

BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

In the Matter of:

JOSEPH J. MIRELES
(Claimant)

PRECEDENT
DISABILITY DECISION
No. P-D-80
Case No. D-69-250

The claimant appealed from Referee's Decision No. LA-TD-D-122 which held him ineligible for unemployment disability benefits commencing May 2, 1969 under the provisions of section 2677 of the Unemployment Insurance Code.

STATEMENT OF FACTS

The claimant worked as a truck assembler for a truck firm and was a member of Local 1586 of the International Association of Machinists. The union called a strike and established a picket line at the employer's premises effective March 16, 1969. The claimant left his work after March 15, 1969 because of the trade dispute and chose not to cross the picket line. The trade dispute ended on May 24, 1969 and the claimant resumed his work as a truck assembler with the "trade dispute" employer.

After the commencement of the trade dispute an agreement was entered into between the claimant's union and the longshoremen's union. Under this agreement the longshoremen's union made available daily from 50 to 75 jobs as longshoremen for members of the claimant's union. The claimant worked as a longshoreman for a period of time in April 1969 and last worked as a longshoreman on April 30, 1969.

For some time prior to the commencement of the trade dispute the claimant suffered from a nasal obstruction. He planned to have the obstruction removed when he had enough time and money to do it. He received an income tax refund prior to April 30, 1969 and on May 2, 1969 underwent surgery for the removal of the nasal obstruction. The surgery was

performed in a physician's office and the claimant was not hospitalized. The claimant was scheduled to work as a longshoreman during the week subsequent to May 2 and would have worked had he not undergone the nasal surgery.

The physician who performed the surgery certified that the claimant was disabled and unable to perform his work from May 2 through May 24, 1969.

The claimant did not file a claim for unemployment compensation benefits.

REASONS FOR DECISION

There is no question that this claimant left his work because of a trade dispute. Therefore, had he filed a claim for unemployment compensation benefits, he would be subject to the provisions of section 1262 of the Unemployment Insurance Code which provides as follows:

"1262. An individual is not eligible for unemployment compensation benefits, and no such benefit shall be payable to him, if he left his work because of a trade dispute. Such individual shall remain ineligible for the period during which he continues out of work by reason of the fact that the trade dispute is still in active progress in the establishment in which he was employed."

However, the claimant did not file a claim for unemployment compensation benefits but rather filed a claim for disability compensation benefits. The first question then for decision is whether or not the provisions of section 1262 of the code apply to claims for disability benefits. Section 2602 of the code provides as follows:

"2602. (a) Except as otherwise provided, the provisions and definitions of Part 1 (commencing with Section 100) of this division apply to this part. In case of any conflict between the provisions of Part 1 and the provisions of this part, the provisions of this part shall prevail with respect to unemployment compensation disability benefits, and the provisions of Part 1 prevail with respect to unemployment compensation benefits.

"(b) The provisions of Articles 4 (commencing with Section 1375) and 5 (commencing with Section 1401) of Chapter 5 of Part 1, and the provisions of Chapter 6 (commencing with Section 1501) of Part 1 of this division do not apply to this part.

"(c) Sections 312, 318, 625, 626, 627, 628, 1251, 1253, 1254, 1255, 1279, 1326 to 1333, inclusive, 1339, and 1340 do not apply to this part."

Section 1262 appears in Part 1 of the code and there is nothing in the code which "otherwise provided" with respect to section 1262 of the code. Therefore, this section of the code applies to claims for disability benefits.

The claimant left his work because of a trade dispute within the meaning of section 1262 of the code and, therefore, the provisions of section 2677 become applicable. This section provides in part as follows:

"2677. An individual who is disqualified from receiving unemployment compensation benefits under Section 1262 shall be presumed to be ineligible to receive disability benefits under this part for the same period or periods unless the individual establishes, pursuant to authorized regulations, that his alleged disability was the result of an accident or required a period of hospitalization, that it was not caused by and did not arise out of the trade dispute, and that it would have occurred and would have prevented him from continuing his work if the trade dispute had not occurred. . . ."

The operation the claimant underwent was not of an emergency nature and his period of disability did not result from an accident or require a period of hospitalization; he is therefore ineligible for disability benefits unless the work he obtained subsequent to leaving work because of the trade dispute terminated his period of ineligibility under section 1262 of the code. The California Supreme Court in Mark Hopkins, Inc. v. California Employment Commission (24 Cal. 2d 744, 151 P. 2d 299) stated that a trade dispute merely suspends but does not terminate the employment relationship, and, in order for the claimant's disqualification under section 1262 to be terminated by subsequent employment, the subsequent employment must indicate a break in the continuity in the claimant's unemployment and the causal connection between his unemployment and the trade dispute. Such employment must completely sever the relationship of the employee and his former employer.

It is obvious that the employment which the claimant obtained as a longshoreman was merely of a stopgap nature and was made available to the claimant and his fellow workers only because of the trade dispute which was in progress between the claimant's former employer and the claimant's union. The claimant did not intend to pursue this line of endeavor but did intend to return to his trade dispute employer when the trade dispute was settled, and, in fact, did return to the trade dispute employer. We conclude, therefore, that the employment which the claimant obtained was not of such a nature as to sever the relationship between himself and his former employer. Accordingly, the claimant was not eligible for disability benefits under sections 1262 and 2677 of the code.

DECISION

The decision of the referee is affirmed. Disability benefits are denied commencing May 2, 1969.

Sacramento, California, July 21, 1970

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

ROBERT W. SIGG, Chairman

LOWELL NELSON

CLAUDE MINARD

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