

BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

In the Matter of the
Reserve Account of:

QUALITY MOBILE HOMES
(Employer)

Claimant: Roger Kopp

Office of Appeals No. UPL-R-19253

PRECEDENT
RULING DECISION
No. P-R-432
Case No. R-81-189

Quality Mobile Homes appealed from the decision of the administrative law judge which held it was not entitled to a determination or ruling under sections 1030(a) and 1327 of the Unemployment Insurance Code.

STATEMENT OF FACTS

The claimant opened a claim for benefits naming the appellant as his last employer. Pursuant to section 1327 of the code, the department mailed Quality Mobile Homes (hereinafter "Quality") a Notice of New Claim Filed. The employer's timely response to this notice stated as follows:

"[The claimant] was hired as a piece worker, independent outside laborer (sic) We have billings to support this."

Due to Quality's response, the department conducted an investigation and concluded that an employment relationship had existed. Thereafter, the department issued Quality a form entitled "Notice of Denial of Determination and Ruling." The reason for the department's decision was its conclusion that the appellant was in fact the claimant's last employer and that the employer's response to the Notice of New Claim Filed ". . . did not mention a quit or discharge" The department also stated, "If you wish to submit information concerning a quit or discharge you have 10 days from the mailing date of this notice to respond."

Quality appealed from the department's notice to the administrative law judge who, without deciding the claimant's status as an employee or independent contractor, affirmed the department's denial of a determination and ruling.

REASONS FOR DECISION

The issue before us is whether or not the information furnished by Quality to the department in response to the Notice of New Claim Filed entitled it to a determination and/or a ruling.

Section 1327 of the Unemployment Insurance Code prescribes the kind of information a most recent employer is to provide the department in order to receive a determination pursuant to section 1328 of the code and thereby become a party to any proceedings with respect to the determination.

Section 1327 of the code, in pertinent part, provides:

"The department shall give a notice of the filing of a new or additional claim to the employing unit by which the claimant was last employed immediately preceding the filing of such claim. 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, in pertinent part, provides:

"The department shall consider the facts submitted by an employer pursuant to Section 1327 and . . . make a determination as to the claimant's eligibility for benefits. The department shall promptly notify the claimant and any employer who prior to the determination has submitted any facts or given any notice pursuant to Section 1327 . . . of the determination . . . and the reasons therefor."

Subsection (a) of section 1030 of the code prescribes the kind of information a most recent employer is to provide the department in order to receive a ruling pursuant to subsection (c) of section 1030 of the code.

Subsection (a) of section 1030 of the code, in pertinent part, provides:

"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 or her work"

Subsection (c) of section 1030 of the code, in pertinent part, provides:

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

In order to decide the issue before us, we must analyze code sections 1327 and 1030(a) in order to ascertain the nature of the information each intends to elicit. In this respect, we must look primarily to the language used in each code section itself. Only where a statute is of doubtful meaning should we go beyond the language of the statute to determine its intent (E. Crawford, The Construction of Statutes 256 (1940)).

The meaning of the language in code sections 1030(a) and 1327 is plain and clearly expressed. It is apparent that these sections do not purport to elicit the same information.

Section 1030(a) specifically requires submission of "any facts . . . 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 or her work" This language clearly limits the information sought by the statute to "facts" relative to the termination **of** the employment relationship.

The information required by section 1327 is not as restrictive as that found in section 1030(a). Code section 1327 elicits information pertaining to "any facts . . . which may affect the claimant's eligibility for benefits."

Since there are factors in addition to the cause for termination of the employment relationship which may affect the claimant's eligibility for benefits, we conclude that section 1327 does not intend to restrict the information acceptable for compliance with its provisions to that required by section 1030(a).

This conclusion is buttressed by the purpose of the information obtained pursuant to each of the sections. Code section 1030(c) provides that the department is to consider the facts received pursuant to section 1030(a) and "notify the employer of its ruling as to the cause of the termination of the claimant's employment." The department's ruling will either relieve or not relieve the employer's reserve account of benefit charges. Such relief may be denied or granted solely on the basis of the cause for termination of the employment relationship (see section 1032 of the code). Accordingly, the information requested in section 1030(a) is required to specifically address the reason for termination of the employment relationship.

Section 1328 requires that the department consider the facts received pursuant to section 1327 and "make a determination as to the claimant's eligibility for benefits." Since a claimant's eligibility for benefits is dependent upon several factors in addition to the reason for termination of the employment relationship, e.g., availability, the information required to make a determination may include facts unrelated to the reason for termination of the employment relationship.

Based on the above, it is found that in order to comply with code section 1030(a) and thus become entitled to a ruling pursuant to section 1030(c), an employer or purported employer must provide the department with "facts" specifically addressing the cause for termination of the employment relationship.

It is also found that an employer or purported employer may comply with code section 1327 and thus become entitled to a determination pursuant to section 1328 by providing any facts which may affect the claimant's eligibility for benefits irrespective of the relevance such facts may have to the cause for termination of the employment relationship.

With respect to the procedure whereby the department granted Quality an additional ten days in which to submit facts concerning the separation, we find it proper and essential in a case such as this one.

It is settled that the relationship contemplated by the California Unemployment Insurance Code as the basis for requiring contributions to the Unemployment Insurance Fund is that of employer and employee. A principal for whom services are rendered by an independent contractor does not come within the scope of its provisions (Empire Star Mines v. California Employment Commission (1946), 28 Cal 2d 33, 168 P.2d 686).

It follows that the employment relationship is jurisdictional and must be established before a purported employer may be placed in the position of having to provide information prescribed by code sections which presuppose the very fact the purported employer denies.

For these reasons, it is found that the ten-day time limitation in section 1030(a) of the code, in cases where the employment relationship is disputed by the purported employer, commences to run upon the mailing of notice that the department has found such a relationship existed between the claimant and purported employer.

Here, Quality's initial response to the Notice of New Claim Filed did not refer to the circumstances surrounding termination of the purported employment relationship. Also, Quality elected not to submit such information when afforded an additional ten days in which to do so. Not having furnished "facts" disclosing the specific information requested in code section 1030(a), Quality was not entitled to a ruling under section 1030(c) of the code based on its response.

If Quality had submitted information as to the cause for termination of the purported employment relationship, such information would not have constituted an admission that an employment relationship had existed. On the contrary, Quality would have been entitled to a ruling and afforded the normal appeal rights with respect to the ruling issues as well as the status question. In future cases the department should make this known to the employer at the time the employer is provided the additional ten days to submit information.

Quality's response, however, did state that the claimant was not an employee, but was an independent contractor. Such an assertion, if true, could affect the claimant's eligibility for benefits. If finally determined that there was no employment relationship, the loss of wage credits attributable to the purported employer could affect the claimant's benefit amount or his eligibility to file a valid claim. Therefore, it is found that the information

submitted by Quality complied with the requirements of section 1327 of the code. Accordingly, Quality was entitled to a determination pursuant to section 1328 of the code.

However, in light of section 1327 of the code, which provides for the prompt payment or denial of benefits, the department may not delay its determination of the claimant's entitlement for benefits pending the final resolution of the claimant's status as an employee or independent contractor. Therefore, in a case such as this, where the purported employer denies an employment relationship and does not state facts with respect to the termination of the relationship, the department should conduct its customary investigation, and make its findings as to the status question as well as the reasons for termination of employment. Thereafter, the department should issue a determination to the claimant and purported employer as to the claimant's entitlement to benefits resulting from the termination of employment based on the information available. The purported employer may then appeal from the determination to an administrative law judge who should decide the status issue prior to the other issues in the determination.

DECISION

The portion of the decision of the administrative law judge denying a ruling is affirmed. The portion of the decision denying a determination is remanded to the department for issuance of a determination in conformance with the provisions of this decision.

Sacramento, California, February 17, 1983.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

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