

BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

THIS DECISION DESIGNATES FORMER BENEFIT
DECISION NO. 5263 AS A PRECEDENT
DECISION PURSUANT TO SECTION
409 OF THE UNEMPLOYMENT
INSURANCE CODE.

In the Matter of:

RUTH R. MERCER
(Claimant)

B. F. GOODRICH COMPANY
(Employer)

PRECEDENT
BENEFIT DECISION
No. P-B-269

FORMERLY BENEFIT DECISION No. 5263
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The above-named claimant on May 17, 1948, appealed from the decision of a Referee (S-6075) which held that she was subject to disqualification under Section 58(a)(1) of the Act [now section 1256 of the Unemployment Insurance Code] and that she was ineligible for benefits under Section 57(c) of the Act [now section 1253(c) of the code]. In order to obtain additional evidence, the California Unemployment Insurance Appeals Board remanded this case to a Referee for further hearing. A transcript of the evidence obtained by the Referee at the hearing has been referred to this Appeals Board for consideration.

Based on the record before us, our statement of fact, reason for decision, and decision are as follows:

STATEMENT OF FACT

Prior to November 4, 1947, the claimant was employed for fourteen months at the employer's plant in Los Angeles in the preparation of materials for the manufacture of tires. She left this employment on or about November 4, 1947, in order to accompany her husband who intended to enter into self-employment and attend school in Chico, California. Thereafter the claimant secured temporary work of approximately two weeks' duration as a census taker for the city of Chico. The employment was performed under the supervision of the Federal Government and the claimant was paid at the rate

of five cents per person. This employment terminated in November, 1947, due to completion of the census. The claimant has had prior employment experience as a salesclerk, file clerk, and factory worker.

On February 27, 1948, the claimant registered as a salesclerk and filed a claim for benefits in the Chico office of the Department of Employment. The employer herein protested the payment of benefits and on March 9, 1948, the Department issued a determination which held that the claimant's leaving of work with the employer in order to move with her husband to Chico was with good cause within the meaning of Section 58(a)(1) [now section 1256 of the code]. The Department further held that the claimant was available for work and otherwise eligible for benefits under the Act. The employer appealed and a Referee reversed the determination on the ground that the claimant did not have good cause for leaving her employment in Los Angeles since the claimant's husband had established only a temporary residence in Chico. The Referee further held that the claimant was not available for work inasmuch as she had voluntarily moved to a locality where industry did not provide employment opportunities within her most recent employment experience. The claimant appealed to this Appeals Board.

There are no rubber products manufacturing establishments in the Chico area. There are two factories which employ women and train them to operate various machines. Employment opportunities for salesclerks exist in Chico and employers are willing to hire inexperienced help for part-time work but prefer that full-time employees have some prior experience. The claimant has applied for employment and has actively sought work as a salesclerk, counter clerk in a laundry, and as a factory worker. The claimant has imposed no restrictions on acceptable work. The claimant and her husband moved to Yuba City, California, in June, 1948.

REASON FOR DECISION

Section 58(a)(1) of the Act [now section 1256 of the code] provides as follows:

"(a) An individual shall be disqualified for benefits if:

"(1) He has left his most recent work voluntarily without good cause, if so found by the commission;"

It is apparent from the record in this case that both the Department and the Referee considered that the claimant's most recent work prior to filing her claim for benefits was for the B. F. Goodrich Company in Los Angeles. However, it is clear that after terminating such employment and moving to Chico the claimant secured temporary work as a census taker for the city of Chico. This work was of approximately two weeks' duration, the claimant was compensated for her services, and the claimant continued in such work until the completion of the census. While the services performed by the claimant would constitute exempt employment under the taxing provisions of the Act as set forth in Section 7(g) thereof [subsequently code section 634, now repealed], Section 58(a)(1) [now section 1256 of the code] does not limit the disqualification provided therein for a voluntary leaving of work without good cause to employment which is subject to the taxing provisions of the Act. On the contrary, Section 58(a)(1) [now section 1256 of the code] specifically provides that an individual shall be disqualified if he leaves "his most recent work" voluntarily without good cause, and "work" is not defined or limited in the Act to "employment" subject to the Act. Since the claimant's "most recent work" prior to filing her claim for benefits on February 27, 1948, was as a census taker for the city of Chico, which work ended when the census was completed, the claimant may not be subjected to disqualification under 58(a)(1) of the Act [now section 1256 of the code] in connection with her prior employment with the employer herein.

The claimant also has contested the denial of benefits under Section 57(c) of the Act [now section 1253(c) of the code]. Relative to this issue, the Referee held that since the claimant had moved to an area where work within her most recent employment experience as a rubber factory worker did not exist, she had withdrawn from the labor market and was not available for work. On the facts of this case we are not in accord with the Referee's conclusion. While it is admitted that there are no rubber manufacturing concerns in the immediate vicinity of Chico, it is our opinion that the experience which the claimant acquired while employed as a rubber factory worker would reasonably fit her to perform other factory work which does exist in Chico. In fact, the evidence discloses that these prospective employers were willing to train workers to operate various machines in the establishments. The claimant was willing to accept such work and had applied for same. A further point to consider in this case is that the employment service apparently considered the claimant qualified as a salesclerk for she was registered and classified with regard to her occupational skills as a salesclerk. The claimant has had prior experience as a salesclerk, such work exists in the area, and she was seeking employment of that nature.

Under these facts, which show that the claimant was in a labor market without restrictions or limitations on acceptable work during the period of her residence in Chico, we conclude that she met the availability requirements of Section 57(c) of the Act [now section 1253(c) of the code] for the week in which February 27, 1948, occurred, and thereafter until she moved to Yuba City, California. Since the record does not contain facts upon which a determination of eligibility can be made for periods subsequent to the claimant's residence in Chico, this decision is limited to those periods in which she was claiming benefits while residing in Chico.

DECISION

The decision of the Referee is reversed. Benefits are allowed provided the claimant is otherwise eligible.

Sacramento, California, January 20, 1949.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

MICHAEL B. KUNZ, Chairman

GLENN V. WALLS

PETER E. MITCHELL

Pursuant to section 409 of the Unemployment Insurance Code, the above Benefit Decision No. 5263 is hereby designated as Precedent Decision No. P-B-269.

Sacramento, California, March 16, 1976.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

DON BLEWETT, Chairperson

MARILYN H. GRACE

CARL A. BRITSCHGI

HARRY K. GRAFE

RICHARD H. MARRIOTT