

DECIDING CLAIMS TO UNEMPLOYMENT BENEFITS; AN OUTLINE OF THE BRITISH SYSTEM

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In April of this year benefits under State unemployment compensation laws were payable in 24 States and the District of Columbia. In July three more States are to start payments. As States have developed and expanded their benefit-payment procedures, it has become evident that many provisions of State laws raise difficult questions of interpretation. Moreover, unfamiliarity with the conditions required for the receipt of benefits has given rise to a large number of contested claims, and administration and workers alike are focusing attention upon procedures for the determination of claims and for appeals.

For guidance in the development of adjudication procedures and techniques, a consideration of the experience of Great Britain, where the unemployment compensation system has been in operation for many years, should be helpful, as it was earlier when the laws were drafted.

The British method of deciding claims to benefit has admirable qualities, and over a period of years it has been found to be successful. Few changes have been required in recent years. However, in adapting any part of the British system to the needs of State agencies administering unemployment compensation in this country, careful consideration must be given to the fact that the problems of administering a new system are necessarily different from those which arise where the law has been in operation over a long period of time. In this country interpretation of the laws is still uncertain; claimants are frequently unaware of their rights and do not understand procedures; and employers, who have the right to appeal decisions favorable to claimants, often do not understand the disqualifications upon which they base their appeals. The personnel administering the act is new, and, for the most part, unfamiliar with the problems which will arise. Then too, the social and economic background of the American people gives rise to a different industrial psychology, which must be given adequate recognition. The methods which work satisfactorily under a well-

established system are not completely adequate to handle the problems of the now.

Deciding Claims to Benefit

In Great Britain, the decision as to whether or not a claimant is entitled to unemployment insurance benefits is vested in certain statutory authorities, appointed under the Unemployment Insurance Act. These authorities are insurance officers, courts of referees, and the Umpire.

The insurance officers, appointed by the Minister of Labour, consist of a chief insurance officer, located in London; a divisional insurance officer for each of the nine divisions; and officers attached to each local employment exchange. The manager of the exchange serves also as senior insurance officer in the exchange area.

The primary duties of local officers consist of examining claims, allowing benefits, or referring cases for decision to the courts of referees. While local officers cannot disallow claims involving the statutory disqualifications for misconduct, voluntary leaving, refusal of suitable employment, and such conditions as the requirement that the claimant be capable of and available for work, they may disallow claims affected by the trade-dispute disqualification and most other statutory requirements.

The divisional insurance officer reviews claims referred to him by the local insurance officer and also all decisions of the courts of referees which the local insurance officer believes should be appealed to the Umpire. When the divisional insurance officer agrees with the recommendation to appeal made to him by the local insurance officer, he in turn refers the case to the chief insurance officer, upon whom rests the final decision as to appeal to the Umpire.

The courts of referees sit in the various court districts into which the country is divided. The court is usually held in or near the local employment exchanges. The chairman of the court is appointed by the Minister of Labour; the other two members are drawn from two panels—one representing employers, the other, insured workers.

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The panels consist of persons appointed by the Minister from nominations of local employment committees. They must be either insured workers, representatives of an association of insured workers, employers, or employers' representatives. The panels are appointed for a term of 3 years, and the members are usually called in rotation to sit with the court. Whenever practicable, women are chosen for women's cases and men when men's cases are being considered. Members are not permitted to sit in any case in which they have an interest. A clerk of the court performs the clerical work; he takes no part in the court's discussion or its decision.

The Umpire is appointed by the Crown for an indefinite period to hear appeals from decisions of the courts of referees. He is assisted by one or more Deputy Umpires. No special qualifications are designated in the act for this appointment, but it is interesting to note that, of the three Umpires who have been appointed since the beginning of the unemployment insurance system in 1911, two have been selected from the judges of the higher courts. The decisions of the Umpire are final; no appeal to the courts of law is permitted.

Initial Determination

When an individual becomes unemployed, he must get his unemployment book from his employer and leave it with the nearest employment exchange until he is reemployed. At the exchange he must fill out a claim form giving, with other information, the name of his last employer, the dates of his employment, and the reason for its termination. A copy of this statement is sent to the insurance officer investigating the claims at the exchange. He notifies the employer that a claim has been filed and sends him a form containing the information given by the claimant. The employer is asked to verify this information and to state why the claimant left his job. The employer is told that, if his reply appears to indicate any reason for disallowing the claim, a copy will be sent to the claimant, and possibly to the claimant's union.

A summary of the conditions and disqualifications for the receipt of benefit under the unemployment insurance act is printed on the back of the form. These conditions and disqualifications are similar to those provided in many of our State laws.

Briefly, the form states that, although the em-

ployment of a claimant has terminated, he is not considered to be unemployed during a period in which he continues to receive wages or any payment which is compensation for the loss of, and is substantially equivalent to, the remuneration he would have received if the employment had not terminated.

To qualify for benefit, the claimant must be capable of and available for work.

A claimant who loses his employment through misconduct or who voluntarily leaves his employment without just cause is disqualified for receiving benefit for a period not exceeding 6 weeks.

A claimant is disqualified for a similar period for receiving benefit if it is proved by an officer of the Ministry of Labour that he has, without good cause, refused or failed to apply for, or refused to accept, suitable employment when he was notified of such employment by an employment exchange or when it was offered to him by an employer.

A claimant who has lost his employment by reason of a stoppage of work which was due to a trade dispute at the factory, workshop, or other premises or place at which he was employed is ordinarily disqualified for receiving benefit so long as the stoppage of work continues, except in a case where he has, during the stoppage of work, "become *bona fide* employed elsewhere in the occupation which he usually follows or has become regularly engaged in some other occupation."

No attempt is made, when informing the employer of the claim of his former employee, to quote the act or to set out in complete detail the various provisions. The form gives sufficient information concerning the disqualifications, however, to enable the employer to answer the questions intelligently and also to point out to him the significance of any statements he may make.

Although employers are not required by law to return the forms sent them, they are urged to cooperate in the matter. In the early days of unemployment insurance many employers were antagonistic. In recent years, however, most employers have been cooperative.

If the employer's reply is inadequate, supplemental forms may be sent him containing informal questions designed to bring out the necessary facts. Likewise, the insurance officer may visit the employer personally or call in the claimant, in order to make a more complete investigation. Such cases are few, however, and most investigations are conducted by mail.

If it appears, from the employer's reply, that there may be ground for disqualification, a copy of the reply is made on a special form and sent to the claimant. This form contains a copy of the questions addressed to the employer and the employer's answer to each. The back of the form provides space for the claimant's comment on the employer's replies. The claimant may deny the allegations or introduce explanatory matter showing justification or excuse for his conduct. He may also indicate that he wishes his union to be notified if the claim should be referred to the court of referees. Since claims are referred only when the insurance officer feels that he cannot allow them, the claimant must be prepared to present a strong case to the court in order to substantiate his claim to benefit.

A brief statement of the several disqualifications is also included on the form. For example, it explains that the word "misconduct" includes breaches of discipline or company rules, or conduct which is inconsistent with the fulfillment of the conditions of service or which renders the worker incapable of performing his work efficiently. Since the act contains no definition of misconduct, this explanation is derived from the Umpire's decisions.

When the case involves refusal or failure to apply for or accept suitable employment, the officer of the exchange notifying the claimant of the vacancy submits to the investigating officer, on a special form, particulars concerning both the claimant and the employment which was offered. The information includes the name of the prospective employer, the place of employment, nature of the work, a statement of the claimant's previous experience in work of that kind, the length of time the employment was expected to last, the distance from the claimant's home, facts concerning the wages and hours, the rate provided by union agreements where such an agreement is in operation in the locality, the rate generally paid by "good" employers, in the absence of such agreement, and data concerning the notification to the claimant and his refusal.

To this information the investigating officer adds the claimant's reason for refusal or failure to apply, and facts concerning lodgings or housing accommodations if the work offered was not within daily traveling distance of the claimant's home. If the officer considers the claimant's refusal unreason-

able, he gives the reasons for his opinion and includes information concerning the claimant's opportunities for obtaining other work and his industrial record and previous earnings. In this connection, greater leniency is permitted when the claimant has a good employment record and reasonable opportunities for future employment than when he has frequently been or is likely to be a burden to the fund.

On the evidence thus collected, the insurance officer renders his decision. He may either allow the claim or refer it to the court of referees. He is not permitted to disallow claims in cases of this kind. Notice of the decision is mailed to the claimant, and, if the case is to be referred to the court of referees, the claimant's local union is advised of the fact.

Notification of Disallowance

When the claimant is notified that his claim is disallowed (in those cases in which the insurance officer may and does disallow), a complete statement of the decision and reasoning of the insurance officer is sent to him and he is advised that he may make an appeal within 21 days by stating his reasons for appeal on the back of the form and returning it to the local employment office. He is further instructed to continue to sign the unemployed register in accordance with directions previously given him.

Referrals and Appeals to the Court of Referees

Referrals to the court of referees are made on a prescribed form, which is designed to present clearly and concisely the information which has been collected by the insurance officer. Separate forms are used in cases involving refusal of suitable employment, misconduct, or voluntary leaving, and cases of married women. Married women receive special treatment under the "Anomalies Regulations," which were designed in part to prevent married women who have no intention of continuing in employment from obtaining benefits. Other cases are referred on a general form to which is attached special supplemental information forms.

The general referral form also provides space for the court to enter evidence obtained at the hearing, its findings of fact on questions material to the decision, and the full text of the decision itself, including a minority report if any is made.

The referral form for cases involving refusal of suitable employment contains all the information submitted by the placement and investigating officers. On the back of this form is entered the report of the proceedings of the court of referees, including data concerning the composition of the court, persons notified or summoned to attend, and other persons present. Where any members of the court are absent, the form also contains the claimant's signed consent to the consideration of his case in the absence of any member except the chairman. The claimant is not obliged, however, to have his case heard with less than a full court. When the court consists of two members, the chairman has a second, or deciding, vote.

Other referral forms are similar in character; each contains printed information relevant to the particular type of case. All forms provide space for the insurance officer's observations and recommendation, which may include reference to pertinent decisions of the Umpire.

Appeal forms, used in appeal against decisions of the insurance officer in those cases in which he disallows benefits, present the insurance officer's decision and the local office report—which includes the claimant's original statements, the grounds on which the appeal is based, and the insurance officer's observations. Space is also allowed for the usual report of proceedings of the court of referees.

It may seem that these procedures demand considerable unnecessary clerical work from the local office. The conclusion is undoubtedly true in those cases in which the claimant does not answer the employer's charges or appear at the hearing in his own behalf. Much of this work could be eliminated if the insurance officer were permitted to deny benefits when the claimant fails to reply, but since he lacks this power in certain types of cases, complete referrals must be made to the court of referees.

The advantages of using the mail to complete the data required in the general run of cases are obvious. Many claims can thus be handled by a small staff of clerical assistants, and the insurance officers are left free to investigate special cases such as may arise in the case of labor disputes. Moreover, since the claimant may be called in for questioning in doubtful cases, the advantages of personal contact are not lost.

A Typical Hearing

A typical hearing of a court of referees is as follows:

The Court.—A normal sitting of the court lasts about 3 hours, during which time a considerable number of cases can be handled. Because much of the necessary information has already been obtained by the insurance officer, cases frequently are disposed of in 10 or 15 minutes. The court does not, however, attempt to rush cases through, but gives each case fair consideration. It sits as frequently as is necessary to handle the burden of cases. During the consideration of any claim, the claimant and his representative, the employer and his representative, and the insurance officer or representative of the employment exchange may be present. (In cases involving juvenile employment, a representative of the juvenile employment committee may also be invited to attend in an advisory capacity.) These persons, however, take no part in the discussion of the decision and may be asked to leave the room while the discussion is taking place. The hearings are not open to the public and newspaper reporters are not permitted to attend. The claimant is always either summoned to attend or notified of the hearing. The employer is ordinarily not notified of the hearing unless he so requests; however, he is generally called upon to attend labor-dispute cases and cases in which it is contended that conditions of employment in his establishment are less favorable than those provided by minimum standards in the act. He may, of course, be asked to attend in other cases if it seems advisable.

The Hearing.—The court usually sits in a room connected with the employment exchange or in a room nearby, which is easily accessible to the workers in that locality. The room is simply furnished, with tables and a few chairs. Since claimants are not allowed to be present during discussion of the decision, a waiting room is provided outside for such occasions. The clerk ushers the claimant before the court, and the hearing proceeds informally, the claimant usually sitting across the table from the chairman. The claimant presents his own case, or, if he is accompanied by a representative of his union, the representative may present the case for him. The claimant may not, however, be represented by a lawyer. The chairman and each member of the

court has before him a copy of the data compiled by the insurance officer. The claimant has also received a copy and is therefore prepared to face the questions which the chairman now proceeds to ask him, in a conversational manner. The claimant is asked to explain just what happened in his case, how he came to leave his employment, and what other circumstances have a bearing on his lack of employment. Most claimants, and even their representatives, are not very fluent in presenting their cases. Therefore the court must frequently ask a great many questions to elicit the necessary information. When a union representative is present, the chairman may query him concerning the customs of the trade, the reputation of the employer in question, prevailing wages, the existence of trade agreements, and the character and general reliability of the claimant. It is interesting to note that the chairman often relies to a considerable extent on the statements of a union representative and accepts them as authoritative.

The insurance officer may be present at the hearing voluntarily, if he thinks it advisable; he may be requested by the court to appear if it seems likely that he may assist in presenting the essential facts. The insurance officer is also regarded as an authority on local industrial conditions, and his word is frequently taken concerning the prevailing labor conditions and the conditions which exist in the establishment of a particular employer. Because of long service in the area, both the insurance officer and the chairman usually have personal knowledge of the local situation and of the employers in the area.

The insurance officer is also regarded as an expert on the unemployment compensation law. Frequently he points out to the court previous decisions of the Umpire on cases in point and recommends to the court what he thinks should be the decision in the immediate case. He does not, however, take any part in the discussion of the decision, and the court does not consider itself bound by his recommendation. If the insurance officer feels that the decision of the court is contrary to law, he may appeal the case to the Umpire.

The evidence which is given by the insurance officer, the union representative, the claimant, and other witnesses who may be introduced to testify in the case, is recorded briefly on a form by the chairman himself. This record, together with the other facts supplied by the insurance officer,

forms the basis for the Umpire's decision, if the case is appealed to him.

The chairman of the court usually dominates the hearing, influencing the members of the panel and the claimant as well. The members of the panel are free to ask questions of the claimant after the chairman has satisfied himself that he has all the facts in the case. Since the insurance fund is accumulated out of workers', employers', and State contributions, the representatives of workers and employers are no less interested than the insurance officer in seeing that benefits are paid in accordance with the provisions of law. In England there do not exist special interests¹ which the employers' representative is expected to safeguard. Hence, it not infrequently happens that the employers' representative is as alert to the workers' rights as the workers' representative himself. The attitude which prevails throughout the hearing seems to be one of mutual cooperation and a desire to see that justice is done rather than merely to promote the rights of a particular faction. It is no doubt largely because of this spirit of cooperation that the British unemployment insurance system is being administered with so little difficulty.

When all testimony has been taken, the claimant is ushered from the room, and the case is discussed. While all members of the court feel free to interpret the facts as they see them, the chairman usually expounds the law. However, the other members have the right to refer to the published decisions of the Umpire and to satisfy themselves as to what the law is. A unanimous agreement is reached in most cases, but a dissenting member may write a separate opinion.

Whenever it seems necessary, the court may adjourn the case to obtain additional evidence. In actual practice the court frequently does adjourn in order to present to the employer information obtained from the claimant at the hearing, when there is reason to doubt the truth of the claimant's statements. Since many of the chairmen presiding over courts of referees have served for a considerable period of time, they have become personally acquainted with a large number of claimants who have appeared several times before their court. In such cases, the chairman frequently accepts the claimants' un-

¹ In the United States such special interests are created by the existence of merit rating or separate employer-reserve accounts.

supported testimony and makes no attempt to verify their statements. While this may seem generally unadvisable, it does serve to speed up cases by eliminating the necessity for adjournments and further hearings.

Notice of Decision

The claimant is notified of the decision before he leaves the premises, and a formal notice outlining the reason for the decision and the basis thereof is later mailed to the claimant and also, in the case of a union member, to the claimant's association. If the decision of the court has not been unanimous, the claimant has the right to appeal to the Umpire and, even where the decision has been unanimous, the chairman may grant leave for such an appeal. If he feels that it is useless for the claimant to appeal, however, the chairman usually dissuades him from such course. At the present time, few appeals by claimants are being carried to the Umpire. Unemployment insurance has been in operation for many years and the provisions of the law are well defined. Most of the appeals to the Umpire are carried by the insurance officer, who has the right to appeal if he feels that the court of referees has misinterpreted or misapplied the law. Appeals must normally be brought within 6 months.

Local Referees

In many areas the claimant would have to travel a considerable distance to attend a regular hearing of the court of referees. Therefore, local referees are permitted to hold hearings in the claimant's locality to obtain facts upon which the insurance officer or court of referees may later base a decision. Two local referees conduct such hearings, one being drawn from the panel of employers' representatives and one from the panel of insured workers' representatives who live in the same area as the claimant. If the case is referred by the insurance officer, a report is made to him. He may then make an initial determination or may refer the report to the court of referees as he must in cases in which he is not permitted to disallow claims. In cases referred by the court, the local referees report directly to the chairman of the court. After a decision has been made, the claimant is notified of the outcome. If he requests it, a report is also sent to the branch secretary of his local union.

Rehearings

The Unemployment Insurance Act provides that a court may revise its decision when new facts have been presented to it. These new facts must have been in existence at the time of the earlier decision but not known to the court. If a claimant has failed to attend and the case has been heard without his consent and decided against him, he may, by showing good cause for his failure to appear, have the case reopened. A rehearing is not permissible merely because the court or any member thereof later decides that a proper decision was not reached. If the members of the court are not the same at the rehearing as on the previous occasion, the case must be completely reheard. Unless new facts can be introduced, a case decided by the court cannot be reheard; the decision remains operative unless it is overruled by the Umpire. Cases which have been appealed to the Umpire are not subject to rehearing by the court of referees except at the direction of the Umpire. The Umpire may revise his own decision when new facts are brought to his attention, but he is not bound to do so.

Appeals to the Umpire

The handling of appealed cases by the Umpire has become a simple and almost routine matter. The chief insurance officer receives the record of the entire proceedings before the court and prepares the case for the Umpire's consideration. It is his duty to point out any decisions which may bear upon the case, whether they operate for or against the claimant. Usually it is necessary only to point out that the case under consideration is similar in fact and in principle to previously adjudicated cases. Upon this showing, the Umpire renders his decision, from which there is no further appeal. At times cases arise which seem to have special significance in that the decision may have a far-reaching effect. In such instances, experts may be called in to testify as to the economic and social implications of a situation and the probable effect of certain decisions which might be made. The Umpire may take additional evidence as to facts, or he may remand the case to the court of referees with instructions to find further facts upon which he will later make a decision.

The Ministry of Labour issues from time to time a publication called *Selected Decisions of the Umpire*. These decisions, selected by the chief insurance officer, are of general interest to the

courts of referees and are used by them in making their decisions.

Central vs. Local Determination

The development of benefit-payment procedure in the United States has given rise to considerable discussion as to the relative merits of central and local determination of appealed cases. In considering the value of either method, the circumstances under which the plan is to be put into operation must be considered. In Great Britain, where the insurance system has been in operation for many years, the advantages of local hearings and determination are considerable. Officers serve for long periods of time in their particular areas and gain personal knowledge of the local employment situation, of working conditions in the establishments of the local employers, and, not infrequently, of the personal circumstances of claimants themselves. In these local hearings, the officers have the benefit of a complete digest of the attendant facts and, in addition, are able to call in the claimant himself for interview. The advantage of this method is obvious when one considers that many of the persons filing claims for benefits are unable to present in writing a satisfactory case for themselves. Even when they are personally interviewed, considerable skill on the part of the court is required to elicit the necessary facts.

Since interpretation of the provisions of the Unemployment Insurance Act in Great Britain has for many years been considered well settled, little difficulty arises because of variation in the handling of cases in different parts of the country. Furthermore, the insurance officer's right to appeal decisions to the Umpire whenever he believes that the law has been misapplied or misinterpreted serves to achieve uniformity.

The chief insurance officer also, through the divisional officers, keeps insurance officers informed of decisions of the Umpire and of the generally accepted interpretations of the provisions of the act.

Adjustment of Contested Claims

Although the British system of unemployment insurance does not include an adjustment unit as such, through its operating procedures it achieves much the same results. Questions concerning the rate of benefits payable, computation of duration

of benefits, and proof of unemployment are for the most part settled by unofficial administrative adjustments and do not often get into the regular appeal channels. Such questions are determinable by the Minister of Labour and are subject to appeal to the civil courts.

The necessity for further adjustment in Great Britain is partially eliminated by the fact that the employer has no appeal when a decision favors the claimant.

It is also a fact that, since unemployment insurance has been in operation in Great Britain for many years, most claimants have become aware of their rights and generally know when it is useless to make an appeal.

Concluding Observations

Certain fundamental differences between the British system of deciding claims and the system generally followed by State agencies in the United States preclude the drawing of close analogies, and must be taken into account in making any comparisons between the two systems. One important difference is that in many instances the court of referees, in addition to its function as an appeal body, makes initial determinations. As has been pointed out, the insurance officer may not himself disallow cases involving certain statutory qualifications and disqualifications. While he, in effect, makes a judgment in cases of this kind by not allowing benefit, he does not actually render a decision. The court of referees, therefore, has the responsibility of making the initial determination in the case, and it is considered essential that the claimant have an opportunity to be heard if he so wishes. Hence, the claimant is always notified of the time at which his case will be taken up. If, however, the court finds it necessary to obtain first-hand information from the claimant, he is summoned to appear at a hearing.

Another important difference found in the British system arises out of the fact that the employer is not considered to be a party in interest to the case. When he attends a hearing, it is only as a witness; he may never appeal. The parties to a dispute are the claimant and the insurance officer, each of whom has the right to appeal. The interest of the insurance officer is in seeing that benefits are paid in accordance with the law.