BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

In the Matter of:

PENNY COLBURN
(Claimant)

PRECEDENT
BENEFIT DECISION
No. P-B-115
Case No. 70-6574

S.S.A. No.

DEPARTMENT OF HUMAN
RESOURCES DEVELOPMENT

The Department appealed from Referee's Decision No. SF-2015 which held the claimant was entitled to file a valid new claim and establish a benefit year effective April 26, 1970, instead of May 3, 1970, under section 1276 of the Unemployment Insurance Code and authorized regulations. Written argument has been submitted by the parties.

STATEMENT OF FACTS

On Tuesday, April 28, 1970, the claimant entered a Department office and filed the documents necessary to establish a new claim and benefit year for unemployment insurance. During this process, the Department interviewer presented to the claimant for her signature the following statement:

"BASE PERIOD CHANGE

"TO CLAIMANTS WHO REPORT APRIL 27, 28, OR 29, 1970

"YOU HAVE A CHOICE: YOU MAY FILE YOUR CLAIM EFFECTIVE APRIL 26, 1970 OR MAY 3, 1970. CLAIMS FILED EFFECTIVE APRIL 26, 1970 WILL BE BASED ON WAGES PAID TO YOU BETWEEN OCTOBER 1, 1968 AND SEPTEMBER 30, 1969. CLAIMS FILED EFFECTIVE MAY 3, 1970 WILL BE BASED ON WAGES PAID TO YOU BETWEEN JANUARY 1, 1969 AND DECEMBER 31, 1969.

"THE CHOICE IS YOURS. DO NOT ASK THE INTERVIEWER TO DECIDE FOR YOU.

"I HAVE READ THIS STATEMENT AND UNDERSTAND ITS CONTENTS. I UNDERSTAND THAT MY CHOICE IS FINAL AND THAT NO CHANGES IN THE DATE OF MY CLAIM FOR UNEMPLOYMENT INSURANCE WILL BE MADE.

"I CHOOSE TO HAVE MY CLAIM FOR UNEMPLOYMENT INSURANCE BEGIN:

_____APRIL 26, 1970

(CHECK ONE) _____MAY 3, 1970"

The claimant first checked the April 26, 1970 beginning date. She then erased that check and instead checked the May 3, 1970 date. The claimant was not certain what the statement meant. She asked the interviewer, who gave a general explanation of base period wage credits. It is the Department's policy not to advise claimants to choose one benefit year over another in such circumstances as the interviewers do not then know what wages the claimants may have had in covered employment.

The claimant had earnings from advertising work of approximately $1,827 from October through December 1968 and of approximately $1,550 in January and February 1969. Commencing in March 1969 and continuing through December 1969, the claimant was the editor and publisher of a European magazine in San Francisco under a partnership arrangement for which she received a draw of about $6,750. The claimant assumed the money drawn was wages and would be included as base period wages. Apparently, however, the claimant did not ask the interviewer about specific wages, their proper allocation, or the consequences because the claimant testified there was no discussion of what she had earned or the amount of benefits she might receive if she chose one period over the other.

The interviewer's explanation of the meaning of the base periods left the claimant still uncertain. She

finally decided to accept the May 3, 1970 benefit year beginning date because her first day to report back to the Department office would not conflict with an appointment she had for a job interview in New York.

The claimant did not appeal from the notice of computation of her claim, which apparently excluded the $6,750 as earnings from self-employment and not wages. Therefore, whether that exclusion was or was not proper is not a question for consideration in this appeal. The claimant first requested a change in the beginning date of her claim to April 26, 1970 when she was notified in August that her award of benefits had been exhausted under her claim beginning May 3, 1970.

In reaching his conclusion, the referee reasoned that since the claimant physically filed her claim documents on Tuesday, April 28, 1970, her valid new claim and benefit year must begin on Sunday, April 26, 1970 and the Department had no authority under the law and regulations to offer the claimant a choice of some other beginning date.

The claimant contends that as she was given a choice of benefit year beginning dates, she should have been fully informed of the consequences so that she could intelligently decide.

The Department contends the claimant filed a valid claim which cannot be cancelled and which is binding on the claimant since no representations were made to her that may have misled her or were in any way erroneous.

REASONS FOR DECISION

Section 1276 of the Unemployment Insurance Code provides in pertinent part as follows:

"1276. 'Benefit year', with respect to any individual, means the 52-week period beginning with the first day of the week with respect to which the individual first files a valid claim for benefits and thereafter the 52-week period beginning with the week in which such individual again files a valid claim after the termination of his last preceding benefit year. As used in this section, 'valid claim' means any claim for benefits made in accordance with the provisions of this division and authorized regulations if the individual filing the claim is unemployed and has been paid not less than the minimum amount of wages in employment for employers necessary to qualify for benefits. . . ."

Authorized regulations in Title 22 of the California Administrative Code provide in part as follows:

"1326-1. Benefit Claims--In General. Individuals who have become separated from their work or who are working on a part-time or reduced earnings basis on the effective date for which their claim for benefits was filed, <u>and who desire to claim benefits</u> shall do so as prescribed in Sections 1326-2 through 1326-11 of these regulations." (Emphasis added)

"1326-3. Filing a New Claim for Benefits. A new claim may be filed by any person who has become separated from his work or who is working on a part-time or reduced earnings basis on the effective date for which his claim was filed, and shall set forth that:

(a) He has become separated from his work or is working on a part-time or reduced earnings basis;

(b) He registers for work;

(c) He claims benefits;

(d) Such other information as the department may require."

"1251-1. Definitions. Unless the context otherwise requires, the following terms used in these regulations relating to unemployment compensation benefits shall have the following meaning:

* * *

"(c) 'New Claim' means an application for the establishment of a benefit year and for a determination of eligibility for benefits and a computation of the maximum benefits payable and the weekly rate."

"1253-1. The Term Week Defined. The term 'week' for benefit purposes means the seven consecutive days commencing at 12:01 a.m., Sunday, and ending 12 midnight the following Saturday."

"1253-2. Week--Total or Part-total Unemployment. 'Week of total or part-total unemployment' means the week of unemployment in which an individual registers in person at an employment office prior to the close

> of business on Wednesday of such week; however, if an individual registers subsequent to Wednesday and prior to Saturday, his week shall commence the week immediately succeeding such registration except as provided in Section 1253-4 of these regulations. Thereafter his week shall be the week immediately following such week for subsequent continued weeks of unemployment."

Under sections 1280 and 1281 of the Unemployment Insurance Code, the claimant's highest quarter earnings and base period wage credits of about $1,550 for the benefit year beginning May 3, 1970 would entitle her to a weekly benefit amount of $59 for some 13 weeks. For a benefit year beginning April 26, 1970 the claimant could have added some $1,827 base period wage credits for the last quarter of 1968 for a weekly benefit amount of $65 payable for almost 26 full weeks. Obviously her selection made some substantial difference in both her weekly benefit amount and her potential maximum award. The claimant made a selection which she subsequently discovered was to her disadvantage. In our opinion the claimant is bound by that selection because: (1) she filed a valid claim for benefits effective May 3, 1970 and (2) she has established no basis upon which that valid claim may be disregarded.

The referee concluded the May 3, 1970 claim was invalid because the claimant physically filed the documents on Tuesday, April 28, 1970 and the claim could only begin on Sunday, April 26, 1970, under the law and authorized regulations. However, when the claimant filed those documents she did so with a statement that she chose to have her claim begin May 3 and not April 26.

Under section 1276 of the Unemployment Insurance Code, a "valid claim" must be made in accordance with authorized regulations, which in turn provide for the filing of claims by those "who desire to claim benefits . . ." (22 Cal. Adm. Code 1326-1)

In our opinion, the Department may not process as valid or effective a claim for a period as to which the claimant has clearly indicated she has no

intention of filing a claim. Therefore, in the present case the Department could not accept the claimant's claim to begin April 26 because the claimant expressly stated she did not want her claim to begin that date. The Department accepted the date chosen by the claimant, May 3, 1970, and we conclude the claimant filed a valid claim effective that date even though she actually filed the documents the prior Tuesday. Since the claimant had already filed her documents, there was no reason for her to return to file them again merely to meet some technical requirements of the regulations. "The law neither does nor requires idle acts." (section 3532 of the California Civil Code)

In concluding that the May 3, 1970 claim was invalid the referee reasoned that the Department was not authorized to offer the claimant any choice in the matter under the law and the regulations when she physically filed the documents the previous Tuesday. Since the claimant chose not to file her claim effective April 26, 1970 so that the Department could not accept it effective that date, it is our opinion the fact the Department offered the claimant the choice relates not to the validity of the claim but to whether a basis exists for disregarding the valid claim.

In our prior decisions we have consistently held that once a valid claim for benefits is filed, there is no authority to cancel the claim under the Unemployment Insurance Code. Having filed a valid claim, the claimant is bound by her selection even though she subsequently may discover that her action was to her disadvantage. A person is presumed to intend the ordinary consequences of his voluntary act. (Section 665 of the California Evidence Code) Representatives of the Department are entitled to rely on this presumption in processing claims. The Unemployment Insurance Code and regulations adopted under the code do not require that representatives of the Department seek out unemployed workers on an individual basis and advise them of their potential rights under the code. If a claimant files a claim for benefits under a mistaken belief in what the law provides, she is bound by her voluntary act and must accept the consequences unless her mistake was in reliance upon representations made to her by the Department.

In Appeals Board Decision No. P-T-23 we recognized that it is now well settled that the doctrine of equitable estoppel may be applied against a governmental agency where justice and right require it. We set forth the four elements required to be present by the California Supreme Court in Driscoll v. City of Los Angeles (1967), 67 Cal. 2d 297, 431 P. 2d 245, 61 Cal. Rptr. 661:

1. The party to be estopped must be apprised of the facts;

2. He must intend that his conduct shall be acted upon, or must so act that the party asserting the estoppel had a right to believe it was so intended;

3. The other party must be ignorant of the true state of facts; and

4. He must rely upon the conduct to his injury.

The Supreme Court in the Driscoll case examined the totality of the circumstances, including such factors as whether the agency purported to advise and direct, or merely to inform and respond to inquiries, and the reasonableness of the agency's conduct or advice depending upon whether a basic fundamental right was involved or only some additional right.

In our prior decisions, we have recognized that misrepresentation upon which another may reasonably rely may occur not only through actual incorrect statements about what the law provides, but may occur also through omission or a failure to speak where there is a duty to speak and an opportunity to speak. (People v. Ocean Shore R. R. (1948), 32 Cal. 2d 406, 196 P. 2d 570, 6 A.L.R. 2d 1179) Although representatives of the Department have no duty to volunteer advice to claimants, when advice is given, particularly upon request, claimants are entitled to rely upon the representatives as informed persons and to place credence in the information given. (California Attorney General Opinion No. 47-144, 10 Ops. Cal. Atty. Gen. 32) Correct information may be

misleading because it may be only part of the information which the claimant needs in order to act in accordance with his expressed intentions or to his best advantage.

In the present case the claimant contends that since the Department gave her a choice of benefit years, it should have furnished sufficient information so that she could make an intelligent decision, in particular to put her on notice that earnings in self-employment could not be used for base period wage credits.

However, the claimant was in no way denied the opportunity to file a claim or given any incorrect information; on the contrary, she was given a choice of claims. She certainly was alerted to the fact there must be some difference and that she must make the decision. Nevertheless, the claimant asked only general questions and did not ask about her specific earnings or the consequences of filing for one benefit year or the other. The claimant made her decision to serve her own convenience in job hunting. Even though she may have assumed her earnings from self-employment would be considered, it is not clear she would not have made the same decision she did had she been more fully informed.

In any event, the Department was not informed of the claimant's assumption or in any way responsible for it. Consequently, the first element of estoppel set forth in the Driscoll case has not been met; i.e., the Department was not apprised of the facts. We can find no duty under the total circumstances for the Department to attempt to ascertain further facts from the claimant. The claimant from her previous work was not uneducated. When the Department gave a choice in writing and its representative furnished general information and the claimant asked for no further or detailed information, we think the Department was then entitled to rely upon the presumption in Evidence Code section 665. Therefore, the claimant has established no basis upon which her valid claim may be disregarded.

DECISION

The decision of the referee is reversed. The claim effective May 3, 1970 is valid. The Department is not estopped to deny the claimant's request to have her new claim and benefit year made effective April 26, 1970.

Sacramento, California, September 7, 1971.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

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