

JOHNSON v. UNEMPLOYMENT INSURANCE APPEALS BOARD

Case Number: 21STCP01911

Hearing Date: January 24, 2024

FILED
Superior Court of California
County of Los Angeles

JAN 24 2024

David W. Skayton, Executive Officer/Clerk of Court
By: F. Becerra, Deputy

[Tentative] **ORDER DENYING MOTION TO AMEND JUDGMENT**

Petitioner, Geary J. Johnson, brings this motion to amend judgment. Respondent, California Unemployment Insurance Appeals Board (CUIAB), opposes the motion.

RELEVANT HISTORY

On July 25, 2022, this court issued its judgment granting Petitioner's request for a peremptory writ of mandate. The judgment ordered that a writ issue directing CUIAB to set aside its April 16, 2021 decision and reconsider the matter pursuant to *Topanga Association for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506. The court did so finding the underlying decision, a denial of Petitioner's request for federal Pandemic Unemployment Assistance (PUA) benefits, could not be properly reviewed because the rationale for the CUIAB's decision was unclear.

On December 2, 2022, the CUIAB filed its return on the writ. The return indicated its prior decision had been vacated and included a new decision issued on or about November 4, 2022 (the 2022 Decision).¹ The 2022 Decision again found Petitioner ineligible for PUA.

On December 12, 2022, Petitioner filed his opposition to the return asserting the 2022 Decision "does not comply with the judgment of the Superior Court . . ." (Opposition 1:22-23.) Petitioner argued he "did not apply for unemployment based on COVID-19 reasons in December 2019, yet the [2022 Decision] used the same 2019 benefit filing as the basis for its [2022 Decision], an argument already rejected by the court as false and not factual." (Opposition 1:25-28.) Petitioner also argued the 2022 Decision is not supported by "facts or laws . . ." (Opposition 2:3.) Petitioner contends the CUIAB is unable "to provide any law to support its decision that Petitioner was not entitled to PUA benefits because he was unemployed before the Pandemic was declared; not one [unemployment insurance code] or state or federal law in support is presented by the" CUIAB. (Opposition 2:8-10.)

On September 13, 2023, Petitioner filed this motion. While styled as a motion to amend the judgment, the motion seeks further relief against CUIAB as having not complied with the court's

¹ It appears Petitioner appealed the 2022 Decision. (See Appeal attached to Opposition.) The results of the appeal are not before the court. Thus, it is unclear whether Petitioner now challenges a decision that is not yet final. AS DISCUSSED DURING THE HEARING,

IT DOES NOT APPEAR TO THE COURT THAT PETITIONER'S OBJECTION TO THE 2022 DECISION IS TIMELY. PETITIONER HAD 30 DAYS FROM 11-4-22 TO APPEAL CUIAB'S 2022 DECISION. PETITIONER DID NOT FILE HIS OBJECTION WITH THE COURT UNTIL 12-12-2022.

01/25/2024

prior writ. The court thus treats Petitioner's motion as a motion to enforce the writ. (See *City of Carmel-By-The-Sea v. Board of Supervisors* (1982) 137 Cal.App.3d 964, 971 [motion can be used to enforce a writ].)

ANALYSIS

As noted, Petitioner argues CUIAB did not comply with the writ because the CUIAB mistakenly notes Petitioner "did not apply for unemployment based on COVID-19 reasons in December 2019, yet the [2022 Decision] used the same 2019 benefit filing as the basis for its [2022 Decision], an argument already rejected by the court as false and not factual." (Opposition 1:25-28.) Petitioner also argued the 2022 Decision is not supported by "facts or laws" (Opposition 2:3.)

The CUIAB asserts Petitioner is wrong. The CUIAB argues:

Specifically, the ALJ found that the last time petitioner worked was in 2019. Based on that last date of employment, the ALJ then analyzed the legislative history of the CARES Act and PUA program and the criteria for eligibility for a person to qualify for PUA assistance. Finally, in finding petitioner ineligible for PUA assistance, the ALJ specifically cited to title 15 United States Code section 9021(h) and 20 Code of Federal Regulations part 625.5 (2021) to support his finding (See Exhibit A). (CUIAB Opposition 4:7-12.)

In its judgment in this proceeding, the court explained the dispute between the parties:

According to his testimony, Petitioner last worked for wages or other compensation on December 31, 2019. (AR 86-87, 162, 188). Since that date, Petitioner did not perform any work for wages, money or other compensation. (AR 86-87.)

On January 13, 2020, Petitioner submitted a "UI Online Application Report for Confirmation" for benefits. (AR 160.) In the application, Petitioner stated he last worked on December 31, 2019. (AR 162.) He also indicated he did not become unemployed due to disaster.² (AR 162.)

On March 27, 2020, the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) was enacted. The CARES Act provided financial assistance to individuals affected by the COVID-19 public health emergency declared by the United States Secretary of Health and Human Services on January 27, 2020. (See Coronavirus

² Respondent contends the application was for PUA benefits citing AR 160. The citation does not support the application as one for PUA benefits. It is unclear to the court how Petitioner could have applied for PUA benefits prior to passage of the CARES Act. The application indicates Petitioner's unemployment was unrelated to disaster. (AR 162.)

Aid, Relief, and Economic Security Act, 21 Pub. L. No. 116-136, 134 Stat. 281 (2020).) The CARES Act created a new temporary federal program, the PUA program, which provided unemployment benefits to workers not covered by regular unemployment insurance, including self-employed workers and gig workers. (15 U.S.C. § 9021.) Although the PUA benefit and administration costs are federally funded, individuals applied for PUA benefits through state unemployment agencies, and those state agencies process PUA applications and make eligibility determinations. (15 U.S.C. § 9021(f).)

On August 10, 2020, Petitioner received a Notice of Pandemic Unemployment Assistance Award stating the EDD had filed petitioner's PUA claim. (AR 120.) The notice explained "[t]o receive PUA benefits, you must provide the EDD with eligibility information every two weeks." (AR 120.) The notice also explained, "In order to provide benefits as quickly as possible, your claim has been filed with the minimum amount of \$167 allowed under federal law. After these initial payments, depending on your prior earnings, your weekly amount of \$167 per week may be increased based on the annual income you provided in your initial PUA application." (AR 120.)

Petitioner received an undated Notice of Determination for Pandemic Unemployment Assistance from the EDD reporting he did not qualify for federal PUA benefits. The notice explained Petitioner was not entitled to PUA benefits because his date of unemployment preceded the Secretary of Health and Human Services' declaration of a COVID-19 public health emergency on January 27, 2020. (AR 121.) The notice advised federal law did not permit payment of PUA benefits to him. (AR 121.)

Petitioner appealed the EDD's decision based on the conflict in the notices. Petitioner thereafter withdrew the appeal believing he could get an explanation from the EDD about the contradictory notices. After finding no success with an explanation from the EDD, Petitioner reinstated the appeal. (AR 187.)

On February 11, 2021, an administrative law judge (ALJ) conducted an administrative hearing. (AR 56-94.) The hearing focused on whether Petitioner became unemployed, partially unemployed, or unable to or unavailable for work prior to January 27, 2020, and therefore not as a direct result of the COVID-19 pandemic health emergency. (AR 59, 188.) Petitioner testified he last worked on December 31, 2019. (AR 86.) (Writ, Exh. A, pp. 1-3.)

To be clear, the court did not find in its order and judgment that Petitioner was entitled to PUA benefits. The court remanded the matter to CUIAB because the decision was unclear and could not effectively be reviewed by the court.

///

The 2022 Decision

The 2022 Decision explains Petitioner last worked in 2019. He filed a valid claim for unemployment insurance benefits effective January 12, 2020. Petitioner exhausted the benefits payable on that claim. Thereafter, Petitioner qualified for Pandemic Emergency Unemployment Compensation (PEUA), a federally funded extension of unemployment insurance benefits created under Coronavirus Aid, Relief, and Economic Security Act, 21 Pub. L. No. 116-136, 134 Stat. 281 (2020), the CARES Act. Petitioner thereafter exhausted all benefits payable under the PEUA program.

The Employment Development Department (EDD) thereafter considered whether Petitioner qualified for PUA. Ultimately, the EDD determined Petitioner was ineligible for PUA benefits.³

The PUA eligibility provisions of the CARES Act are set forth in 15 U.S.C. section 9021 (Section 9021). Section 9021, subdivision (a)(3)(A)(ii) provides the eligibility requirements for PUA. Section 9021, subdivision (a)(3) defines covered individuals. Covered individuals include those who are not eligible for regular or extended benefits (“including an individual who has exhausted all rights to regular unemployment or extended benefits under State or Federal law”) and who certify they are otherwise able to work “except the individual is unemployed, partially unemployed, or unable or unavailable to work because” of certain conditions. (§ 9021, subd. (a)(3)(A)(ii).)

The PUA program is related to and fashioned after the Disaster Unemployment Assistance (DUA) program. Certain regulations have been promulgated for the DUA. (See 20 CFR § 625.) Those regulations are applicable to consideration of PUA. (§ 9021, subd. (h).)

The applicable DUA regulations define “unemployed worker” at section 625.2, subdivision (s):

means an individual who was employed in or was to commence employment in the major disaster area at the time the major disaster began, and whose principal source of income and livelihood is dependent upon the individual's employment for wages, and whose unemployment is caused by a major disaster as provided in § 625.5(a).

The applicable DUA regulations define and explain when the unemployment of an unemployed worker is caused by a major disaster at section 625.5, subdivision (a):

³ Prior to that determination, the EDD found Petitioner qualified for PUA as of July 19, 2020. The finding, however, was contingent as the EDD needed additional certification for benefits to be payable. The 2022 Decision explains why the EDD is not bound by the initial determination and notes the initial determination “explicitly indicates the claimant is subject to further certification.” (2022 Decision 4.)

The unemployment of an unemployed worker is **caused by a major disaster** if—

- (1) The individual has a “week of unemployment” as defined in § 625.2(w)(1) following the “date the major disaster began” as defined in § 625.2(e), and such unemployment is a direct result of the major disaster; or
- (2) The individual is unable to reach the place of employment as a direct result of the major disaster; or
- (3) The individual was to commence employment and does not have a job or is unable to reach the job as a direct result of the major disaster; or
- (4) The individual has become the breadwinner or major support for a household because the head of the household has died as a direct result of the major disaster; or
- (5) The individual cannot work because of an injury caused as a direct result of the major disaster. (Emphasis added.)

Finally, the applicable DUA regulations define when unemployment is a direct result of the disaster at section 625.5, subdivision (c):

For the purposes of paragraphs (a)(1) and (b)(1) of this section, a worker's . . . unemployment is a direct result of the major disaster **where the unemployment is an immediate result of the major disaster itself, and not the result of a longer chain of events precipitated or exacerbated by the disaster.** Such an individual's unemployment is a direct result of the major disaster if the unemployment resulted from:

- (1) The physical damage or destruction of the place of employment;
- (2) The physical inaccessibility of the place of employment in the major disaster area due to its closure by or at the request of the federal, state or local government, in immediate response to the disaster; or
- (3) Lack of work, or loss of revenues, provided that, prior to the disaster, the employer, or the business in the case of a self-employed individual, received at least a majority of its revenue or income from an entity in the major disaster area that was either damaged or destroyed in the disaster, or an entity in the major disaster area closed by the federal, state or local government in immediate response to the disaster.

Under the applicable regulations, an individual's unemployment is not the direct result of the pandemic where the "unemployment is an immediate result of the major disaster itself, and not the result of a longer chain of events precipitated or exacerbated by the disaster." (*Ibid.*)

The CUIAB found Petitioner's unemployment—which predated the pandemic—was not the direct and immediate result of the public health emergency. The CUIAB found Petitioner's "loss of employment was not related to the pandemic, . . ." (2022 Decision p. 6.) The CUIAB noted the pandemic undoubtedly made it more difficult to "find new work," but the pandemic "was not the cause of the unemployment in the first place, but rather exacerbated by the public health emergency." (2022 Decision p. 6.) Thus, the CUIAB determined Petitioner was not qualified for PUA benefits because Petitioner's unemployment was not caused by the pandemic and instead was the "result of a longer chain of events precipitated or exacerbated by the disaster." (20 CFR part 625.5, subd. (c).)

On the facts before the court, it appears CUIAB is correct. That is, Petitioner's unemployment was exacerbated by the pandemic, not caused by it. Petitioner became unemployed prior to the pandemic. That the Secretary of Health and Human Services declared COVID-19 to be a public health emergency on January 20, 2020 did not cause Petitioner's unemployment—it exacerbated it.

Petitioner's Position

Petitioner does not explain how the CUIAB's decision is flawed. Petitioner does not address the CUIAB's legal reasoning. Petitioner appears to acknowledge the DUA regulations are applicable to decisions made for PUA. (Opposition, Appeal attachment, p. 8, item 42.) Petitioner appears to contend, however, he is entitled to PUA solely based on his self-certification. (§ 9021, subdivision (a)(3)(A)(ii). Petitioner does not explain how any self-certification would override a decision his unemployment was not caused by the pandemic under the applicable regulations. Importantly, Petitioner does not address why his unemployment existing on January 20, 2020 was caused by the pandemic as opposed to exacerbating his unemployment thereafter.

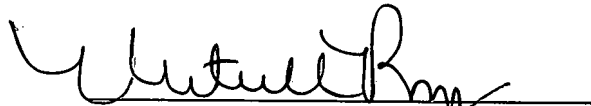
THE COURT FINDS PETITIONER'S RELIANCE ON QUESTIONS 4, 5 + 6 IN HIS CONCLUSION

23 PAGE "APPEAL" DOCUMENT UNPERSUASIVE AS DISCUSSED DURING THE HEARING.

Based on the foregoing, the court discharges the writ and overrules Petitioner's objection.

IT IS SO ORDERED.

January 24, 2024



Hon. Mitchell Beckloff
Judge of the Superior Court

AS DISCUSSED DURING THE HEARING, THE COURT ADDRESSES THE MISTAKE DESPITE WHAT APPEARS TO BE AN UNTIMELY OBJECTION TO THE 2022 DECISION.