

BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

THIS DECISION DESIGNATES FORMER RULING
DECISION NO. 147 AS A PRECEDENT
DECISION PURSUANT TO SECTION
409 OF THE UNEMPLOYMENT
INSURANCE CODE.

In the Matter of the
Reserve Account of:

LAFAYETTE HOTEL
(Employer)

Claimant: Richard L. Risner

PRECEDENT
RULING DECISION
No. P-R-341

FORMERLY RULING DECISION No. 147
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The employer appealed to a referee from the Notice of Determination on Charge to Reserve Account of the Department of Employment which held that the employer's account was subject to charges equal to ten times the claimant's weekly benefit amount, a total of \$550, under section 1030.5 of the Unemployment Insurance Code. After the issuance of Referee's Decision No. LB-R-12565, we set it aside under section 1336 [now section 413] of the code.

STATEMENT OF FACTS

The claimant was employed by the employer herein as a relief chef from March 14, 1964 until March 25, 1964. He filed an additional claim for benefits effective March 29, 1964. His weekly benefit amount had been determined to be \$55 when he filed a new claim for benefits effective March 1, 1964.

When he filed his additional claim for benefits, the claimant gave as the reason for separation from his most recent work, "Fired - unable to arise early in a.m." The Department gave to the claimant a form entitled Claimant's Statement on Discharge from Last Work and instructed him to complete and return it. On April 6, 1964 the claimant completed the form and therein stated that he had been laid off although he believed that there was enough work to keep him fully occupied.

When the claimant was interviewed by the Department on April 7, 1964, he explained that he had originally believed that he had been discharged for tardiness but that he had since talked to the executive chef, his supervisor, and had been told that he was laid off for lack of work. The departmental representative, in the claimant's presence, called the employer's office, explained the situation, and was referred to the executive chef. During the ensuing telephone conversation with the executive chef, the departmental representative made written notes to the effect that she had explained the situation to the chef and had been informed that the claimant had been laid off for lack of work and for no other reason.

On April 9, 1964 the employer's agent submitted to the Department a written statement requesting a ruling and giving the following information:

"Claimant worked from March 14, 1964 to March 25, 1964 as a Cook earning scale \$18.00 plus meals. He was hired as a relief cook to work relief shifts for all cooks. He was to work the breakfast shift starting at 5:30 a.m. to 1:30 p.m. on Tuesdays. He did not come to work until 1 p.m. on Tuesday, March 17th and was warned. He did not come to work until 12:50 p.m. on Tuesday March 24th. He was discharged. His statement on DE 1190 'unable to rise early in A.M.' would seem ridiculous; and certainly not cause for losing your job."

On April 10, 1964 the Department mailed to the employer's agent a Notice of Potential Charge to Reserve Account, describing the conflicting statements, and requesting an explanation within ten days. The employer's agent responded on April 15, 1964 by means of the following affidavit by the executive chef:

"Facts re discharge:

"Risner last worked March 24th. He was to work the breakfast shift March 25th from 5:30 am. to 1:30 p.m. He had been late the week before for this shift. He did not come in on March 25th until 10:30 a.m. and when he saw me he left. He came in on March 26th and said 'I know, I know, I was late'. He has worked for me before and knows I will not tolerate lateness for no cause and he said he had overslept because no one to call him! I gave him his check and showed as well as told him

why he was discharged. The reason was because he had failed to show for the breakfast shift twice. Two cooks witnessed this. I at no time ever told him it was for lack of work.

"Dept. of Employment call:

"A lady from the Dept. called me and asked why Risner was terminated. I told her it was for coming late for two breakfast shifts. She told me that Risner told her I had said it was for lack of work. I told her this was not so. She told me that he had only worked two weeks for the hotel and that the hotel would not pay for the unemployment. She again said he said it was lack of work. I told her it was not for lack of work. I know nothing about unemployment insurance but wanted records straight as to discharge. She seemed persistent (sic) in saying lack of work so I said in desperation after talking for about 20 minutes 'alright-lack of work'.

"Risner came to the hotel about 1½ hours after the lady called me and said, 'thanks, Chef' and I said 'for what'. Risner replied, 'now I can draw my unemployment'.

"I do not speak English fluently but I do understand truth. I repeatedly told the lady that it was not lack of work.

"If there is any misstatement, it is from Risner. I told both he and the Dept. that he was discharged for failure to report on time twice for breakfast shift."

On April 23, 1964 the Department issued the Notice of Determination on Charge to Reserve Account herein from which the employer appealed as above stated.

The testimony in this matter was in conflict concerning the substance of the telephone conversation between the executive chef and the departmental representative. The testimony of the chef was contradictory in many details, such as the duration of the conversation. During the hearing, the referee commented that the chef had no difficulty understanding the questions asked and that the referee had no difficulty understanding the chef's answers.

In Referee's Decision No. LB-R-12565, which we have set aside, the referee found that the statement of the chef to the departmental representative was a wilful, false statement but concluded that charges could not be imposed under section 1030.5 of the code because the statement of the executive chef was in oral rather than in written form and thus was not submitted pursuant to section 1030 of the code. This conclusion was based upon our decision in Ruling Decision No. 78 that the employer therein was not entitled to a ruling because it had not, within the time provided, submitted written information concerning the claimant's separation from work, although it had submitted such information orally.

REASONS FOR DECISION

Having reviewed the entire record in this case, we find that the agent's initial written statement to the Department was correct but that the chef's oral statement was false and wilfully made. The sole issue before us is, therefore, whether charges may be imposed upon the employer under section 1030.5 of the Unemployment Insurance Code because of the submission of such wilful false statement, orally to the Department.

Section 1030.5 of the 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 1030 of the code provides in pertinent part:

"1030. (a) Any employer who is entitled under Section 1327 to receive notice of the filing of a new or additional claim may, within 10 days after mailing of such notice, submit to the department any facts within its possession disclosing whether the claimant left such employer's employ voluntarily and without good cause or was discharged from such employment for misconduct connected with his work."

* * *

"(c) The department shall consider such facts together with any information in its possession and promptly issue to the employer its ruling as to the cause of the termination of the claimant's employment. . . ."

Section 1327 of the code provides:

"1327. A notice of the filing of a new or additional claim shall be given to the employing unit by which the claimant was last employed immediately preceding the filing of such claim, and the employing unit so notified shall submit within 10 days after the mailing of such notice any facts then known which may affect the claimant's eligibility for benefits."

Section 1328 of the code provides:

"The facts submitted by an employer pursuant to Section 1327 shall be considered and a determination made as to the claimant's eligibility for benefits. The claimant and any employer who prior to the determination has submitted any facts or given any notice pursuant to Section 1327 and authorized regulations shall be promptly notified of the determination and the reasons therefor and may appeal therefrom to a referee within 10 days from mailing or personal service of notice of the determination. The 10-day period may be extended for good cause."

In Ruling Decision No. 145 [now Appeals Board Decision No. P-R-340] we considered the situation wherein the employer's agent submitted a written statement concerning the claimant's separation from its employ and requested a determination of the claimant's eligibility for benefits under code sections 1256, 1257(a), and 1260. The agent did not request a ruling under section 1030(a) of the code. It was contended, therefore, that the information was not submitted pursuant to section 1030(a) of the code, and that section 1030.5 was not applicable. We stated in the cited decision:

". . . when an employer submits information relating to a voluntary quit or discharge in response to a notice received under section 1327 of the code, such information is submitted pursuant to section 1030(a) as well as section 1327 of the code, and any determination issued by the department under section 1328 of the code responsive to such issue does constitute a ruling under section 1030 and section 1328 of the code"

In the present case the employer submitted a timely written statement under section 1327 of the code in response to the notice of claim, purporting to be the facts surrounding the claimant's discharge. The Department was therefore obligated under code sections 1328 and 1030(c) to issue a determination of eligibility and a ruling based upon all of the information which it possessed.

In section 100 of the code the legislature expressed as a purpose of the unemployment insurance program the ". . . providing benefits for persons unemployed through no fault of their own, and to reduce involuntary unemployment and the suffering caused thereby to a minimum." In order to comply with the purpose expressed by the legislature, it was incumbent upon the Department to make a just determination as expeditiously as possible. To accomplish this, it was reasonable for the Department to attempt to clarify, by telephonic contact with the employer, the statements it had received from the claimant. The Department did this and was referred to the executive chef, a responsible employee of the employer and the person most likely to know the reasons for the claimant's separation from his employment.

The question is whether the oral statement by the chef was submitted pursuant to section 1030 of the code. It should be noted that such oral statement was obtained before the timely and factual written statement was submitted by the agent.

In Ruling Decision No. 78, the employer, within ten days of notice of the claim filed, informed the Department by telephone of the circumstances surrounding the claimant's discharge. The Department, in accordance with its procedure, requested that the employer submit the facts in writing. The employer did not do so within the ten-day time limit provided. The decision held that neither the oral submission of facts by the employer nor the untimely written statement entitled the employer to a ruling.

In Ruling Decision No. 123 and in Benefit Decision No. 6601 we quoted the following rule of statutory construction:

"The general rule of statutory construction is that if the language is unambiguous and the statute's meaning is clear, the statute must be accorded the expressed meaning without deviation since any departure would constitute an invasion of the province of the legislature (Crawford, Statutory Construction, 249). A clear and unambiguous statute must be literally construed (Miller v. Bank of America, 166 F. 2d 415). Mere inconvenience resulting from a construction according to the clear meaning of a statute will not justify the courts in ignoring its terms. Where the meaning is clear, the courts must take a statute as they find it. If its operation will result in inequality or hardship in some cases, the remedy lies with the legislature (45 Cal. Jur. 2d, Statutes § 122)."

The term "pursuant to" is defined in Webster's Third New International Dictionary, Unabridged, as "in conformance with or agreement with." The language of code section 1030.5 is clear insofar as the issue before us is concerned. The phrase "in submitting facts pursuant to Section 1030 or 3701," punctuated as it is, is restrictive in that it limits the assessment of charges under section 1030.5 to situations wherein the employer has performed the acts which cause it to become entitled to a ruling under section 1030 or 3701 of the code.

The oral statement which the chef gave to the Department in the present case was not an act which would cause the employer to become entitled to a ruling. Therefore, the chef's oral statement was not submitted pursuant to section 1030 of the code; and charges under section 1030.5 of the code may not be imposed because of such oral statement even though it may have been false and wilful.

The statement which the employer's agent submitted was timely, was in writing, and was in regard to the claimant's discharge. Therefore, the agent performed an act which caused the employer to become entitled to a ruling, and it was submitted pursuant to section 1030 of the code. However, we have held that the agent's statement was true. Hence, no charges may be imposed under code section 1030.5 against the employer's account.

We realize that the Department must frequently rely upon oral statements of employers when investigating the eligibility of claimants for benefits; we recognize that claimants may be denied benefits because of wilful false statements orally made by employers; and, we also understand that the Department's position may become more difficult because of the result herein. However, the remedy for these inequities is beyond our authority and is a matter for legislative attention.

DECISION

The determination of the Department is reversed. The employer's account is not chargeable under section 1030.5 of the code.

Sacramento, California, September 4, 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. 147 is hereby designated as Precedent Decision No. P-R-341.

Sacramento, California, May 3, 1977.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

DON BLEWETT, Chairperson

MARILYN H. GRACE

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