

BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

In the Matter of:

BARBARA B. ODBERT
(Claimant)

GARBER INSURANCE AGENCY
(Employer)

PRECEDENT
BENEFIT DECISION
No. P-B-102
Case No. 70-154

The employer appealed from Referee's Decision No. S-32411 which held that the claimant was not disqualified for benefits under section 1256 of the Unemployment Insurance Code and that the employer's account is not relieved of charges under section 1032 of the code.

STATEMENT OF FACTS

The claimant was employed for about 11 months as an office worker for the employer and last worked on June 24, 1969. The employment terminated on June 26, 1969.

During the period of employment, the claimant was absent on various occasions due to domestic problems and personal illness. Her absenteeism was discussed with her by the employer. On or about June 9, 1969 the claimant submitted a resignation to the employer effective when a replacement was obtained. This resignation was due to the claimant's dissatisfaction with the job. There were no particular complaints given to the employer at the time of submitting the resignation.

The claimant told the Department and testified at the hearing that there were numerous items which caused her to be dissatisfied with the work. These included the amount of work required, the handling of dissatisfied customers when the employer was available for this action, poor office equipment and conditions and discourtesy shown by the employer in the conduct of the office.

The claimant was absent from work due to illness a portion of June 24 and all of June 25, 1969. She telephoned the employer on June 26, 1969 that she would be able to return to work on the following day. At that time the claimant was informed that she need not return to work as the employer would handle the claimant's work. The employer testified that a replacement had been hired for the claimant and this replacement began work on July 2, 1969.

The claimant contended in effect that she was terminated by the employer prior to the effective date set for her resignation. The employer contended in effect that the claimant voluntarily quit work as she had previously submitted a resignation and a replacement was obtained.

REASONS FOR DECISION

A discharge occurs where the employer is the moving party in terminating the employment and a voluntary leaving of work occurs where the employee is the moving party in terminating the employment.

In the present case the claimant gave the employer notice that she was quitting when the employer obtained a replacement for her. The replacement of the claimant occurred on June 26, 1969 when the employer decided to absorb the claimant's duties. The employer at that time became the replacement. The claimant was, therefore, the moving party in this case by voluntarily leaving her work.

There is good cause for the voluntary leaving of work where the facts disclose a real, substantial and compelling reason of such nature as would cause a reasonable person genuinely desirous of retaining employment to take similar action. (Appeals Board Decision No. P-B-27)

The claimant left her work because she was dissatisfied with the amount of work required, the handling of dissatisfied customers, the poor office equipment and the discourtesy shown by the employer.

A leaving of work may be with good cause where the production requirements of the job become unreasonable or too difficult. Also, a leaving of work can be with good cause where working conditions become intolerable. However, we cannot find from the record before us that the production requirements of the job became unreasonable or that working conditions

became intolerable. The claimant, therefore, left her work without good cause.

DECISION

The decision of the referee is reversed. The claimant left her most recent work without good cause and the employer's reserve account is relieved of benefit charges under section 1032 of the code.

Sacramento, California, February 25, 1971.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

ROBERT W. SIGG, Chairman

CLAUDE MINARD

JOHN B. WEISS

DISSENTING - Written Opinion Attached

LOWELL NELSON

DON BLEWETT

DISSENTING OPINION

We do not agree with the conclusion reached by our colleagues.

In our judgment, the conclusion reached by the referee is legally sound. In prematurely laying off the claimant, the employer turned what would have been a voluntary quit on July 2, 1969 into a discharge on June 26, 1969. There being no evidence of misconduct on the part of the claimant, we would accordingly conclude that the discharge was for reasons other than misconduct.

In our opinion the facts of the present case are on "all fours" with those in Appeals Board Decision No. P-B-39. The claimants in both cases were not permitted to work to the effective date of their resignations and the employers did not pay the claimants their wages through those dates.

In Appeals Board Decision No. P-B-39, we held that the claimant was not disqualified for benefits under section 1256 of the code under such circumstances. In our judgment the same conclusion should be reached in the instant case.

LOWELL NELSON

DON BLEWETT