simply because they have not found work in the off-season in the past, would essentially leave these disabled workers without any benefits under any of these programs. Disability benefits are intended to fill this gap in the safety net and compensate, in part, for the wage loss sustained by individuals unemployed because of sickness or injury resulting in the inability to perform their usual and customary work. (See e.g., *Bryant v. Industrial Acci. Com.*, *supra*, 37 Cal.2d at p. 218.)

It would be contrary to the purposes of these programs to deny benefits for disability just because the claimant happened to be unemployed through no fault of his own at the onset of his disability. Therefore, the fact that a claimant is a seasonal agricultural worker, who has been unable in years past to find work in the off-season, is insufficient, in and of itself, to conclude that the claimant is unavailable for work because it is the off-season as opposed to unavailable for work because of illness or disability.

- II. If the claimant suffered “a wage loss due to unemployment as a result of illness...” his illness, and not the lack of work, made him “unavailable or unable to work” and thus he was not ineligible for benefits under code section 140.5.
 - A. The claimant did not withdraw from the labor market prior to the onset of his disability, under regulation section 2601-1, subdivision (u).

As stated above, there is no presumption that the claimant has withdrawn from the labor market in this case, and the facts indicate that the claimant was attached to the labor market prior to the onset of disability. Therefore, to find that

the claimant is unattached to the labor market, EDD must find sufficient evidence that the claimant's wage loss is due to being unavailable for work for reasons other than illness or disability.

B. Nothing in the record indicates that the claimant was unavailable for work at the time of the onset of his disability.

Under *Rios*, for purposes of unemployment insurance benefits, claimants are not considered unavailable for work in the off-season simply because they historically perform seasonal work. (*Rios v. Employment Dev. Dep't*, *supra*, 187 Cal.App.3d at p. 492.) Similarly, code section 140.5 does not necessarily preclude a seasonal worker who suffers a disability while unemployed during the off-season from receiving disability benefits.

Here, the claimant ordinarily did not find work in the off-season. However, there was nothing in the record to show that, at any time prior to the onset of the disability, the claimant had failed to look for suitable work or would not have accepted suitable work. On the contrary, the record would indicate that the claimant continued to certify that he was searching for work up until 17 days before his doctor certified the commencement of his disability. Furthermore, there is a lack of evidence that the claimant failed to make himself available to a substantial field of employment. In addition, nothing in the record indicates that the services which the claimant performs, agricultural labor, are not generally performed in the geographical area in which the claimant resides. We also note that, due to his medical condition, the claimant's doctor had not released him to return to work when work was offered to him in April 2016, the start of the next season.

The claimant was denied disability insurance benefits simply because he was a seasonal worker with a history of collecting unemployment benefits during the off season, the time when his disability arose. However, as explained above, a seasonal worker has not withdrawn from the labor market simply because that worker has difficulty finding work during the off-season. The labor market generally includes employed people and those actively seeking employment. Thus, although the claimant did not customarily work during the off-season, there is insufficient evidence that he was not looking for suitable work or placing unreasonable restrictions on his availability for work.

For these reasons, and because the disability insurance program was designed to alleviate the burden of a loss of wages by claimants, we find that the claimant is not ineligible for benefits under code section 140.5. Accordingly, the decision of the administrative law judge is reversed.

The claimant has submitted additional information which should have been presented at the hearing. To consider this information now would violate due process because the parties have not had the opportunity to rebut or refute the evidence or question witnesses about it. Moreover, the administrative law judge did not have an opportunity to consider this information in arriving at a decision. For these reasons, and because the parties were advised in the hearing notice to bring all documents and witnesses to the hearing, we have not considered this information in our deliberations, for to do so now would be improper and would violate due process. (Precedent Decision P-B-144.)

DECISION

The decision of the administrative law judge is reversed. The claimant is not ineligible for disability benefits under code section 140.5. Disability benefits are payable provided the claimant is otherwise eligible.