

BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

THIS DECISION DESIGNATES FORMER BENEFIT
DECISION NO. 6485 AS A PRECEDENT
DECISION PURSUANT TO SECTION
409 OF THE UNEMPLOYMENT
INSURANCE CODE.

In the Matter of:

HARRY B. SHEPHARD (Claimant)

LOS ANGELES TRANSIT LINES
(Employer-Appellant)

PRECEDENT
BENEFIT DECISION
No. P-B-350

FORMERLY BENEFIT DECISION NO. 6485
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Referee's Decision
No. LA-22053

STATEMENT OF FACTS

The employer has appealed to this Appeals Board from the referee's decision upon the merits upon its appeal to a referee which held that the claimant was entitled to benefits under the Unemployment Insurance Code and that the employer's account is chargeable under section 1032 of the Unemployment Insurance Code.

On January 5, 1956, the department issued both a determination under section 1256 of the Unemployment Insurance Code and a ruling under section 1030 of the code holding that claimant had voluntarily left his work with good cause within the meaning of the cited sections. At the time, the employer did not appeal from the adverse ruling but proceeded to make further investigation of the facts. As a result thereof, on January 23, 1956, the employer submitted additional information to the department and asked for a reconsideration of its earlier determination. It did not then appeal nor offer any showing of good cause for delay in respect to filing an appeal.

The department took no action in connection with redetermining claimant's eligibility. Instead, it processed the employer's letter as an appeal to a referee. At the hearing before the referee, the employer then first requested that its letter be accepted as an appeal in view of the department's failure to redetermine eligibility. The referee so accepted it and proceeded to hear and decide the appeal upon its merits.

REASONS FOR DECISION

Section 1328 of the Unemployment Insurance Code set forth when an employer could appeal to a referee from an adverse determination with respect to a claimant's eligibility for benefits. That section provided that the appeal must be taken within ten days unless the appeal period were extended for good cause. We have previously held in Ruling Decision No. 110 that the fact that the employer desires to make an investigation before deciding whether it should file an appeal does not constitute good cause for extending the time limitations for filing an appeal. Accordingly, a timely appeal was not taken to a referee from the department's determination.

Section 1332 of the Unemployment Insurance Code set forth when the department could for good cause reconsider a determination which it had previously made. It made the same provision for an appeal from an adverse redetermination as that found in section 1328, but no provision was made for an appeal from the department's failure or refusal to reconsider its previous determination. Accordingly, we hold that no such right of appeal exists.

It appears, therefore, that the referee was in error in accepting the appeal as timely filed and was without jurisdiction to hear and determine the appeal upon its merits.

DECISION

The decision of the referee is modified. The appeal to the referee is dismissed as untimely filed. Benefits are payable and the employer's account is chargeable as provided in the department's determination.

Sacramento, California, May 4, 1956.

CALIFORNIA EMPLOYMENT INSURANCE APPEALS BOARD

MICHAEL B. KUNZ, Chairman

GLENN V. WALLS

ARNOLD L. MORSE

Pursuant to section 409 of the Unemployment Insurance Code, the above Benefit Decision No. 6485 is hereby designated as Precedent Decision No. P-B-350.

Sacramento, California, May 24, 1977.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

DON BLEWETT, Chairperson

MARILYN H. GRACE

CARL A. BRITSCHGI

HARRY K. GRAFE

RICHARD H. MARRIOTT