BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

THIS DECISION DESIGNATES FORMER RULING DECISION NO. 142 AS A PRECEDENT DECISION PURSUANT TO SECTION 409 OF THE UNEMPLOYMENT INSURANCE CODE.

In the Matter of:

BERKELEY FARMS
(Employer)

Claimant: Benjamin B. Posey

PRECEDENT
RULING DECISION
No. P-R-339

FORMERLY
RULING DECISION
NO. 142

The employer appealed to a referee from a departmental notice of determination charging the employer's reserve account in the amount of $231 under section 1030.5 of the Unemployment Insurance Code. After the issuance of Referee's Decision No. SJ-R-4034, we set aside the decision under section 1336 [now section 413] of the code.

STATEMENT OF FACTS

The claimant was employed by the employer herein from March 18, 1963 to May 12, 1963 as a driver. Effective September 15, 1963, the claimant filed a claim for benefits. His weekly benefit amount was determined to be $33. The employer, as a base period employer, was notified of the filing of the claim and duly responded on October 3, 1963 with the statement that the claimant had voluntarily left its employ to resume his education. The department then interviewed the claimant and was informed that he had been discharged because of his past driving record.

Prior to his discharge, the claimant had mentioned in a conversation with his immediate supervisor that he would like to resume his education. A higher official, the manager of the employer's San Mateo branch, discharged the claimant because of his past driving record. The immediate supervisor was aware of this. Subsequently, the immediate supervisor was promoted to managership of the San Mateo branch. Thereafter, in response to a request from the employer's main office, he informed such office that the claimant had voluntarily left his work to go to school. He did this because he thought it would be better for the claimant's employment record; he did not realize that his report would possibly be used in connection with unemployment insurance matters.

When the employer was notified of the claim for benefits, its main office informed its representative, an organization engaged in representing employers, that the claimant had left its employ to go to school and the agent relayed this statement to the department on October 3, 1963.

In appealing from the department's determination, the employer's representative stated simply, "The supervisor did not wilfully make a misstatement as to the reason for termination of the claimant."

REASONS FOR DECISION

Section 1030.5 of the Unemployment Insurance Code provides:

> "1030.5. If the director finds that any employer or any employee, officer, or agent of any employer, in submitting facts pursuant to Section 1030 or 3701, willfully makes a false statement or representation or willfully fails to report a material fact concerning the termination of a claimant's employment, the director shall make a determination thereon charging the employer's reserve account not less than 2 nor more than 10 times the weekly benefit amount of such claimant. The director shall give notice to the employer of a determination under this section. Appeals may be taken from said determinations in the same manner as appeals from determinations on benefit claims."

Section 1257 of the code provides in pertinent part:

> "1257. An individual is also disqualified for unemployment compensation benefits if:
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> "(a) He wilfully made a false statement or representation or wilfully failed to report a material fact to obtain any unemployment compensation benefits under this division."

In Benefit Decision No. 6746 [now Appeals Board Decision No. P-B-216] we held that the term "willfully" in section 1030.5 of the code has the same meaning as that same term in section 1257(a) of the code.

In Benefit Decision No. 5730, we considered the situation in which a claimant had performed services for a law firm serving summonses and complaints. During a 19-week period he had completed 13 services. To accomplish this, he worked a varying number of hours per week; in one instance, he worked over 50 hours to complete a service. He did not report his work or earnings to the department when claiming benefits for two reasons: (1) He knew that he was entitled to earn $3 per week without affecting his benefit amount (this was true in 1949 and 1950), and (2) he did not think it was necessary to report his work and earnings as he felt it would only confuse everything.

In determining that the claimant was subject to disqualification, we adopted the following definitions of the term "wilful":

> " 'To do a thing with deliberation is to do it after consideration and reflection, and if after indulging in this mental process, the act is done as a result thereof, it is wilful.' People v. Sheldon (1886) 68 Cal. 434, 9 Pac. 457."
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> " 'To do a thing wilfully is to do it knowingly.' People v. Calvert (1928) 93 Cal. App. 568, 269 Pac. 969."
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> " 'Conscious; knowing; done with stubborn purpose but not with malice.' Helme v. Great Western Milling Co., 43 Cal. App. 416, 185 Pac. 510, 512."

We also stated in Benefit Decision No. 5730:

> "In the instant case, the claimant's failure to report the aforementioned facts was his belief that it would only 'confuse everything.' Under the aforementioned definitions we can reach no other conclusion but that the claimant's failure to disclose these facts was wilful. As to the materiality of the information which the claimant withheld, it is our opinion that the application of the disqualifying provisions of Section 58(a)(3) of the Act (now 1257(a) of the code) is not dependent upon whether the information withheld would have necessarily resulted in ineligibility or disqualification for benefits under other appropriate sections of the Act (now code). It is sufficient if the claimant believed, or should have known, that the facts withheld would raise a question as to his entitlement to benefits, and clearly the claimant in the instant case entertained such a belief. The claimant's failure to report these facts to the Department, prevented the Department from properly performing its statutory obligation of determining the claimant's eligibility for benefits and constituted a wilful withholding of material facts to obtain benefits. . . ."

Unquestionably, a false statement was submitted to the department in this matter. It was material and concerned the termination of the claimant's employment. The person from whom it originated (the claimant's immediate supervisor and, subsequently, the manager of the employer's San Mateo office) made it with knowledge that it was false. However, he made the statement to his employer's main office and not directly to the department. Apparently, the employer's main office and its representative did not know that the statement was false when they relayed it to the department. The real question before us, therefore, is whether the employer's reserve account is subject to charges under section 1030.5 where the employee or agent submitting the false statement was not aware of its falsity.

We think that we may be aided in this problem by expressing here the definition of the word "employer." Section 675 of the code defines "employer" as follows:

> " 'Employer' means any employing unit, which for some portion of a day, has within the current calendar year or had within the preceding calendar year in employment one or more individuals and pays wages for employment in excess of one hundred dollars ($100) during any calendar quarter."

"Employing unit" is defined in pertinent part in code section 135 as follows:

> " 'Employing unit,' means any individual or type of organization, including, but not limited to, a joint venture, partnership, association, trust, estate, joint stock company, insurance company, corporation whether domestic or foreign . . . which has, or subsequent to January 1, 1936, had, in its employ one or more individuals performing services for it within this State. . . ."

The sections of the code relating to notices and the submission of facts with which we are concerned are sections 1030, 1030.5, 1327 and 1328. Sections 1030 and 1030.5 refer to "employer." Section 1327 refers to "employing unit." Section 1328 speaks of "employer pursuant to section 1327." In view of the above, we are convinced that the word "employer" and the words "employing unit" are used synonymously in these sections. Thus, "employer" as used in section 1030.5 does not refer to any particular person, but to the entire employing unit; and, if any employee, officer or agent of the "employing unit" makes a wilful, false statement thereunder, the "employer" is responsible.

If we were to hold that the employer's account may not be charged under section 1030.5 in these circumstances, we must hold that the section is applicable only if the person actually submitting a false statement to the department does so knowingly and wilfully. This would be an erroneous interpretation; it would render section 1030.5 almost entirely ineffective and defeat the apparent intent of the legislature; it would make the statute effective only in regard to the "little businessman" who personally deals with the department. It would also permit an employer to evade the purpose of section 1030.5 of the code simply by interposing between itself, its employees, or its officers and the department an agent who had no direct knowledge of the facts in a case. We may not assume that the legislature intended absurd results such as these. As stated in 45 Cal. Jur. 2d 625, section 116:

> "Statutes must be given a reasonable and common sense construction in accordance with the apparent purpose and intention of the law-makers -- one that is practical rather than technical, and that will lead to a wise policy rather than to mischief and absurdity. . . . A literal construction that will lead to absurd results should not be given if it can be avoided."

In our opinion, the legislature intended in code section 1030.5 to specifically make the employer responsible for the wilful acts and omissions of its employees, officers, and agents.

The fact that the employee with whom the false statement originated did not realize that it might possibly be used in connection with unemployment insurance matters is not material. Section 1030.5 contains no language concerning intent; it does not require a showing of intent to defraud as a prerequisite to the imposition of charges to the employer's account.

Although we think it unnecessary to elaborate upon the above, we wish to demonstrate briefly that the charges imposed by the department in this case were proper for other reasons; that is, under the principle that the act or omission of an agent is imputed to his principal.

In Benefit Decision No. 6394 we considered a situation in which the claimant was absent from work because of his own and his wife's illnesses. The employer's rules required that employees report intended absences to the personnel department. The claimant lived three-quarters of a mile from the nearest telephone, and he was unable to make a call until the personnel office had closed and his foreman had left for the day. The claimant left a message with the guard on duty at the time. The employer's records contained no entry concerning the claimant's telephone call. The claimant was discharged. In holding that the claimant had been discharged for reasons other than misconduct, we stated:

> "It is true that the claimant did not notify the personnel department. However, in the instant case, the claimant could not telephone at any time but only when he could leave his wife and family. Since such opportunities were at periods of time when the claimant's foreman or the employer's personnel staff were not on the premises, the guard would be the logical person to deliver any messages left with him by the claimant.

> In our opinion, it is logical to assume that a proper function of a guard is to report unusual incidents or to forward messages to supervisory personnel. In accepting the message, the guard acted as an agent for the employer and consequently his negligence in not forwarding the message given to him by the claimant should be imputed to the employer and not to the claimant. Accordingly, we find that the claimant did notify the employer of his intended absence, and we conclude that he was discharged for reasons other than misconduct in connection with his work."

In Benefit Decision No. 6428, the claimant had received vacation pay. Since he did not write English well, he asked his wife to complete his claim form. The receipt of vacation pay was not disclosed thereon. The claimant's wife could not recall whether she had asked the claimant if he had received vacation pay. In holding that the claimant was subject to disqualification for wilfully withholding material information, we stated:

> "The further question at issue is whether the claimant is subject to disqualification under code section 1257(a) for having wilfully made a false statement in connection with his claim for benefits. While the claimant himself pleads ignorance of the fact that the claim form filed with the department contained an incorrect statement concerning his receipt of vacation pay, nevertheless, having requested his wife to complete the form on his behalf, he established her as his agent. Since it is well established that the acts of an agent are imputed to the principal and that the principal is liable therefor, we must conclude that the claimant, in filing the erroneous form with the department, represented that he had not received any vacation pay (Benefit Decision No. 6394; Tax Decision No. 1878) . . . ."

In Benefit Decision No. 6500, the department called the claimant's home to offer her a referral to work. The claimant was away from home seeking work, and the call was accepted by her sister-in-law, who identified herself as the claimant. The sister-in-law neglected to tell the claimant of the referral. In disqualifying the claimant for benefits, we stated:

"In the present case, the department's referral must be considered to have been communicated to the claimant because the sister- in-law, by having been authorized to impersonate her over the telephone, acted as the claimant's agent in accepting the information concerning the referral . . . ."

In Benefit Decision No. 3252, we held that the claimant therein was bound by the failure of his union representative to appear at a hearing for him. We have also held that parties to an appeal were bound by the failure of their representatives where appeals were delayed by counsel, union representatives, and other agents (Benefit Decisions Nos. 4451, 5094, 5739 and 5867).

In the present case, the false statement submitted to the department is traceable directly to an employee of this employer and was made within the scope of his employment. It was the responsibility of the employer to submit only true information in its attempt to obtain relief from charges to its account under sections 1030 and 1032 of the code; and the act of its employee must be imputed to the employer.

DECISION

The determination of the department is affirmed. The employer's account is charged in the amount of $231 under section 1030.5 of the code.

Sacramento, California, May 8, 1964.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

GERALD F. MAHER, Chairman

LOWELL NELSON

NORMAN J. GATZERT

Pursuant to section 409 of the Unemployment Insurance Code, the above Ruling Decision No. 142 is hereby designated as Precedent Decision No. P-R-339.

Sacramento, California, May 3, 1977.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

DON BLEWETT, Chairperson

MARILYN H. GRACE

CARL A. BRITSCHGI

HARRY K. GRAFE

RICHARD H. MARRIOTT