

BEFORE THE  
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

In the Matter of:

SACRAMENTO PROFESSIONAL  
NURSES, INC.  
(Petitioner)

PRECEDENT  
TAX DECISION  
No. P-T-437  
Case No. T-84-119

EMPLOYMENT DEVELOPMENT DEPARTMENT

Office of Appeals No. S-T-11586

The Department appealed from the decision of the administrative law judge which held that under the doctrine of collateral estoppel the Department is estopped from denying that the "nurses" whose remuneration formed the base of an assessment against the petitioner were independent contractors and not employees of the petitioner.

STATEMENT OF FACTS

On November 19, 1975, the petitioner, a nonprofit corporation exempt from federal income taxes as an organization described in section 501(c)(3) of the Internal Revenue Code, filed articles of incorporation with the Secretary of State of the State of California setting forth the general purposes of the organization. In essence, the organization is a group of registered nurses and licensed vocational nurses who have joined together as an incorporated association to assist each other in securing work with hospitals and other care facilities in the greater Sacramento community and to promote and enhance professional standards.

Sometime during the early part of 1982, one Jacklyn F. Jennings filed a claim for unemployment benefits listing the petitioner as her most recent employer. The petitioner immediately responded indicating that Jennings was a self-employed individual and that the corporation did not have any employees as such.

The Department's auditing section then conducted an investigation to determine the employment status, if any, existing between Jennings and the corporation. As a result of the audit and investigation a determination was made that Jennings was in fact an employee and a notice to that effect was mailed on April 5, 1982.

An appeal was filed by the petitioner to the Department's determination and a hearing was held on June 4, 1982 at which Jennings, the petitioner and the Department, including a representative from its audit section, were present. The hearing was extensive and afforded each party an ample opportunity to submit evidence relating to the status of the parties involved.

On September 1, 1982, the administrative law judge rendered a decision holding that Jennings was an employee of the petitioner. The petitioner appealed the decision of the administrative law judge to the Appeals Board. On February 17, 1983, the Appeals Board issued a decision (82-9379) which reversed that of the administrative law judge and found that Jennings was an independent contractor and hence not an employee of the petitioner. The Department did not seek judicial review of the Appeals Board decision within six months pursuant to section 410 of the California Unemployment Insurance Code. Accordingly, the decision has become final.

Based upon the information obtained during its investigation regarding Jennings, the Department determined that all of the nurses performed their services in a relationship which was that of employer-employee under the usual common law rules used to define the employer-employee relationship, and further determined that the petitioner was the employer of the nurses. Accordingly, on December 28, 1982, the Department levied an assessment against the petitioner for unemployment and disability insurance contributions, California income taxes and penalties and interest.

A petition for reassessment was filed by the petitioner under the provisions of section 1222 of the Unemployment Insurance Code. Subsequent to the Appeals Board decision in 82-9379 (the Jennings claim), the Department allowed a credit against the assessments representing contributions, income taxes, penalties and interest attributable to the remuneration included in the assessment which was paid by the petitioner to Jennings.

Relying upon the California Supreme Court decision in People v. Sims, 32 Cal. 3d 468 (1982), the petitioner contends that by reason of the final benefit decision with respect to the claimant Jennings (82-9379), the Department is now estopped from levying the assessment against the petitioner.

Pursuant to agreement between the parties, the matter was submitted to the administrative law judge on written briefs for a ruling on the collateral estoppel issue before proceeding with an evidentiary hearing. On March 16, 1984, the administrative law judge issued his decision from which the Department has filed a timely appeal.

### REASONS FOR DECISION

Collateral estoppel is a secondary aspect of the res judicata doctrine. Under collateral estoppel, a party to an action is precluded from relitigating in a second proceeding matters litigated and determined in a prior proceeding (People v. Sims, 32 Cal. 3d 468, 477).

"A second action between the same parties on a different cause of action is not precluded by a former judgment. But the first judgment 'operates as an estoppel or conclusive adjudication as to such issues in the second action as were actually litigated and determined in the first action.' " (citation omitted, emphasis original)

\* \* \*

"The effect of a judgment as a collateral estoppel is confined to issues actually litigated." 4 Witkin, Cal. Procedure, Judgment section 197, p 3335, 3336.

In People v. Sims, supra, the court initially examined the question of whether an administrative decision made after a fair hearing may ever be accorded collateral estoppel effect. To resolve this initial question, the court relied upon the guidelines set forth by the United States Supreme Court in United States v. Utah Constr. Co., 384 US 394, which held that collateral estoppel may be applied to decisions made by administrative agencies when the administrative agency is (1) acting in a judicial capacity, and (2) resolves disputed issues of fact properly before it which (3) the parties had an adequate opportunity to litigate.

There has been no contention by any party, and indeed there reasonably cannot be, that either the administrative law judge or the Appeals Board does not act in a judicial capacity. The disputed issues properly before the administrative law judge and the Appeals Board were resolved in the prior proceeding and the parties there had an adequate opportunity to litigate. Accordingly, we conclude that as a general proposition, the doctrine of collateral estoppel is applicable to Unemployment Insurance Appeals Board hearings. In fact, we have previously so held in Appeals Board Decision No. P-B-408.

Having resolved the initial question in the affirmative, we must now consider the further question, posed by the court in Sims, of whether the traditional requirements and policy reasons for applying collateral estoppel were satisfied by the facts of the case before us.

Here again, the Sims decision posed the following threefold test:

1. Is the issue necessarily decided at the previous proceeding identical to the one which is sought to be relitigated,
2. Did the previous proceeding result in a final judgment on the merits, and
3. Was the party against whom collateral estoppel is asserted a party or in privity with a party at the prior proceeding.

In the case now before us, the petitioner fails to meet the first of the three requirements. The issue decided in the first proceeding was whether the claimant in that proceeding (Jennings) was an independent contractor or an employee of the petitioner. That issue has been finally resolved and we note that the Department, apparently conceding that the doctrine of collateral estoppel applies with respect to the remuneration paid to Jennings, has excluded such remuneration from the assessment in the instant matter.

The status of the relationship between Jennings and the petitioner is therefore not at issue in the present proceeding. However, the status of those nurses whose remuneration forms the predicate for the assessment now under consideration was not at issue in the prior proceeding. Consequently, the issue before the administrative law judge was not "identical" within the meaning of Sims.

In contradistinction, the issue in People v. Sims was whether the defendant, June Sims, was guilty of a criminal charge of welfare fraud. In the prior Department of Social Services (DSS) administrative proceeding which gave rise to the estoppel, that same party (i.e., June Sims) had received a favorable decision based on identical facts and identical issues. In the matter now before us, it does not necessarily follow from a final decision on Jennings' claim for benefits that all of the other nurses, both registered nurses and licensed vocational nurses, were also independent contractors. There may be considerable factual variances with respect to the relationship of the other nurses and the petitioner. The Department should therefore be permitted to present its evidence concerning the status of the other nurses.

We are strengthened in the conclusion we have reached by a further examination of the Sims decision and a comparison of the statutory scheme and expressed public policy of the Unemployment Insurance Code.

In Sims, the court noted at the outset the probable impossibility of distinguishing or reconciling the numerous cases previously concerned with the application of the doctrine of collateral estoppel to administrative hearings, and stated that in the case before it, the court was ". . . only concerned with whether a DSS fair hearing decision has binding effect in a collateral proceeding." (People v. Sims, supra, at 477) While we do not interpret this statement to be an expression of intent to necessarily preclude the application of the doctrine of collateral estoppel to the final decisions of administrative agencies other than the DSS, we do believe that the court thereby intended a caveat that there may be other administrative agency decisions in which the doctrine does not apply. As further evidence of this intent, the court went on to quote from 2 Davis, Administrative Law (1958), section 18.03, page 568, as follows:

"The key to a sound solution of problems of res judicata in administrative law is recognition that the traditional principle of res judicata as developed in the judicial system should be fully applicable to some administrative action, that the principle should not be applicable to other administrative action, and that much administrative action should be subject to a qualified or relaxed set of rules." [Citations]

There is an express public policy that favors prompt payments of unemployment insurance benefits to eligible claimants. In Cal Dept of HRD v. Java, 402 US 121 (1971), the United States Supreme Court, holding that benefits may not be withheld from a claimant pending an employer appeal from an initial determination of eligibility, stated that the very essence of the Congressional objective in enacting the Unemployment Insurance Program was to have benefits paid to eligible claimants at the earliest stage of unemployment that such payments are administratively feasible after the Department's qualification interview.

Benefit determinations made by the Department are in effect summary proceedings. They are promptly adjudicated and in uncontested cases, are frequently predicated on testimony as presented by the benefit claimant alone. A system necessary, in short, to fulfill the statutory directive of prompt determination and payment when due.

Tax petitions, on the other hand, frequently involve substantial questions of law and significant sums of money. Employers are fully represented in the proceedings, and rights to benefits are not at issue. These proceedings are consequently much more extensive than benefit determinations. The hearings are often lengthy, and ordinarily are held long after the claimant's benefit entitlement has been exhausted. Prior to hearing, the process commonly includes a lengthy review and analysis of financial data which mitigates against prompt resolution.

To hold that a final decision in a benefit determination concerning a particular claimant works to estop the Department from asserting an assessment based upon remuneration paid to all employees alleged to be in a relationship with the employer similar to the benefit claimant, would deprive the Department of its opportunity to fully investigate the facts

and determine the tax liability of the purported employer. To require a claimant's entitlement to benefits be delayed pending the resolution of the tax proceeding would defeat the public purpose, expressed in Java, supra, of prompt determination and payment of benefits.

We have previously relied upon the authority of Empire Star Mines v. California Employment Commission, 28 Cal.2d 33 (1946), in consistently holding collateral estoppel does not apply as between benefit and tax proceedings brought pursuant to the provisions of the Unemployment Insurance Code. In Sims, the court held that collateral estoppel was applicable to administrative proceedings of a judicial nature and overruled that portion of Empire Star Mines which held to the contrary.

However, accepting that the doctrine of collateral estoppel may, in an appropriate case, apply to unemployment insurance administrative hearings, it is clear that the traditional requirements and policy reasons for applying the doctrine are not satisfied in the present case, i.e., the issue decided in the prior benefit decision is not identical to the issue sought to be litigated in the case now before us. Were we to apply collateral estoppel in the present case, we would be expanding the doctrine beyond the limits of any authority of which we are aware. In so doing, we would deny a party to the proceeding (in this case, the Department) an opportunity to litigate the issue in a fair hearing. The purpose of collateral estoppel is to preclude relitigation of issues that have been finally determined in a prior proceeding, not to deny a party due process.

In summary, we hold that a final decision in a benefit case does not estop the Department from asserting an assessment for unemployment insurance contributions, California income taxes and applicable penalties and interest due from the employer of the benefit claimant for remuneration paid to persons other than the benefit claimant.

In view of our decision, an evidentiary hearing on the merits of the issues presented by the Petition for Reassessment is required. Consequently, it is necessary that this matter be remanded to an administrative law judge for a hearing and decision on the merits.

DECISION

The decision of the administrative law judge is reversed. The Department is not estopped from denying those nurses whose remuneration formed the base of the assessment against the petitioner were independent contractors. The matter is remanded to an administrative law judge for a further hearing and decision on the merits.

Sacramento, California, December 18, 1984.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

ROBERT L. HARVEY, Chairman

JAMES J. HAGARTY

HERBERT RHODES

LORETTA A. WALKER

CHET WRAY

J. RICHARD GLADE

DEBRA A. BERG