BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

THIS DECISION DESIGNATES FORMER BENEFIT DECISION NO. 5641 AS A PRECEDENT DECISION PURSUANT TO SECTION 409 OF THE UNEMPLOYMENT INSURANCE CODE.

In the Matter of:

CLARENCE HUDSON
S.S.A. No.

PRECEDENT
BENEFIT DECISION
No. P-B-196

FORMERLY
BENEFIT DECISION
No. 5641

On June 27, 1950, the above-named claimant appealed from the decision of a Referee (LA-34397) which held that the claimant was ineligible for benefits under the provisions of Section 57(c) of the Act (now section 1253(c) of the Unemployment Insurance Code). The Appeals Board granted the claimant's request to present oral argument which was heard on August 28, 1950, in Los Angeles, California.

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

STATEMENT OF FACT

The claimant, seventy-four years of age, was last employed for thirty-seven years by a Los Angeles Bank. He was forced to retire on a pension on January 1, 1949, when he was seventy-three years of age. The claimant has worked for banks for fifty-five years and has had no other employment experience.

The claimant registered for work and filed a claim for benefits in the Los Angeles Commercial office of the Department of Employment on March 21, 1949. After exhausting his potential award for this benefit year the claimant, on March 21, 1950, filed a new claim and established a new benefit year. On May 15, 1950, the Department issued a determination holding the claimant

ineligible for benefits under Section 57(e) of the Act (now section 1253(e) of the Unemployment Insurance Code) from March 31, 1950, to May 8, 1950, for failing to make an adequate search for work. This determination also held the claimant ineligible under Section 57(c) of the Act for an indefinite period commencing March 31, 1950.

The claimant is unable to obtain employment in banks in the Los Angeles area because of a rule which prevents them hiring a person of his advanced age. His age has also been a barrier in his attempts to obtain employment outside of the banking field. There is no evidence to indicate that the claimant was mentally or physically unable to do the type of work for which he was qualified by training and experience. The claimant has imposed no unreasonable restrictions or limitations upon acceptable work.

The claimant sought employment with numerous banks in the area, but because of his age he had no opportunity of obtaining employment with a bank. He also made numerous attempts to find self-employment, but nearly all of these required an investment of capital in the enterprise, and he was either unwilling or unable to make the required investment. Subsequent to March 31, 1950, the claimant's only other attempts to obtain employment were occasional contacts with friends whom he felt might know of an opening for him.

REASON FOR DECISION

Section 57(c) of the Act (now section 1253(c) of the Unemployment Insurance Code) provides as follows:

> "Sec. 57. An unemployed individual shall be eligible to receive benefits with respect to any week only if the commission finds that:
>
> "(c) He was able to work and available for work for such week."

We have uniformly construed this Section to require that a claimant be in a labor market in which

there is some demand for his services, without unreasonable restrictions or limitations upon acceptable work, either self-imposed or created by force of circumstance, so that it may be said that the claimant is genuinely in a labor market ready, willing and able to accept suitable employment if offered (See Benefit Decision No. 5241-10333).

We are of the opinion that old age in itself does not automatically render a claimant not able to work and unavailable for work within the meaning of the above provision of the Act. We are also of the opinion, in the instant case, that the claimant was not physically or mentally incapacitated to a degree which would prevent him from working. However, due to the claimant's age his potential opportunities of employment were, through no fault of his own, extremely limited. Although the Department alleged that the claimant herein placed restrictions upon acceptable employment, the preponderance of the evidence indicates no such restrictions. We therefore conclude that the claimant was eligible for benefits within the meaning of Section 57(c) of the Act (Benefit Decision No. 5397-11942).

Section 57(e) of the Act (now section 1253(e) of the Unemployment Insurance Code) as implemented by Section 209, Title 22, California Administrative Code (now section 1253(c)-1, Title 22, California Administrative Code), requires that a claimant follow a course of action which is reasonably designed to result in his prompt reemployment in suitable work. We are of the opinion that the claimant herein has failed to meet this requirement of the law. His efforts to obtain employment during the period under appeal were concentrated in the field of banking and self-employment where there was essentially no potential opportunity that he would obtain employment. What other efforts he did make were insufficient to constitute an adequate search for work and the claimant is therefore ineligible for benefits under Section 57(e) of the Act and Section 209, Title 22, California Administrative Code, commencing March 31, 1950, and thereafter through June 9, 1950, the date of the Referee's hearing (Benefit Decision No. 5416-10791).

DECISION

The decision of the Referee is modified. The claimant is not ineligible under Section 57(c) of the Act, but is ineligible under Section 57(e) of the Act, and benefits are denied commencing March 31, 1950, and continuing thereafter through June 9, 1950.

Sacramento, California, January 29, 1976.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

DON BLEWETT, Chairperson

MARILYN H. GRACE

CARL A. BRITSCHGI

RICHARD H. MARRIOTT

DISSENTING - Written Opinion Attached

HARRY K. GRAFE

DISSENTING OPINION

I dissent.

Although I heartily agree with the premise that old age per se does not automatically render a claimant unable to work or unavailable for work under what is now subdivision (c) of section 1253 of the Unemployment Insurance Code, I believe my colleagues err when they hold on the facts of the present case that the claimant was able and available for work. Notwithstanding the lack of a transcript and exhibits (I will not belabor this point; my dissent in P-B-168 is self-explanatory), and realizing that no present member of this Board heard the 1950 oral argument, nonetheless taking the few facts as recited by the Board 26 years ago I cannot agree with the majority conclusion as to section 1253(c).

The claimant was a 74-year-old retired banker who had spent 55 years in banking and had no employment experience in any other type of work. He had been mandatorily retired by reason of his age. Although he was apparently mentally alert and physically agile, he was unable to find work. He confined his efforts to seek work to the banking field and found that institutions in that field have a forced retirement policy at various ages of less veneration than that of the claimant. I believe that these facts, when tested against contemporary standards utilized by the Department, would lead to a determination that there is the lack of a labor market for the claimant's services in the banking field. The lack of attachment to a labor market is tantamount to the lack of availability, and accordingly the claimant would be ineligible under section 1253(c).

HARRY K. GRAFE