

BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

THIS DECISION DESIGNATES FORMER BENEFIT
DECISION NO. 6414 AS A PRECEDENT
DECISION PURSUANT TO SECTION
409 OF THE UNEMPLOYMENT
INSURANCE CODE.

In the Matter of:

MARGARET WALSH (Claimant-Appellant)

PRECEDENT
BENEFIT DECISION
No. P-B-173

FORMERLY BENEFIT DECISION No. 6414
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Referee's Decision
No. LA-13852

STATEMENT OF FACTS

Previous to her last employment, the claimant had been employed for ten years as the secretary to the president of a clay products company, which employment was terminated as the result of the death of that individual. In all, claimant had had some fifteen years of experience as an executive secretary.

The claimant was last employed for three years and ten months as an executive secretary by a Los Angeles manufacturer of air-conditioning and refrigeration products. The claimant received a base salary of \$365 per month subsequent to January 1, 1954. Prior thereto, her base salary had been \$325 per month. This employment was terminated by the employer on November 30, 1954 through no fault of the claimant but as the result of the absorption of the employer by a national concern and the consequent transfer of much of its business activity to an eastern city.

The prevailing wage in the area for executive secretaries was around \$375 per month. The majority of the positions in this category, however, were filled by promotions from within an organization rather than by hiring outside employees. The prevailing wage in the area for ordinary secretaries ranged

from \$275 to \$300 per month. Wages in Alhambra were substantially higher than in the rest of the metropolitan area of Los Angeles. It was common practice for individuals living in Alhambra to work in secretarial and executive positions in downtown Los Angeles.

There is a great deal of difference between a position which is designated as an executive secretary and one which is classified just as a secretary. An executive secretary is one who makes very intricate and involved decisions every day and has a great deal of responsibility. She usually works only for one high executive. The department maintained classifications for both positions. Claimant asked to be classified as an executive secretary but the department refused to do so and classified her merely as a secretary.

Effective December 5, 1954, the claimant filed a claim for benefits.

The claimant had made various applications for positions which paid \$300 a month or more. Her type of position was apparently one to which long consideration is often given by an employer before filling it. In positions of lesser responsibility, claimant's capabilities made her undesired rather than desired by most prospective employers who were looking for a steady worker rather than one to try out for promotion.

On June 17, 1955, the claimant signed the following statement for the department on its form DE 2403:

"I have been unemployed since 12-1-54 when I was laid off by Drayer-Hanson. I was employed as an executive secretary @ \$365 per mo. I believe my age and wage limitations are main reasons for extended period of unemployment. I prefer not to work for less than \$325. However I accepted referral and I still have some opportunity to get position at L.A. Housing, which starts at \$305, however I feel other advantages offset the lower pay and also there are periodic increases. I could not accept less than \$300 per mo. I have to have housekeeper for my children and cannot afford to work just to pay her."

On June 24, 1955, the department determined that the claimant was ineligible for benefits effective June 5, 1955 on the ground that she was not

available for work within the meaning of Section 1253(c) of the Unemployment Insurance Code.

On July 1, 1955, claimant did procure employment as executive secretary to the president of a company which was a competitor of her last employer. She had had her application on file with the company and had been under consideration by it for more than four months. Her new employment was on a permanent basis at a monthly salary of \$325 plus a Christmas bonus equal to an additional month's salary, averaging in all slightly over \$350 per month.

Claimant received twenty-four weeks of benefits on her claim through June 4, 1955. Only two weeks remain in dispute.

REASONS FOR DECISION

The evidence very clearly establishes that the claimant had a long and substantial history of work experience as an executive secretary. For approximately fifteen years preceding the filing of her claim, she had satisfactorily held down the exacting responsibilities of such a position in working for the top corporate officers of different corporations. In each case, her employment was terminated under circumstances which definitely reflect that claimant's capabilities or performance were in no way involved as a cause of the termination.

Upon the basis of claimant's past work experience, the department should have given claimant the occupational classification of executive secretary. Claimant requested that she be so classified; and it was error to refuse her request in this respect. Moreover, this error appears to have been injurious to claimant's opportunities for correct and satisfactory placement in her proper labor market for her capabilities are shown to be such that she would actually be undesirable for employment by most employers seeking steady secretarial help to do routine work. It was only the employer who was really seeking an executive secretary who would be inclined to try her out.

Before the top official of a company will hire an individual like the claimant from the outside to assume the responsibilities and receive the confidences which are inherent in the position of an executive secretary, such an official is apt to make an unusually careful personal investigation of his applicants. This process is time-consuming, and accordingly it is likely that the procuring of any such placement may be somewhat prolonged. The time

which it may reasonably take to place an executive secretary cannot be measured by the standards of placing ordinary secretaries, for theirs is quite a different type of labor market.

In Benefit Decision No. 5500, this Appeals Board had before it a similar problem of a talented individual who worked diligently to seek the work for which she was qualified in a small but definite labor market. In that case, we held:

"In the instant case the facts show that the claimant's sole employment experience was as a script supervisor in the motion picture industry, an occupation to which she had devoted twenty-two years and in which calling a high degree of skill and training was requisite. She had had employment on a very steady basis in previous years but due to economic conditions such employment had been radically curtailed. It is obvious that her unemployment during the period involved herein was due to the fact that the motion picture industry in which she had been regularly employed for many years was temporarily unable to provide her with regular employment Under the circumstances presented by the facts herein and in view of the fact that prospects existed for work in her usual occupation within a reasonable time, after she filed her claim for benefits as exemplified by the fact she secured work in her usual occupation in the motion picture industry during December, 1948, and January, 1949, a requirement that the claimant seek and accept work outside the motion picture industry, whether temporary or permanent, was unreasonable and such work was not suitable"

If this claimant had been properly classified in a market for executive secretaries as large as that of the Los Angeles area, she should have had a reasonable chance of procuring work. In fact there is probably nothing that serves better to demonstrate the correctness of the claimant's contention in regard to her proper classification than the fact that shortly afterwards she did actually procure employment as executive secretary for which her new employer had had her under consideration for more than four months before he finally called her to work. Another prospective employer also had had the claimant under consideration for several months and was apparently still considering her at the time she went back to work.

In view of the foregoing, the claimant has adequately demonstrated that she was able and available for work within the meaning of Section 1253(c) of the code prior to the time that she procured her new employment.

DECISION

The decision of the referee is reversed. Benefits are allowed for the remaining weeks of claimant's award if claimant is otherwise eligible.

Sacramento, California, January 6 1976

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

DON BLEWETT, Chairperson

MARILYN H. GRACE

CARL A. BRITSCHGI

RICHARD H. MARRIOTT

DISSENTING - Written Opinion Attached

HARRY K. GRAFE

DISSENTING OPINION

I dissent for the reasons set forth in my dissenting opinion in Appeals Board Decision No. P-B-168.

This is one of the cases adopted by the majority without allowing any discussion of the merits, a palpable violation of due process of law.

HARRY K. GRAFE