

S250149 **FILED WITH PERMISSION**

In the Supreme Court for the State of California

Tamara Skidgel,
Plaintiff and Appellant,

vs.

California Unemployment Insurance Appeals Board,
Defendant and Respondent.

PETITIONER'S ANSWER TO SUPPLEMENTAL BRIEF
OF RESPONDENT CALIFORNIA UNEMPLOYMENT
INSURANCE APPEALS BOARD

After a Published Opinion
from the First District Court of Appeal, No. A151224
On Appeal from a Judgment after the Sustaining of a Demurrer
Alameda County Superior Court, No. RG16810609
The Honorable Robert Freedman

*STEPHEN E. GOLDBERG, State Bar No. 173499
Legal Services of Northern California
517 12th Street, Sacramento, CA 95814
(916) 551-2181 • Fax (916) 551-2196

WADE ASKEW, State Bar No. 293236
Legal Services of Northern California
1810 Capitol Street, Vallejo, CA 94590
(707) 643-0054 • Email: waskew@lsnc.net

Attorneys for Appellant
Tamara Skidgel

TABLE OF CONTENTS

	<u>Page</u>
Table of Authorities.....	3
Petitioner’s Answer to Supplemental Brief of Respondent California Unemployment Insurance Appeals Board.....	4
Certificate of Compliance.....	9
Proof of Service.....	10

TABLE OF AUTHORITIES

Page(s)

Cases

Ass’n of Retarded Citizens v. Department of Developmental Services (1985)
38 Cal.3d 384 7

California Labor Federation AFL-CIO v. Industrial Welfare Commission (1998)
63 Cal.App.4th 982 6

De La Torre v. CashCall, Inc. (2018)
5 Cal.5th 966 5, 6

Pacific Lumber Co. v. State Water Res. Control Bd. (2006)
37 Cal.4th 921 5, 6

Snyder v. Michael’s Stores, Inc. (1997)
16 Cal.4th 991 6

Strauss v. Horton (2009)
46 Cal.4th 364 5

Statutes

Unemployment Insurance Code § 631 4, 5

Other Authorities

Matter of Caldera (2015)
P-B-507 6

Assem. Bill No. 1993 § 1 (2019-2020 Reg. Sess;
<https://leginfo.legislature.ca.gov/faces/billCompareClient.xhtml?bill_id=201920200AB1993&showamends=false>) 4

Stats. 1935, ch. 352, § 7(d) 5

Stats. 1953, ch. 301, § 631 5

Stats. 1972, ch. 579, § 46 5

In its Supplemental Brief, Respondent California Unemployment Insurance Appeals Board (the “Board”) discusses legislation from the 2019-2020 legislative session, AB 1993, that concerned the subject of this case. (Assem. Bill No. 1993 § 1 (2019-2020 Reg. Sess; <https://leginfo.legislature.ca.gov/faces/billCompareClient.xhtml?bill_id=201920200AB1993&showamends=false>.) The bill would have amended Unemployment Insurance Code section 631 to provide that notwithstanding the existing language of the section, “employment” for purposes of unemployment insurance eligibility includes services performed for a spouse, child or parent under the In-Home Supportive Services program.¹ (*Ibid.*) The bill passed the Legislature but the Governor vetoed it. <https://leginfo.legislature.ca.gov/faces/billStatusClient.xhtml?bill_id=201920200AB1993>.

AB 1993 and the Governor’s veto should not control the interpretation of the statutes at issue and the outcome of this case.

The Board states that this vetoed legislation is relevant because “later enactments *may* offer *some* insight into the legislative intent behind previously enacted laws.” (Respondent’s Supplemental Brief at p.3, citing *Pacific Lumber Co. v. State Water Resources Control Bd.* (2006) 37 Cal.4th 921, 940.) Yet, in the second following sentence, the Court made clear that

¹ Further statutory references are to the Unemployment Insurance Code unless otherwise indicated.

this is a weak tool of statutory construction. “[A]n expression of legislative intent in a later enactment is not binding upon a court in its construction of an earlier enacted statute, [although] it is a factor that may be considered.” (*Pacific Lumber Co.*, 37 Cal.4th at p. 940 [citation omitted].)

Interpretation of an existing statute to determine the intent of the Legislature “is a fundamental power of the judicial branch. . . .” (*Strauss v. Horton* (2009) 46 Cal.4th 364, 476, abrogated on another ground by *Obergefell v. Hodges* (2015) 576 U.S. 644, 135 S.Ct. 2584, 192 L.Ed.2d 609.) The intent to be determined is that of the Legislature that enacted the statute; views of a subsequent Legislature is of little use, if any. “Normally, we do not think a statement of a later-sitting legislator sheds much light on the intent of an earlier Legislature’s enactment.” (*De La Torre v. CashCall, Inc.* (2018) 5 Cal.5th 966, 986 n.6.)

Furthermore, section 631 was originally enacted in 1935, codified in the Unemployment Insurance Code when it was established in 1953 and the section was last amended in 1972. (Stats. 1935, ch. 352, § 7(d) [initial enactment]; Stats. 1953, ch. 301, § 631 [codified in UI Code]; Stats. 1972, ch. 579, § 46 [last amendment].) As the Court has recently repeated, “‘[T]here is little logic and some incongruity in the notion that one Legislature may speak authoritatively on the intent of an earlier Legislature’s enactment when a gulf of decades separates the two bodies.’” (*De La Torre, supra*, 5 Cal.5th at p.986, fn. 6, quoting *Western Security*

Bank v. Superior Court (1997) 15 Cal.4th 232, 244.) Indeed, the Court went on to hold in *De La Torre*, “ ‘Post-enactment legislative history (a contradiction in terms) is not a legitimate tool of statutory interpretation.’ ” (*Id.* 5 Cal.5th 986, fn. 6, quoting *Bruesewitz v. Wyeth LLC* (2011) 562 U.S. 223, 242, 131 S.Ct. 1068, 179 L.Ed.2d 1.)

In addition, *Pacific Lumber Co.*, on which the Board relies, addressed legislation that became law. AB 1993 never became law; it was vetoed. In general, no inferences are drawn from vetoed legislation. (*Snyder v. Michael’s Stores, Inc.* (1997) 16 Cal.4th 991, 1003 fn. 4; *California Labor Federation AFL-CIO v. Industrial Welfare Commission* (1998) 63 Cal.App.4th 982, 994-95.)

The Board cites the Department of Finance’s report on AB 1993 to the Governor and his veto message indicating that AB 1993 would cost the state money because it expands eligibility. The Board construes this to mean that the current statute must not be construed to allow Unemployment Insurance eligibility for close family IHSS providers. However, the department’s and Governor’s statements only reflect the financial effect of AB 1993 in light of the current Employment Development Department policy of denying such eligibility approved in *Matter of Caldera* (2015) P-B-507, which is the subject of this litigation. That is, AB 1993 would increase the cost of the unemployment insurance program simply because it would overrule the Department’s present, overly broad but tightfisted,

interpretation of the relevant statutes that, contrary to the Legislature's intent, improperly denies unemployment insurance benefits to a large class of IHSS workers employed by joint employers.

Furthermore, the Department of Finance's and Governor's statements assume the conclusion that the Board asks this Court to reach without analysis of what the Legislature intended in prior enactments that established existing law. This assumption, which disregards the legislative intent of the relevant statutes as they currently exist, should not be given weight when interpreting the statute.

Moreover, fiscal concerns do not control construction of the statutes here. For one thing, the Department of Finance's report does not suggest—and the Board has presented no evidence even hinting—that there is any danger of exhausting funds available to pay UI benefits generally by recognizing the eligibility for such benefits of workers jointly employed by immediately family members and by the state or a county. Even if the Board could make such an assertion, that is not a reason to deny these IHSS workers UI benefits that they have the right to receive. (*Cf., Ass'n of Retarded Citizens v. Dep't of Developmental Services* (1985) 38 Cal.3d 384, 393 [projected exhaustion of funds for developmental services did not justify construing relevant statutes to denying present services to eligible individuals with statutory right to services; "so long as funds remain, the right must be implemented in full; as soon as they are exhausted, [the

services program] can no longer be implemented, but may be financed through an additional appropriation if the Legislature so chooses.”])

The vetoed AB 1933 should not influence the Court’s determination of whether existing law allows a large class of IHSS providers for their spouses, children or parents to be eligible for unemployment insurance benefits.

Dated: December 14, 2020 Respectfully Submitted,

LEGAL SERVICES OF NORTHERN CALIFORNIA

By: /s/ Stephen E. Goldberg
Stephen E. Goldberg
Attorneys for Plaintiff and Appellant Tamara Skidgel

CERTIFICATE OF COMPLIANCE
(California Rules of Court, Rule 8.204(c)(1))

The text of this brief consists of 1,501 words as counted by the Microsoft Word, Microsoft Office Professional Plus 2010, word processing program used to generate this brief.

Dated: December 14, 2020 Respectfully Submitted,

LEGAL SERVICES OF NORTHERN CALIFORNIA

By: /s/ Stephen E. Goldberg
Stephen E. Goldberg
Attorneys for Plaintiff and Appellant Tamara Skidgel

PROOF OF SERVICE

I, Karen Gould Scott, declare:

I am employed in the County of Sacramento, State of California. I am over the age of eighteen years and not a party to the within cause. My business address is 621 Capitol Mall, 18th Floor, Sacramento, CA 95814.

On December 15, 2020, I served the within PETITIONER’S ANSWER TO SUPPLEMENTAL BRIEF OF RESPONDENT CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD as follows:

TRUEFILING	Supreme Court of California 350 McAllister Street, Room 1295 San Francisco, CA 94102-4797 and Fourth Appellate District, Division Three (G051086)
TRUEFILING	Janill L. Richards, Principal Deputy Solicitor General 1515 Clay Street, 20th Floor P.O. Box 70550 Oakland, CA 94612-0550 Attorneys for Respondent, California Unemployment Insurance Appeals Board
USPS Mail	Hon. Judge Robert B. Freedman Alameda County Superior Court Clerk Rene C. Davidson Courthouse 1225 Fallon Street Oakland, CA 94612

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on December 15, 2020 at Sacramento, California.

By: /s/ Karen Scott
Karen Scott

STATE OF CALIFORNIA
Supreme Court of California

PROOF OF SERVICE

STATE OF CALIFORNIA
Supreme Court of California

Case Name: **SKIDGEL v. CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD**

Case Number: **S250149**

Lower Court Case Number: **A151224**

1. At the time of service I was at least 18 years of age and not a party to this legal action.
2. My email address used to e-serve: **sgoldberg@lsnc.net**
3. I served by email a copy of the following document(s) indicated below:

Title(s) of papers e-served:

Filing Type	Document Title
MOTION	SKIDGEL_S250149_Motion_for_Leave_to_Answer_Supplemental_Brief
ADDITIONAL DOCUMENTS	SKIDGEL_S250149_Pet's_Answer_to_Supp_Brief

Service Recipients:

Person Served	Email Address	Type	Date / Time
Wade Askew Legal Services of Northern California 293236	waskew@lsnc.net	e-Serve	12/15/2020 9:09:10 AM
Karen Gould Downey Brand LLP	kgould@downeybrand.com	e-Serve	12/15/2020 9:09:10 AM
Anthony Segall Rothner Segall & Greenstone 101340	asegall@rsglabor.com	e-Serve	12/15/2020 9:09:10 AM
Nayantara Mehta National Employment Law Project 244949	nmehta@nelp.org	e-Serve	12/15/2020 9:09:10 AM
Jenna Miara Bet Tzedek	jmiara@bettzedek.org	e-Serve	12/15/2020 9:09:10 AM
Janill Richards Office of the Attorney General 173817	janill.richards@doj.ca.gov	e-Serve	12/15/2020 9:09:10 AM
Jay-Allen Eisen Downey Brand, LLP 42788	TrueFilings_JEisen@downeybrand.com	e-Serve	12/15/2020 9:09:10 AM
Elizabeth Bixby Legal Aid At Work	lbixby@legalaidatwork.org	e-Serve	12/15/2020 9:09:10 AM
Hadara Stanton Office of the Attorney General 227040	hadara.stanton@doj.ca.gov	e-Serve	12/15/2020 9:09:10 AM
Stephen Goldberg Legal Services Of Northern California 173499	sgoldberg@lsnc.net	e-Serve	12/15/2020 9:09:10 AM

Jay-Allen Eisen Downey Brand, LLP 42788	jeisen@downeybrand.com	e-Serve	12/15/2020 9:09:10 AM
Daniela Urban Center for Workers' Rights 288301	daniela.urban@rightscenter.org	e-Serve	12/15/2020 9:09:10 AM

This proof of service was automatically created, submitted and signed on my behalf through my agreements with TrueFiling and its contents are true to the best of my information, knowledge, and belief.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

12/15/2020

Date

/s/Stephen Goldberg

Signature

Goldberg, Stephen (173499)

Last Name, First Name (PNum)

Legal Services of Northern California

Law Firm