

BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

In the Matter of:

FRANK WILLIAM ANDRES
(Claimant-Appellant)

PRECEDENT
BENEFIT DECISION
No. P-B-11
Case No. 67-5473

CALIFORNIA PANCAKES, INC.
(Employer-Respondent)

The claimant appealed from Referee's Decision No. OAK-4395 which held that, although the claimant was not subject to disqualification for unemployment benefits under the provisions of section 1257(b) of the Unemployment Insurance Code, he was subject to disqualification under section 1256 of the code and the employer's reserve account was relieved of benefit charges under section 1032 of the code on the ground that the claimant voluntarily left his most recent work without good cause.

STATEMENT OF FACTS

The claimant has been employed by the above identified employer since 1963 as a busboy while attending college in Northern California. During the various school vacations and holiday periods when his classes were not in session, the claimant has returned to Anaheim and worked for this employer until such a time as school again convened. He last worked during the Christmas vacation of 1966. This period of employment ended on January 1, 1967. When he left work on January 1, he informed the employer that he probably would not work during the 1967 Easter vacation period because of school commitments. Subsequent thereto and shortly before the Easter vacation period, the employer received a letter from the claimant again stating that he would not work during the Easter vacation period but that he would return to work during the summer vacation period of 1967.

The employer generally increases its staff of employees during the summertime but did not hire anyone to take the claimant's place because the employer assumed the claimant would return to work during the summer vacation.

The record shows that since 1963, work has always been available for the claimant as a busboy during the holiday and vacation periods, and work was available during the summer vacation period of 1967. However, the claimant did not return to work as promised but rather filed a claim for unemployment benefits in the Richmond office of the Department of Employment effective June 18, 1967. The employer, within the time period provided by law, responded to the notice of claim filed sent to it by the department, indicating that the claimant was expected to return to work in June 1967 and had not been discharged.

The claimant testified that he did not return to work for the employer in June because he desired to remain in Northern California and obtain work. He admitted that he could have returned to work and lived with his parents in Anaheim as had been his custom during his prior periods of employment.

REASONS FOR DECISION

Section 1256 of the Unemployment Insurance Code provides for the disqualification of a claimant, and sections 1030 and 1032 of the code provide that an employer's reserve account may be relieved of benefit charges if it is found that the claimant voluntarily left his most recent work without good cause or was discharged for misconduct connected with his most recent work.

In this case the claimant has, for the last four years, followed a pattern of attending college and working for the employer as a busboy during the holiday and vacation periods when his classes were not in session. This pattern is different than that generally followed by the average college student who during periods of holiday and vacation may work for a variety of different employers at a variety of different jobs. Here the claimant has worked for one employer at one job for four years. This situation is also different from that of certain maritime workers whose period of employment is limited by the terms of the contract existing between the individuals' union and the employer (Benefit Decision No. 6613).

A careful review of the pattern followed by the claimant leads us to the conclusion that an employer-employee relationship has existed between the claimant and the employer for the four-year period the claimant has worked for the employer. During those periods when the claimant has been attending

college, he has, in effect, been on an approved leave of absence. In June 1967 he chose not to return at the end of his leave of absence but rather to file a claim for unemployment benefits.

In Benefit Decision No. 5279, the claimant was granted a leave of absence so that she could return to the home of her mother who was seriously ill. When her mother recovered sufficiently that she no longer required the presence or care of the claimant, the claimant chose not to return to work but to file a claim for benefits. We there held that when the claimant did this she abandoned any intention of returning to her former employer and severed the employer-employee relationship which existed by virtue of the authorized leave of absence. We concluded there that the claimant voluntarily left her work. Applying this reasoning to the facts in this case, we conclude that when the claimant failed to return to work and chose to file his claim for benefits, he severed the employer-employee relationship which had existed between him and his employer and, in effect, voluntarily left his most recent work.

It is necessary to decide if his reasons for leaving work were of such a compelling nature as to constitute good cause (Benefit Decision No. 6046). The only reason presented by the claimant for his leaving work was his personal desire to remain in Northern California and attempt to find work there. He presented no compelling reasons for this desire, and we conclude that his actions were not those of a reasonable person genuinely desirous of retaining employment (Benefit Decision No. 5686). We have consistently held that leaving work to look for other work does not constitute good cause. We conclude in this matter that the claimant voluntarily left his most recent work without good cause (Benefit Decision No. 3413 and Ruling Decision No. 1).

DECISION

The decision of the referee is affirmed. The claimant is subject to disqualification under section 1256 of the code and the employer's reserve account is relieved of benefit charges under section 1032 of the code.

Sacramento, California, April 12, 1963.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

ROBERT W. SIGG, Chairman

GERALD F. MAHER

CLAUDE MINARD

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