

# THE ADMINISTRATION OF UNEMPLOYMENT COMPENSATION

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THE social objective of unemployment compensation is achieved through the payment of benefit checks to eligible unemployed persons, and the success of the program depends upon an effective operation of the administrative process in getting these checks out promptly. Such persons as have worked in covered employment—for an employer liable to pay contributions—and have received wages during the base period equal to the minimum specified in the law, have to their credit, in the unemployment compensation fund, a fixed sum of money related to the amount of wages received, against which they may draw, after a waiting period, as a matter of right when unemployed. This right to draw, however, is not absolute. It may be postponed if the unemployment is not involuntary within the contemplation of the law. It may be entirely defeated, generally, if the person does not perform certain conditions precedent—register for work and report—and if he is not able to work, or if, though able, he is not honestly looking for work—that is, if he is not a bona-fide member of industry's labor reserve, exposing himself unequivocally to all the suitable job opportunities which may reasonably be expected to be found in the labor market. To determine how much he has to his credit, if any, and whether he has the immediate right to draw against this credit, is the function of the administrative process.

The administration of the unemployment compensation program is a state responsibility, and the program is, accordingly, based upon 51 independent state and territorial systems linked only by cooperative guidance from the Social Security Board, deriving, in part, from the power of the purse. Each state, as well as the District of Columbia, Alaska, and Hawaii, has a law of its own making which it undertakes to translate into reality by agents of its own selection. Yet no state has made provision to pay, out of its own funds, the agents it selects to administer its law. These costs are met from federal grants, under Title III of the Social Security Act, to states having approved systems. As a condition of approval of each system it is required, in so far as the benefit technique is concerned, that the law provide "(1) Such methods of administration . . . as are found by the Board to be reasonably calculated to insure full payment of unemployment compensation when due; and (2) Payment of unemployment compensation solely through public employment offices or such other agencies as the Board may approve; and (3) Opportunity for a fair hearing, before an im-

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partial tribunal, for all individuals whose claims for unemployment compensation are denied. . . ." <sup>1</sup> The Social Security Board, which operates as a component of the Federal Security Agency, is responsible for certifying the grants to finance the necessary costs of proper and efficient administration of functions essential to the program and is thereby in a position to act as the arbiter with authority to determine whether the federal conditions have been met in the enactment of the statutes and are being currently observed in their administration.

Within this framework, each state has exercised its sovereign right to adopt its own type of administration, with the result that there is considerable diversity among the states in the composition of their administrative agencies and their relationship to other branches of government and in the composition of the impartial tribunals created for the adjudication of disputed claims.

The legislatures of nineteen jurisdictions assigned the administration of unemployment compensation to an existing state department concerned with the administration of other labor laws. A new department was established in the remaining 32 jurisdictions, in only two of which was the administration coordinated with an existing state department (in one the Commissioner of Labor is a member of the board, and in the District of Columbia the three Commissioners who govern the District are ex-officio members of a five-member board). Of these 32 new departments, nine are administered by a single administrator and 23 by a board consisting of three or more members, not all of whom serve on a full-time basis. Sixteen of these 23 boards include representatives of special interests: six have bi-partisan political representation, six have representatives of employers, employees and the public, three have both bi-partisan political representation and representatives of employers, employees and the public, and one requires employee representation only. Including the nineteen existing administrative agencies which were utilized to carry out the unemployment compensation program, the administration of the program is under a single administrator in 21 jurisdictions, under a three-member board in 21 jurisdictions, under a four-member board in two jurisdictions, under a five-member board in five jurisdictions, and under a seven-member board in two jurisdictions. Of the 30 boards, eight have no requirement as to special representation; eight have bi-partisan political representation; six have representatives of employers, employees and the public; five have the combination of bi-partisan political representation and representatives of the three groups; one has representatives of management and labor; one has a combination of bi-partisan political representation and the two group (no public) representation; and one has labor representation, no management or public representative being

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1. 53 STAT. 1378 (1939), 42 U. S. C. § 503 (1940).

required. Classified according to the amount of time devoted to their duties by the members of these 30 boards, it is found that all of the members are on a full-time basis in only seventeen jurisdictions; in six, all of the members are on a part-time basis; and in seven, one member is a full-time administrator and the other members are paid on a per diem basis.

Advisory councils representing employers, employees and the public are required by 38 state laws. These councils, under the terms of the law, generally are established to aid in policy formulation, non-partisan administration, and employment stabilization.

#### INITIAL DETERMINATIONS

In one respect the 51 laws are uniform: in all of the jurisdictions claims for unemployment compensation benefits are initiated in the public employment office. Prior to the enactment of the Social Security Act, there was a nation-wide network of public employment offices administered by the states with the aid of the federal grants provided under the Wagner-Peyser Act. These offices were adopted as the point of contact between the program and its beneficiaries. There was thus established a unified service in the local office of the public employment service, conveniently located throughout the state, where an unemployed person registers and applies for work and, if no suitable work is available to him, files his claim for unemployment compensation benefits as provided in the unemployment compensation law of the state.<sup>2</sup>

Upon the filing of an application for benefits at one of the field offices, administrative machinery is called into play which provides, generally, for the determination of questions relating to benefits at four different levels: initial determination of all claims by a deputy, hearing of disputed claims by an appeal body and later by a board of review or commission, and, finally, court review.

The questions to be resolved before a benefit check may be issued fall broadly into two groups: first, whether the claimant has established a credit in the unemployment compensation fund by reason of his previous employment and, if so, in what amount; and, secondly, whether he has the present right to draw. The matter of first concern looks to the past; it is contingent upon the status of the base period

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2. These offices are currently, and presumably for the duration of the war emergency only, no longer under state administration, having been transferred by the states to the federal government on January 1, 1942 at the request of the President of the United States. The administration of the unemployment compensation program by the states was not affected by this transfer. On September 20, 1945, the United States Senate passed and sent to the House the reconversion unemployment bill which provides, by amendment contrary to the recommendation of the President of the United States, for the return of the employment service facilities to the states within 90 days after enactment. Action on the bill (S. 1274) has been indefinitely postponed by the House Ways and Means Committee.

employers of the claimant and not upon the claimant's present conduct. The answer to this question is found readily in the central office of the agency where the reports which employers are required to file are kept. If his previous employers or any of them have failed to file reports, there may be an unavoidable time-consuming delay to determine whether the employer in question is one who is liable to pay contributions into the unemployment compensation fund under the state law.

The determination of the second question calls for an appraisal of both the claimant's present conduct and reason for his unemployment. In most instances, there is no uncertainty indicated; the separation has resulted from a lack of work and the individual is exposing himself unequivocally to the labor market. Such claims are promptly approved by the deputy or claims examiner whom the administrative agency has placed in the field office as its representative. In other cases, however, the unemployment follows a voluntary separation or a discharge, or the claimant places some restriction upon his willingness to work, or some other factor which under the law is regarded as a cause for disqualification, appears to be present.<sup>3</sup> Such cases raise issues of fact which require analysis or inquiry. The deputy or claims examiner thereupon proceeds to find the facts. He conducts an investigation rather than a hearing, exploring such sources of information as may be indicated. It has been held that such proceeding, without hearing and notice to all parties, meets the essentials of due process.<sup>4</sup> When he has completed his investigation, the deputy or claims examiner makes the initial determination as to whether the claimant is entitled to receive benefits. In this way, the vast majority of the applications will be acted upon, after adequate examination into the facts, with speed and simplicity.

But some cases are more difficult and involve not only a determination of doubtful fact situations but also administrative interpretation of statutory provisions. It is accordingly provided under the laws of twenty jurisdictions that the initial determination may be referred by the deputy to the initial appeals body. Under some circumstances and in some states, the deputy must refer the case to some higher authority without making an initial determination. Where the unemployment is related to a labor dispute, it is provided under the laws of 30 jurisdictions that the deputy is without authority to make the initial determination. In fourteen jurisdictions, he must refer the case to the final administrative appeal body; in three, to the initial appeal body; in seven, to the administrative head of the agency; and in six, to a special examiner designated either by the final administrative appeal body or by the administrative head of the agency. The law of South Dakota

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3. See *Eligibility and Disqualification*, pages 117-204 *infra*.

4. *Boynton Cab Co. v. Giese*, 237 Wis. 237, 296 N. W. 630 (1941).

requires that the initial determination in every case involving a disqualification must be referred to the final administrative appeal body.

#### ADMINISTRATIVE APPEALS

To hear and decide disputed claims there is provided the second level at which questions relating to benefits are determined: the initial appeal, a hearing before an appeal body. All of the jurisdictions have established bodies to which an interested party, dissatisfied with the deputy's initial determination, may appeal as a matter of right. This initial appeal may be either to a single referee, sometimes called a commissioner, or to a tribunal of three members—a referee and one representative each of management and labor. The statutes of twenty jurisdictions provide for an adequate number of referees to hear cases singly, in eighteen of which they are appointed by the agency and in two, by the governor of the state, wholly independently of the agency. The statutes of two jurisdictions provide for a three-member tribunal. The appealing party has the option in 29 jurisdictions of a hearing before a single referee or a three-member tribunal composed of one of the referees, appointed either by the agency or the final appeal body, as chairman and two representative members, chosen for each case from a previously prepared panel. In Massachusetts and West Virginia, the initial appeal may be heard by the final appeal body or one or more of its members, or by an examiner appointed by such body.

However diverse these appeal bodies may be in their composition or relationship to the administrative agency, they are all directed to a common end—to assure to any party whose rights may have been affected adversely by the deputy's initial determination access to a fair, simple, non-legalistic hearing before an impartial, sympathetic, non-legalistic tribunal.<sup>5</sup> The hearing is formal only to the extent that it must be orderly and that notice of time and place of the hearing must be given and the testimony recorded. The statutes generally provide that the manner in which disputed claims shall be presented and the conduct of hearings and appeals shall be in accordance with regulations prescribed by the authority to which the body is subject, whether or not such regulations conform to common law or statutory rules of evidence or other technical rules of procedure. The regulations provide generally that the parties may appear by representative, legal or otherwise, and may have the right to subpoena and examine witnesses, to cross-examine witnesses, to inspect documents, to explain and rebut evidence, and to present argument. When a party is not represented, as is most frequently the case, he is encouraged to tell his story as simply and naturally as possible, and the appeal body gives him every

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5. Only Nebraska and South Dakota require that the referee or any member of the appeals tribunal be an attorney at law.

assistance which does not interfere with the discharge of its official duties. It is to be noted that paid representation is discouraged, and the claimant protected from excessive charges for representation by a provision which generally appears in the statutes giving control to the agency or the appeals board over the size of the fee to be charged.

The decision of the initial appeal body is rendered upon the basis of the evidence presented at the hearing without any presumption of correctness attaching to the initial determination. Some statutes expressly provide that the appeal body shall not be bound by common-law or statutory rules of evidence; others, that the appeal body may adopt regulations to the same end, and such regulations have generally been adopted. Any oral or written evidence of any nature may therefore be admitted, the test being whether it is relevant, probative, and reliable rather than whether it is legally admissible. The extent to which legally inadmissible evidence may be adopted by the body to support a decision will be considered later.

The third level for the determination of disputed questions relating to the payment of benefits is a review or hearing by a second or final administrative appeal body. Machinery for such further appeal by an interested party aggrieved by the decision of the initial appeal body is provided in all but four jurisdictions. This final administrative appeals body is either the state unemployment compensation agency itself or a board of review of three persons appointed by the governor and wholly independent of the state agency which has had administrative charge of the proceedings through the first appeal stage. It has been held that the state unemployment compensation agency itself is an impartial tribunal, satisfying the requirement of due process, even though its employees have made the investigations and orders under review, for the reason that the agency has no personal interest in the controversy and "is not in the true sense of the word an adversary."<sup>6</sup>

This second appeal, however, is allowed as a matter of right to every dissatisfied interested party in only eleven of the 47 jurisdictions having such machinery, in three of which the deputy whose initial determination has been changed by the initial appeals body has the same right. In twenty jurisdictions, the appeal being from a three-member board, it is allowed as a matter of right to any party to a decision when the decision of the initial appeal body was not unanimous and to a deputy whose decision was changed by the initial appeal body; in three, it is allowed as a matter of right only when the initial determination was not affirmed by the initial appeal body. In Massachusetts, an appeal lies only when the decision was not made by the entire Board of Review and in the remaining twelve jurisdictions, it is wholly discretionary with the final administrative appeal body.

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6. Idaho Mutual Benefit Ass'n v. Robison, 154 P. (2d) 156 (Idaho 1944).

The final administrative appeal body may affirm, modify or set aside a decision on the basis of the record made before the lower appeal body, or if it believes that further testimony is necessary for a proper determination of the claim or if additional evidence is offered by a party, it may remand the cause to the lower tribunal with direction to take further testimony or it may itself hold a hearing for the reception of such further testimony and argument. The manner in which disputed claims are presented and the conduct of hearings and appeals before it must be in accordance with regulations which it alone prescribes for granting a reasonable opportunity for a fair hearing, and its hearings are characterized by the same informality and non-legalistic simplicity as obtains in the hearings before the lower appeal tribunal. Its function is to weigh the entire record, to pass upon questions of fact as well as of law, and it may substitute its judgment for that of the lower appeal tribunal whenever such action is indicated. In many states, it may act upon its own motion to transfer proceedings upon any pending claim from one appeal body or referee to another appeal body or referee, or to remove from an appeal body or referee to itself any pending claim involving issues of such import which it may wish to hear and decide in the first instance.

#### COURT REVIEW

After the administrative remedies have been exhausted, the final administrative decision awarding or denying benefits is everywhere subject to court review. This is so even in California, the only jurisdiction whose statute does not so provide. Even though the statute does not provide specific means of judicial review, "it is the duty of this court, when such a question of law is properly presented, to state the true meaning of the statute finally and conclusively. . . ."<sup>7</sup> Where the appeal to the final administrative appeal body is discretionary with that body and has not been allowed, the decision of the initial appeal body becomes the decision of the final appeals body, from which the appeal to the court is taken.<sup>8</sup> The Commission likewise has the right of appeal to the court.<sup>9</sup>

Certain statutory provisions relating to procedure on appeal emphasize the non-technical simplicity and speed with which all proceedings affecting claims for unemployment compensation benefits are con-

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7. *Bodinson Mfg. Co. v. Employment Commission*, 17 Cal. (2d) 321, 109 P. (2d) 935 (1941). Cf. *Idaho Mutual Benefit Ass'n v. Robison*, 154 P. (2d) 156, 161 (Idaho 1944), where the court said, ". . . in connection with hearings before administrative boards . . . unless an appeal is provided therefrom to a court, even though the scope of review be limited, due process is not satisfied."

8. *Unemployment Comp. Comm. v. Chenault & Orear*, 295 Ky. 562, 174 S. W. (2d) 767 (1943).

9. *Unemployment Comp. Comm. v. Barlow*, 191 Miss. 156, 1 So. (2d) 241 (1941).

ducted. It is not necessary as a condition precedent to judicial review to enter exceptions to rulings of the appeal body, nor is a bond required for entering an appeal. Furthermore, the hearing on the appeal is given priority over other matters pending before the court, except workmen's compensation cases.

In a limited number of states, the jurisdiction of the court on appeal extends to questions of both fact and law; and the hearing is *de novo*, "a trial in the commonly accepted sense of that term in a court of general jurisdiction, including the right to produce evidence in the same manner as if the action had originated in the district court."<sup>10</sup> It would appear that the court is thus vested with an administrative function and, in effect, replaces the final administrative appeal body.<sup>11</sup> The general rule, however, is that the petition for review does not imply a retrial upon the merits but rather an examination of the proceeding already concluded for the purpose of determining whether or not upon the law and the evidence, the challenged decision was justified.<sup>12</sup>

It is generally required by the statutes that the commission or board of review file a certified copy of the record in the case, including all documents and papers and a transcript of all testimony taken at the hearing, together with its findings, conclusion and decision, and that such findings, if supported by evidence and in the absence of fraud, shall be conclusive and the jurisdiction of the court confined to questions of law. This finality is attached to the finding even when it is not expressly stated in the statute.<sup>13</sup> But it has been held that the rule that the court will not disturb the judgment where there is a conflict

10. *Deshler Broom Factory v. Kinney*, 140 Neb. 889, 891, 2 N. W. (2d) 332, 333-4 (1942).

11. In *Norwalk Street Ry. Co.'s Appeal*, 69 Conn. 576, 37 A. 1080 (1897), it was held that the constitutional division of powers between the three departments of government prohibited the vesting of administrative functions in the courts. It was therefore held by the Connecticut Court in *DeMond v. Liquor Control Comm.* 129 Conn. 642, 30 A. (2d) 547 (1943) that the amendment to the Liquor Control Act providing that upon an appeal "the trial shall be *de novo*" merely granted to the court the power to conduct an independent inquiry but did not change the nature of the proceeding, the question before the court upon such appeal still being whether the decision of the Commission was reasonable or arbitrary with this difference: the conduct of the Commission was tested after the amendment by the facts proven in the course of the independent investigation conducted by the court instead of upon the record made before the Commission as heretofore.

12. *Idaho Mutual Benefit Ass'n v. Robison*, 154 P. (2d) 156 (Idaho 1944); *Wolfe v. Unemployment Comp. Comm.*, 232 Iowa 1254, 7 N. W. (2d) 799 (1943); *Craig v. State Labor Comm'r*, 154 Kan. 691, 121 P. (2d) 203 (1942); *Burgin v. Mid-Continent Petroleum Corp.*, 188 Okla. 645, 112 P. (2d) 802 (1941); *Johnson v. Pratt*, 200 S. C. 315, 20 S. E. (2d) 865 (1942); *Matter of the Appeals of Farwest Taxi Service, Inc.*, 9 Wash. (2d) 134, 114 P. (2d) 164 (1941).

13. *Matter of the Eligibility of the Persons Employed at the St. Paul and Tacoma Lumber Co.*, 7 Wash. (2d) 580, 110 P. (2d) 877 (1941); *Bodinson Mfg. Co. v. Employment Commission*, 17 Cal. (2d) 321, 109 P. (2d) 935 (1941).

of evidence does not apply when the appeal body did not see the witnesses but decided the case upon depositions.<sup>14</sup>

### EVIDENCE

One of the most important questions arising in connection with judicial review of unemployment compensation benefit cases concerns the extent to which legally inadmissible testimony or hearsay may be relied upon by the administrative bodies to support their findings and decision. The provision in the statutes that the appeal bodies shall not be bound by the common-law or statutory rules of evidence or other technical rules of procedure "is to free administrative boards from the compulsion of technical rules so that the mere admission of matter which would be deemed incompetent in judicial proceedings would not invalidate the administrative order. . . . But this assurance of a desirable flexibility in administrative procedure does not go so far as to justify orders without a basis in evidence having rational probative force."<sup>15</sup> And although the word "evidence" is not modified as it appears in the statutory provisions that the finding shall be conclusive, if supported by evidence (except in a very few states where "competent and substantial" appears), the court will, nevertheless, require support by "substantial" evidence, which is defined as "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion."<sup>16</sup>

The question, then, is whether hearsay evidence may have "rational probative force" and be so relevant as to be accepted by a reasonable mind as adequate to support a conclusion. The rule excluding hearsay, while well-established, dates only from the early part of the eighteenth century, before which time the reception of extrajudicial statements in proof of facts asserted was a matter of course.<sup>17</sup> It aims to guard against possibilities of error,<sup>18</sup> in a judicial combat presided over by a judge whose function is to see that the rules of the game are observed. But that is not to say that hearsay testimony is wholly irrelevant and without rational probative force; in fact, when admitted without objection, it does become evidence available, as is all evidence, for what it is worth.<sup>19</sup> "Regardless of the sweeping terms in which hearsay testimony is condemned, it is not denied that such testimony may be relevant and material. In fact, the general rule to which only a small minority of jurisdictions take exception is that hearsay testimony admitted without

14. *Phipps v. Boise Street Car Co.*, 61 Idaho 740, 107 P. (2d) 148 (1940).

15. *Consolidated Edison Co. v. NLRB*, 305 U. S. 197, 229-30 (1938).

16. *Consolidated Edison Co. v. NLRB*, 305 U. S. 197 (1938).

17. 4 CHAMBERLAYNE, *THE MODERN LAW OF EVIDENCE* (1913) § 2699.

18. 1 WIGMORE, *EVIDENCE* (2d ed. 1923) § 4b(3).

19. 4 CHAMBERLAYNE, *THE MODERN LAW OF EVIDENCE* (1913) § 2701.

objection may properly be considered and given its natural probative effect."<sup>20</sup>

The nature of the proceeding for the determination of whether or not an individual is eligible for and entitled to receive unemployment compensation benefits differs fundamentally from the nature of the judicial proceeding in which the rule against hearsay was developed. It is not an adversary proceeding out of which judgment and execution will issue, for the administrative agency is not an adversary.<sup>21</sup> It is not an adversary proceeding even when the payment of benefits is contested by an employer whose tax rate may be affected thereby. The primary objective of unemployment compensation is to relieve against the distress of unemployment and the imposition of the tax upon the employer is incidental.<sup>22</sup> Whether or not the employer may be denied the privilege of a reduced tax rate is only incidental in the general scheme and not a factor to be considered in the case. The administrative agency functions, not as an arbiter presiding over a judicial combat, but as a social agent entrusted with the determination of whether or not the individual who has rights under the act, has fulfilled the conditions which entitle him to the enjoyment thereof. The role of the employer, as a contributor to the fund out of which the payment is made, is to assist in the preservation of the fund against the demands of those who have not fulfilled the conditions.

The appeal to the court is not a transfer of jurisdiction from the administrative body to the court, except in the very few jurisdictions where the hearing is *de novo*. It is a process for invoking the power of the court to curb unreasonable, arbitrary, and therefore illegal action on the part of the administrative body. The function of the court is limited to a determination of whether the action of the administrative body is reasonable, or arbitrary and capricious, tested by the standard of conduct of reasonable men. And reasonable men, in the ordinary affairs of life, will accept evidence as adequate to support a conclusion on the basis of whether or not it is relevant, probative, and reliable rather than whether it does or does not conform to the common-law or statutory rules of evidence. Moreover, if a jury is permitted to consider hearsay when one of the adversaries fails to invoke the rules of the game, there appears to be no valid reason for denying the same effect to such testimony in the administrative proceeding, where no such rules of the game exist nor of right ought to exist.

It would appear that any rigid rule about hearsay is unsuited to the inquiry conducted in implementing a program the social policy of which encourages the decision of such cases without the benefit of counsel or

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20. 20 AM. JUR. 401; *Opp Cotton Mills v. Adm'r*, 312 U. S. 126, 155 (1941).

21. *Idaho Mutual Benefit Ass'n v. Robison*, 154 P. (2d) 156, 160 (Idaho 1944).

22. *Employment Stabilization Comm. v. Lewis*, 157 P. (2d) 38 (Calif. 1945); *New Haven Metal & Heating Supply Co. v. Danaher*, 128 Conn. 213, 21 A. (2d) 383 (1941).

legally trained administrative officers. All oral or written testimony of whatever nature should be given weight according to its relevancy, reliability and probative value, whether or not it is legally admissible. This view is supported by the action of the Supreme Court of Washington in *Leggerini v. Department of Unemployment Compensation*,<sup>23</sup> despite the assertion of the court that "Regulations prescribed by the director of the department of unemployment compensation and placement pursuant to authority granted by the legislature to receive hearsay evidence in the determination of the question of eligibility of a claimant for benefits under the unemployment compensation and placement act, may not be successfully invoked in a court of law for the purpose of rendering hearsay evidence admissible on review of the decision of the department."<sup>24</sup>

The case was an appeal by an employer from a judgment of the Superior Court affirming a decision of the commissioner of unemployment compensation holding a claimant eligible for benefits. The determinative issue of fact was whether MacDonald Building Company was a subcontractor under contract with Leggerini, claimant's employer. At the first hearing, which the employer did not attend, an investigator of the department testified that both of the parties had admitted to him in the course of his investigation that the subcontractor relationship had existed. At a reopened hearing, the employer denied the existence of such relationship and presented evidence which, the court said, clearly established that the subcontractor relationship did not exist. The finding of the commissioner was based solely on the hearsay testimony at the first hearing. The reversal by the Supreme Court is warranted and proper on the ground that hearsay testimony has little probative value when there is evidence contradictory thereto, and that upon that state of the record, the commissioner's conclusion was not one which a reasonable man, acting reasonably, could have reached.<sup>25</sup> What is important to note is that, while decrying the reliance of the commissioner on hearsay, the court seems to have relied in support of its conclusion on equally inadmissible testimony—"letters, which were accepted by the department as exhibits in the second hearing, which letters are statements (from the persons who employed, or

23. 15 Wash. (2d) 618, 131 P. (2d) 729 (1942).

24. *Id.* at 622, 131 P. (2d) at 731.

25. The only other reported cases where the same question was in issue are *Philips v. Unemployment Comp. Bd. of Rev.*, 152 Pa. Super. 75, 30 A. (2d) 718 (1943); *Howley v. Unemployment Comp. Bd. of Rev.*, *ibid.* Similar warrant is present for the reversal in the *Howley* case; an investigator's report containing the substance of an interview with the mine superintendent that the mine was open for work during a labor dispute and newspaper clippings to the same effect have little probative value to rebut the testimony of the claimant that he reported for work and was refused employment. In the *Philips* case, where the judgment was affirmed, the court said: "It is unimportant that the Board based its order on findings from the investigator's report. The evidence will support no other conclusion."

contracted with appellant for work on their property) regarding the instances the employees of MacDonald Building Company worked on home remodeling jobs on which appellant was the painting contractor." <sup>26</sup> On the basis of these unsworn writings of persons not present in court as witnesses, the court found that "In each instance, the building company had a separate contract for the carpentry work with the principal involved." <sup>27</sup> The variance between the action of the court and the language which it employed seems to be an example of the fact that "the inveterate habit of mind cannot easily be altered when the judicial function comes to be considered." <sup>28</sup>

#### INTERSTATE COOPERATION

The existence of separate state systems entails some difficulties with respect to the payment of benefits to persons who have removed from the state where they have been employed and where they have established rights against the fund; also with respect to eligibility of workers whose jobs carry them across state lines, many of whom acquire some credits towards benefits in one or more states but not sufficient to qualify them for benefits in any one state. Both of these problems have been met through cooperative action of the states in establishing an Interstate Benefit Payment Plan and an Interstate Plan for Combining Wages.

Under the Interstate Benefit Payment Plan, a person who has worked in any state and has there acquired benefit rights may receive benefits even though he no longer resides in that state at the time of his unemployment. His claims are filed in the state where he then resides and transmitted to the liable state—the state where he acquired his benefit rights—together with the information necessary to a determination of his present eligibility. The liable state makes the initial determination in the same manner as in the case of intrastate claims and appeals may likewise be taken in the usual manner except that the decision of the appeals body is based upon depositions or testimony taken before an appeals officer in the state of the claimant's residence. The state of residence under this plan merely acts as an agent for the state which is liable for making payments.

The purpose of the Interstate Plan for Combining Wages <sup>29</sup> is to provide a system whereby a migrant worker who has earned wages in more than one state, but whose earnings in any one state are inadequate to entitle him to benefits in any state, may nevertheless become eligible

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26. *Id.* at 623, 131 P. (2d) at 731.

27. *Ibid.*

28. 1 WIGMORE, EVIDENCE (2d ed. 1923) § 4b.

29. This plan is a recent development and has not yet been universally adopted. It removes a very potent argument for federalization of the unemployment compensation program.

for benefits. This is accomplished through combining all the wages earned by such person during the base period wherever earned and treating the combined amount as if earned in the state where he resides at the time of his unemployment, and he is paid benefits by such state even though in fact he may have had no earnings whatsoever there. The benefit year, base period, qualifying wages, benefit rate and duration of benefits under the unemployment compensation law of the paying state—the state of his residence—are the benefit year, base period, qualifying wages, benefit rate and duration of benefits applicable to a combined-wage claimant. Provision is made for reimbursement to the paying state by the several states wherein the wages were earned.

Such cooperation is the achievement of the Interstate Conference of Employment Security Agencies in which the state agencies are joined for the exchange of administrative experience and for collaboration with the Social Security Board in evaluating federal and state legislation, policies and procedures. There is currently under consideration a proposed Interstate Maritime Reciprocal Arrangement for the purpose of solving the problem of coverage of maritime workers.

Such is the machinery established by the states to relieve against the distress of unemployment. But the effectiveness of the program is dependent on the type of persons to whom this machinery is committed. Administered by persons aware of their responsibilities as social agents to whom is entrusted the handling of people rather than of files, the program can attain the full measure of its possibilities as an instrument of social security.