

BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

THIS DECISION DESIGNATES FORMER DISABILITY
DECISION NO. 29 AS A PRECEDENT
DECISION PURSUANT TO SECTION
409 OF THE UNEMPLOYMENT
INSURANCE CODE

In the Matter of:

PRECEDENT
DISABILITY DECISION
No. P-D-383

FORMERLY DISABILITY DECISION No. 29

The above-named claimant on January 15, 1947, appealed to a Referee (Case No. SF-DI-23) from a determination of the Department of Employment which held that she was ineligible for a disability insurance benefits under the provisions of Section 206 of the Unemployment Insurance Act [now section 2627 of the Unemployment Insurance Code]. Prior to the issuance of the Referee's decision the California Unemployment Insurance Appeals Board on June 12, 1947, removed the case to itself under the provisions of Section 72 of the Act [now section 412 of the Unemployment Insurance Code].

Based on the record before us, our statement of fact, reason for decision, and decision are as follows:

STATEMENT OF FACT

Prior to the period involved in this appeal the claimant had been employed as a maid in a San Francisco hotel. She last worked on February 22, 1946, voluntarily terminating at that time because she had a sore toe which made it painful for her to continue work.

On April 1, 1946, the claimant registered for work and filed a claim for unemployment insurance benefits in the San Francisco office of the Department of Employment. On December 5, 1946, the claimant filed a claim for disability benefits, and the claim was backdated to November 24, 1946.

On January 14, 1947, the Department issued a determination which held that the claimant was ineligible for disability benefits, on the ground that she was not disabled within the meaning of Section 206 of the Unemployment Insurance Act [now section 2627 of the Unemployment Insurance Code]. The claimant appealed to a Referee but, prior to the issuance of a Referee's decision, the Appeals Board removed the case to itself under the provisions of Section 72 of the Act [now section 412 of the Unemployment Insurance Code].

The physician's certificate, which is a part of the first disability claim form, contains a statement that the claimant is "not disabled" and is "always able to do work not too strenuous." An official of a medical school, where the claimant had received treatment, submitted a report as follows:

"On December 26, 1946, a disability claim was sent to your office on the above-named patient. Mrs. Sorenson now informs us that you desire an amended report as to her work ability. According to our records, she is not disabled and is able to do work which is not strenuous."

The claimant testified that she left her last work when her toe became blistered so that she could not walk. She stated that she also suffered a slight stroke and was in a generally run-down condition. She further testified that the persons who signed the certificate and the letter referred to above had not personally treated her, and that the physician who had treated her told her that she was not able to work.

REASON FOR DECISION

Section 201 of the Unemployment Insurance Act [now section 2626 of the Unemployment Insurance Code] provides in part:

" 'Disability' or 'disabled' includes both mental or physical illness and mental or physical injury. An individual shall be deemed disabled in any week in which, because of his physical or mental condition, he is unable to perform his regular or customary work."

Section 252 of the Act [now section 2708 of the Unemployment Insurance Code] provides:

"The commission shall require for each uninterrupted period of disability that the first claim for unemployment compensation disability benefits be supported by the certificate of a physician as defined in Section 3209.3 of the Labor Code as to the disability of the claimant and the estimated duration of such disability, provided that in the case of any individual who in good faith adheres to the teachings of any bona fide church, sect, denomination or organization and in accordance with its principles depends for healing entirely upon prayer or spiritual means, no medical examination shall be required, but in lieu thereof the commission may accept the certificate of a duly authorized and accredited practitioner of such bona fide church, sect, denomination or organization as to the disability of the claimant and the estimated duration of such disability, and no authorized regulation prescribing the manner of proof of illness or injury shall discriminate against such individual."

Section 206 of the Act [now section 2627 of the Unemployment Insurance Code] provides in part that a disabled individual shall be eligible for benefits only if he has filed the certificate required by Section 252 of the Act [now section 2708 of the Unemployment Insurance Code].

The clear meaning of these provisions is that disability benefits are payable only to persons who are unemployed and disabled. A person is not disabled within the meaning of the law unless the illness or injury is such as to prevent the performance of his regular or customary work. He is not eligible for benefits unless the first claim is supported by the certificate of a physician or practitioner as to the disability of the claimant.

The certificate filed in the instant case did not support the claim, in that it showed that the claimant was not disabled. The claimant has offered testimony to contradict the medical evidence, but such testimony is incompetent and may not be considered. Although lay testimony is admissible to establish the continuation or termination of a disability, such evidence is not admissible to establish disability in the first instance in view of the specific requirement of Section 252 [now section 2708 of the Unemployment Insurance Code] that the first claim be supported by the certificate of a physician or practitioner. Accordingly we hold that the claimant in the instant case was not disabled and did not meet the eligibility requirements of Section 206 of the Act [now section 2627 of the Unemployment Insurance Code]. Inasmuch as the claimant previously had filed a claim for unemployment insurance benefits, and had established a benefit year for disability purposes as well as unemployment insurance purposes, no question of the validity of the disability claim arises in this appeal.

DECISION

The determination of the department is affirmed. Benefits are denied.

Sacramento, California, August 27, 1947.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

TOLAND C. McGETTIGAN, Chairman

MICHAEL B. KUNZ

HIRAM W. JOHNSON, 3rd

Pursuant to section 409 of the Unemployment Insurance Code, the above Disability Decision No. 29 is hereby designated as Precedent Decision No. P-D-383.

Sacramento, California, May 2, 1978.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

DON BLEWETT, Chairperson

MARILYN H. GRACE

HARRY K. GRAFE

RICHARD H. MARRIOTT

HERBERT RHODES