

BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

In the Matter of:

RODRIGUEZ DIESEL SERVICE
AND TRANSPORTATION
FRANK A. RODRIGUEZ and
FRANK A. RODRIGUEZ, Jr., dba
(Petitioners)

PRECEDENT
TAX DECISION
No. P-T-118
Case No. T-71-26

DEPARTMENT OF HUMAN RESOURCE
RESOURCES DEVELOPMENT

The petitioners have appealed from the referee's order in Case No. S-T-3862 denying their application for reopening of their petition.

STATEMENT OF FACTS

The petitioners were duly notified that a hearing before a referee would be held at 9 a.m. on Tuesday, March 9, 1971, at 528 North Madison Street in Stockton, California. The hearing was convened at that place and on that date at 9:15 a.m. with the Department present. The petitioners were not present, nor had any message been given to the referee as to the reasons why they were not.

The referee first became aware of the presence of one of the petitioners at about 9:30 a.m. shortly after he had appeared at the place set for hearing. By that time the Department representatives had dispersed. No hearing was held. On March 10, 1971 the referee dismissed the petition for failure of the petitioners to appear at a regularly scheduled hearing.

Thereafter on March 16, 1971 the petitioners applied for reopening of the petition stating that the petitioner who came to the hearing was ten minutes late because it was necessary for him to dispatch his trucks that morning. The referee, after considering the explanation, found that a satisfactory showing of good cause for failure to appear had not been made.

REASONS FOR DECISION

Basically, it is a petitioner's responsibility to be punctual in making his appearance at a scheduled hearing before a referee, upon penalty that if he fails to do so his petition will be dismissed. The very heavy case loads which referees must carry in the interests of efficient and economical public administration, do not permit much leeway for those who show up late. Many people can be inconvenienced and put to expense by the tardiness of just one.

Still, it must be recognized that things do intervene in our daily lives which can make an occasional tardiness almost inevitable. We are caught in situations over which we have no control, like freeway tieups and parking problems. That is why there are rules which provide an opportunity to reopen a petition upon a showing of good cause.

Essentially, this means the showing of a compelling reason why the tardiness could not have been prevented. It should reflect good faith and reasonable diligence upon the part of the party seeking relief. It should be judged with common sense in the light of fundamental purposes.

The petitioner who came to the hearing explained that he was late because: "It was necessary for me to dispatch my trucks that morning."

Neither petitioner offered any explanation as to why they could not have made arrangements for one of them to be at the hearing at the appointed time while the other took care of dispatching the trucks. They received at least 25 days' advance notice of when the hearing was to be held. No explanation has been given as to why they did not seek in advance to rearrange the time of the hearing if it presented particular business problems for them.

The referee waited 15 minutes for the petitioner to appear before he convened the hearing in his absence. It was apparently about ten minutes later after he had adjourned this hearing before this petitioner appeared in the hearing room.

Essentially, the explanation for the failure to appear at the time the hearing was scheduled, is a statement which confirms that the petitioners placed their immediate personal concerns above their public obligations. We are not prepared to hold that such an explanation constitutes good cause.

We have already mentioned the very heavy case loads which the referee in this matter and some 75 or so others like him must carry. During the calendar year 1970 they were called upon to hear and decide almost 60,000 individual matters. Their load should not be increased by being unduly lenient with those who do not, without the most compelling reasons, appear at a hearing.

We are convinced that the referee handled this matter fairly and in accordance with the established rules. His order denying reopening of the petition should be affirmed.

DECISION

The order of the referee denying reopening of the petition is affirmed.

Sacramento, California, November 11, 1971

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

ROBERT W. SIGG, Chairman

CLAUDE MINARD

JOHN B. WEISS

DON BLEWETT

CARL A. BRITSCHGI