

BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

THIS DECISION DESIGNATES FORMER BENEFIT
DECISION NO. 6809 AS A PRECEDENT
DECISION PURSUANT TO SECTION
409 OF THE UNEMPLOYMENT
INSURANCE CODE.

In the Matter of:

MICHAL L. DAWSON
(Claimant-Respondent)

NORTH AMERICAN AVIATION, INC.
(Employer-Appellant)

PRECEDENT
BENEFIT DECISION
No. P-B-272

FORMERLY BENEFIT DECISION No. 6809
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The employer appealed from Referee's Decision No. LB-414 which affirmed the Department of Employment's modification of determination holding the claimant eligible to receive unemployment insurance benefits under section 1260(a) of the Unemployment Insurance Code, because she had performed services in bona fide employment for which she had been paid remuneration in excess of five times her weekly benefit amount.

STATEMENT OF FACTS

The claimant was employed by the employer herein for eight months. She was classified as an expediter at a terminating wage of \$2.71 per hour. Her duties involved expediting parts from the parts department to the manufacturing departments and maintaining the records required for parts control.

The claimant was "bumped," and elected a layoff in lieu of accepting a transfer to work as a blueprint clerk in a chemical building in May 1966. She was four months pregnant at the time, did not like the work offered, and did not feel it would be agreeable to her physical condition. Her doctor, however, had advised her that she was able to continue working until October 31, 1966.

She filed a claim for benefits effective May 15, 1966. Her weekly benefit amount was set at \$56. She was disqualified for benefits by a departmental determination dated June 2, 1966, under section 1256 of the Unemployment Insurance Code on the ground that she left her most recent work voluntarily without good cause.

After filing her claim, the claimant made an extensive search for work as a general office clerk, her occupational classification, applying for work at a telephone company, aircraft company, and lumber company, among other large potential employers, and at many small offices; but she was unable to find work.

On June 3, 1966, the claimant telephoned the office manager of a baby pants manufacturer located in Glendale, of which her father was president and stockholder, and asked for a job. She had worked for the company for three years prior to September 1961 as a part-time employee after school, and full time during the summer months up to June 1962, typing, filing, ordering office supplies, and answering the telephone.

The claimant was told an opening existed in the office as a general office worker, involving duties similar to those she performed in previous years. She accepted the job after subsequently agreeing with her father that she should be paid \$2.70 per hour. She worked at that rate, forty hours a week, for four weeks, June 6, 1966 through July 1, 1966, and earned \$432. She was laid off when business fell off, the company's orders being subject to seasonal fluctuations.

The claimant had apparently been paid two dollars per hour during her last period of employment with the company. Her father testified that she was now a more valuable employee, since she had gained experience in similar work. Her father preferred hiring her to other help because she was familiar with the company's office procedures. The hiring of inexperienced help would have been too expensive. He considered the agreed upon hourly wage fair, moreover, in view of her commuting expense from home to office. Two other office employees were able to work only part time because of family responsibilities. They were paid \$2.25 and \$2.75 per hour, respectively. It is unknown what wage was paid another employee who worked three to four months, six months earlier during a rush period.

When the claimant reopened her claim for unemployment benefits effective July 10, 1966, she was interviewed by the department in regard to her possible "purge" of the disqualification under section 1256 of the code. She established to the department's satisfaction that she had earned in excess of five times her weekly benefit amount in bona fide employment and was issued the modification of determination appealed from herein.

The employer contended before the referee that the employment was not bona fide because the work was performed outside the geographic area where the claimant normally worked, and did not indicate a genuine re-entry into her labor market. The claimant, who lives in Downey, 28 miles from the baby pants company, testified that it took her 30 minutes by freeways to drive this distance, the same distance she had travelled when formerly working for the company.

The employer also contended at the hearing that it was significant that the department's determination disqualifying the claimant under section 1256 was issued on June 2; that she applied for employment through her father on June 3; and that she has had no employment since she worked the four weeks for her father. The claimant denied she accepted the job and worked only long enough to "purge" the disqualification, but, rather, that she worked for the company because she needed the money, and only inquired about the opportunity after being turned down for employment by many other companies. She further testified she would have been willing to continue working for the company despite the long distance from her home.

In its appeal to this board, the employer argues it is inherently improbable that the claimant would have been hired except for her father's position in the company, particularly when her father anticipated the usual summer slump in sales orders and had, accordingly, been operating without additional help until her employment inquiry. It contends the employment was not bona fide because, while the claimant worked only four weeks, her father's own testimony was to the effect that the seasonal slump did not occur until three months later.

Our reading of the witness' testimony, however, does not lead us to this conclusion. What he first stated was that the claimant was laid off in July 1966 because of a diminution in sales orders. Then he stated that, at the time of the hearing in October, the company was experiencing a seasonal fluctuation which allowed him to dispense with the services of half his staff.

It seems clear to us the witness' line of testimony was simply describing a natural sequence of events in the company's annual business cycle, nothing more.

REASONS FOR DECISION

Section 1260(a) of the Unemployment Insurance Code provides, in pertinent part, that an individual disqualified under section 1256 of the code is ineligible to receive unemployment compensation benefits until she has performed services in bona fide employment for which she has received remuneration equal to or in excess of five times her weekly benefit amount.

In Benefit Decision No. 6798, we construed the meaning of the phrase "bona fide employment" as it appears in section 1260(a) of the code. In so doing, we gave our especial attention and unqualified assent to the criteria established in Benefit Decision No. 6775 for determining whether a claimant had secured the bona fide employment required to terminate a period of ineligibility imposed under section 1264 of the code:

". . . consideration should be given, among other things, to the character of the employment, how it was obtained, the wage paid, whether it was in the regular course of the employer's business and the customary occupation of the claimant, the wage last received by the claimant in his customary occupation, and whether the claimant is willing to accept future employment of the same kind and under the same conditions. Evaluation of these factors will tend to show the good faith of the claimant in accepting the employment and will assist the trier of the facts in determining whether there has been a genuine return to the labor market."

* * *

". . . Only when evaluation of these . . . factors show that the claimant genuinely intended to return to the labor market may we conclude that the employment was bona fide."

We decided that the same factors should be considered when determining whether employment is "bona fide" within the meaning of section 1260(a), so as to purge the disqualification imposed under section 1256 of the code.

In the case presently before us, it is clear that the services performed by the claimant for the baby pants company were similar to those performed by her for other employers prior to her employment for the employer herein, and were essentially the same duties previously performed by her for the company in years past. She was able, without additional training and the costs incident thereto, to assume the responsibilities of her position. The company needed her services again, beginning June 6, 1966, because of a sudden increase in sales orders, just as it had found it necessary to hire the other employee during the short rush period six months earlier. Its other two office employees were unable to work full time during this period of need.

We have similarly examined the reasons disclosed for paying the claimant the approximate hourly remuneration which she received from the employer herein, and we conclude that the wage was reasonably suited to the state of her competence at that time. The claimant's uncontroverted testimony is that she accepted the job with expectation of its permanence. We note in this connection that it did not terminate once she had satisfied the monetary test for purging her disqualification, but extended beyond and until her services were no longer needed.

The employers' argument, however, necessitates a further review of the evidence with respect to the acquisition, as well as termination, of this employment.

The record does indeed reveal the job was obtained one day following the claimant's notice of disqualification. However, we attach no particular significance to this fact. The claimant testified to the numerous contacts made by her in an attempt to locate another job. It was only from desperation that she contacted the one person whom she felt could assist her earn the money which she and her family needed for living expenses.

We are mindful, of course, that close relatives may enter into a purported employment relationship for collusive purposes. A closer scrutiny of the evidence must perforce be made before determining the relationship to be bona fide.

But the existence of a blood relationship alone is only one element to be considered among the several above-enumerated and others not enumerated but implied; it is not indispensable to a finding of collusion; nor, on the other hand, ipso facto evidence for such a finding. Standing alone, it does not create a presumption of collusion, nor even raise an inference of such a "secret cooperation for a fraudulent purpose." (Webster's Third New International Dictionary, 1963).

Therefore, in determining the bona fides of employment under section 1260(a) of the code, we will continue to weigh the evidentiary facts in accordance with the general criteria enunciated in Benefit Decision No. 6798, and will include in our evaluation those additional elements, as herein found, which tend to prove or disprove a genuine return or attachment to the labor market.

In the present case, we conclude that the claimant has performed services in bona fide employment for which she received remuneration in excess of five times her weekly benefit amount, and is entitled to benefits on her reopened claim subsequent to the termination of such employment.

DECISION

The decision of the referee is affirmed. The claimant is eligible for benefits under section 1260(a) of the code and benefits are payable, provided she is otherwise eligible.

Sacramento, California, March 1, 1967.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

GERALD F. MAHER, Chairman

LOWELL NELSON

NORMAN J. GATZERT

Pursuant to section 409 of the Unemployment Insurance Code, the above Benefit Decision No. 6809 is hereby designated as Precedent Decision No. P-B-272.

Sacramento, California, March 16, 1976.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

DON BLEWETT, Chairperson

MARILYN H. GRACE

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