

BEFORE THE  
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

In the Matter of:

DENNIS R. WRIGHT  
(Claimant)

PRECEDENT  
BENEFIT DECISION  
No. P-B-116  
Case No. 71-1694

UNITED STATES  
DEPARTMENT OF AGRICULTURE  
MANAGEMENT DATA SERVICE  
(Employer)

The claimant appealed from Referee's Decision No. BK-UCFE-5651 which held that the claimant was disqualified for benefits under section 1256 of the Unemployment Insurance Code.

STATEMENT OF FACTS

The claimant was last employed by the Department of Agriculture on a special 180-day assignment which was to expire in November 1970. Because of working hours in addition to the normal eight-hour, five-day, 40-hour workweek, the 180-day period expired on October 28, 1970. This was also the claimant's last day of work. On or before October 28, 1970 the claimant was offered an additional 40 days' work at the rate of pay he had been receiving, namely, \$2.50 an hour. It appears that the claimant refused this offer on the last day he worked since he later gave the Department as a reason for not accepting the offer that the "180 day temporary employment was terminated." Another reason given by the claimant for not accepting the offer was that the wage offered for the additional work was inadequate.

The claimant had no firm prospect of any other employment at the time the original appointment expired on October 28, 1970. He did not realize that the labor market was as unfavorable as he found it to be. If he had realized the condition of the labor market he would have accepted the additional 40-day appointment.

In reply to a request for wage and separation information the federal agency submitted the following findings with respect to the reason for separation:

"Resignation - Not enough pay."

The claimant was receiving the standard salary of a federal employee in the GS-3 classification.

### REASONS FOR DECISION

Section 1256 of the Unemployment Insurance Code provides that an individual is disqualified for benefits if he left his most recent work voluntarily without good cause or if he was discharged for misconduct connected with his most recent work.

Chapter 85 of Title 5 of the United States Code and supplementing regulations provide for unemployment benefits to federal employees. Entitlement to benefit payments is required to be determined under the provisions of the unemployment insurance law of the state to which wage credits have been assigned, which in this case is California.

The federal act further provides that the reasons for the termination of a claimant's employment, as found and reported by the federal agency, are binding on the state agency. Thus, in determining whether a claimant is entitled to benefits under section 1256 of the code we must accept the federal findings concerning the reasons for termination of the employment with the federal agency.

In Benefit Decision No. 6741 the board held that where a teacher failed to renew her teaching contract for another year the leaving of work which occurred because of this was involuntary. The refusal to renew the contract was a refusal of a job offer. The basis for this holding was Douglas Aircraft Co. v. California Unemployment Insurance Appeals Board (1960), 180 C.A. 2d 636, 4 Cal. Rptr. 723, which held that a leaving of work under a pregnancy leave pursuant to the terms of a collective bargaining agreement was not a "voluntary" leaving of work under section 1256 of the code.

We do not believe that the Douglas Aircraft Co. case is a valid authority for the factual situations involved in Benefit Decision No. 6741 and the present

case. A leave of absence situation is not presented in Benefit Decision No. 6741 or the instant case. What we have instead is an offer of continued "suitable employment" (section 1258 of the code) prior to the expiration of a term of employment. A failure to accept such an offer is a voluntary leaving of work, and benefit entitlement is to be determined on the basis of whether or not good cause exists for the refusal of continued employment. In so concluding we disaffirm the holding in Benefit Decision No. 6741.

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 has given two reasons for not accepting the additional 40 days of employment; namely, that he had completed the 180-day special assignment and that the salary offered for the additional work was inadequate.

The mere running of the 180-day period does not form the basis for a finding of good cause or for finding that section 1256 of the code is inapplicable where an offer of continued suitable employment has been made prior to the expiration of the term.

Dissatisfaction with a wage which is not substantially below the prevailing rate of pay does not constitute good cause for leaving work.

The claimant was making the standard salary of a federal employee working in the GS-3 classification. He was therefore not working below the prevailing wage rate for the type of work he was doing. The claimant therefore did not have good cause to leave his work because of the rate of pay that he was receiving.

No other reasons being present for the failure to accept the offer of continued suitable employment, we must conclude that the claimant did not have good cause to leave work.

DECISION

The decision of the referee is affirmed. The claimant is disqualified for benefits under section 1256 of the code.

Sacramento, California, October 13, 1971.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

CLAUDE MINARD

JOHN B. WEISS

CARL A. BRITSCHGI

CONCURRING - Written Opinion Attached

ROBERT W. SIGG, Chairman

DISSENTING - Written Opinion Attached

DON BLEWETT

CONCURRING OPINION

I concur with the result of the majority opinion in this case. However, I would go further and clarify the distinctions between section 1256 and section 1257 of the code.

In my opinion section 1257 of the code, as a whole, does not apply to employed individuals. In fact, I would also hold that it does not apply to an unemployed person until after he has applied for unemployment insurance benefits.

Section 1256 of the code covers the claimant's last work and sets forth the claimant's rights or detriments with respect to the termination of that work.

Section 1257 comes immediately thereafter. It was obviously meant to cover matters different from those in section 1256. It reads as follows:

"1257. An individual is also disqualified for unemployment compensation benefits if:

"(a) He wilfully made a false statement or representation or wilfully failed to report a material fact to obtain any unemployment compensation benefits under this division.

"(b) He, without good cause, refused to accept suitable employment when offered to him, or failed to apply for suitable employment when notified by a public employment office."

It is significant that the first sentence of section 1257 contains the words "also disqualified" which appears to indicate that the section does not apply to work termination issues but to other matters.

Section 1257(a) pertains to false statements or wilful nondisclosure of information while attempting to obtain unemployment insurance benefits. It is impossible for that part of the statute to apply to any situation or incident prior to unemployment and a claim being filed.

Section 1257(b) refers to offers of work and, in the alternative, to notices by the Department to apply for work. This section, it seems to me, was not intended to apply to offers of work or referrals to work of an individual while still employed. It certainly would not apply to Department referrals because no referrals would be made until after an unemployed person had registered for work. My belief that it also does not apply to offers of suitable work, made to an employed person, is fortified by the provisions of section 1258 of the code. That section provides that "length of unemployment" should be considered in determining whether the work offered in connection with section 1257(b) is suitable. Section 1260(b) provides that any disqualification imposed under section 1257(b) shall begin in a week in which the claimant is registered for work with the Department. That provision would indicate that unemployment and the filing of a claim are both necessary prerequisites to any act which may result in a disqualification under section 1257(b).

I am unimpressed by the reference in the dissenting opinion to the U. S. Department of Labor Letter No. 984. In the first place, a Department of Labor letter has never been considered as a precedent in unemployment insurance matters; and secondly, the letter seems to refer to new work by a different employer, or offers of reemployment with different conditions by the old employer. The letter does not refer to, mention, nor discuss a situation where continued work for the same employer performing the same duties at the same wage is available to a claimant but he chooses not to continue working.

The claimant in the case before us was employed and was offered continuing employment on the same basis for forty more days.

The claimant, of course, did not have to accept continued employment any more than he had to work 180 days under his original contract of employment. However, we are not deciding whether the claimant had to work or not but whether the claimant is eligible for unemployment benefits, and that issue is determined by the circumstances surrounding his termination of work.

It appears to me that he left his work without good cause. Therefore he is disqualified for benefits under the express provisions of section 1256 of the code.

ROBERT W. SIGG

DISSENTING OPINION

I concede that there is no real conflict in the evidence insofar as what the claimant did, so that the issue before us would seem to be simply a question of applying the law to the admitted facts.

First, I would point out that I disagree with my colleagues in their conclusion to disaffirm our previous holding in Benefit Decision No. 6741. In the cited case the claimant was a schoolteacher working for the federal government on an overseas assignment. She had a contract each school year running from August through June. In December 1962 she was offered an opportunity to renew her contract for the 1963-1964 school year. She refused this offer because she wanted to return to the states. Employment in the states had not been assured her but she was confident that she could obtain employment in California as a teacher. The issue before us in that case was whether the claimant had left her work voluntarily under section 1256 of the code. We held that she had not quit her job but instead her employment had expired at the end of the 1962-1963 contract. We noted that her refusal of 1963-1964 was a refusal of new work, and since that issue was not before us, we did not treat it. It is my opinion that had we considered the issue under section 1257(b) of the code, we would have held that the claimant's refusal was with good cause because of the extensive time lag between the expiration of the contract and the beginning date of the new contract.

It is also my opinion that the issue in the matter now before us is whether the claimant refused to accept an offer of suitable work rather than the issue of the claimant's eligibility for benefits under section 1256 of the code.

This view is fortified by the U. S. Department of Labor, Unemployment Insurance Program Letter No. 984, dated September 20, 1968, which reads in pertinent as follows:

"Interpretation of 'New Work'

"For the purpose of applying the prevailing conditions-of-work standard in section 3304(a)(5)(B) of the Federal Unemployment Tax Act, an offer of new work includes (1) an offer of work to an unemployed individual by an employer with

whom he has never had a contract of employment; (2) an offer of re-employment to an unemployed individual by his last (or any other) employer with whom he does not have a contract of employment at the time the offer is made; and (3) an offer by an individual's present employer of (a) different duties from those he has agreed to perform in his existing contract of employment, or (b) different terms or conditions of employment from those in his existing contract.

"This definition makes the determination of whether an offer is of 'new work' depend on whether the offer is of a new contract of employment. This we believe is sound.

"All work is performed under a contract of employment between a worker and his employer. The contract describes the duties the parties have agreed the worker is to perform, and the terms and conditions under which the worker is to perform them. If the duties, terms, or conditions of the work offered by an employer are covered by an existing contract between him and the worker, the offer is not of new work. On the other hand, if the duties, terms, or conditions of the work offered by an employer are not covered by an existing contract between him and the worker, the offer is of a new contract of employment and is, therefore, new work.

"It is not difficult to agree that 'new work' clearly includes an offer of work to an unemployed individual by an employer with whom he has never had a contract of employment; that is, an employer for whom he has never worked before. If the worker has never had a contract of employment with the offering employer, the fact-finding and the application of the test are simple.

"But if the phrase 'new work' were limited to work with an employer for whom the individual has never worked, it is plain that the purpose of section 3304(a)(5)(B) would be largely nullified. It can make no difference, insofar as that purpose is concerned, that the unemployed worker is offered re-employment by his former employer rather than employment by one in whose employ he has never been. It can make no difference either in the application of the test. The question is whether the offer of re-employment is an offer of a new contract of employment. If the worker quit his job with the employer, or was discharged or laid off indefinitely, the existing contract of employment was thereby terminated. An indefinite layoff, that is, a layoff for an indefinite period with no fixed or determined

date of recall, is the equivalent of a discharge. The existence of a seniority right to recall does not continue the contract of employment beyond the date of layoff. Such a seniority right is the worker's right; it does not obligate the worker to accept the recall and does not require the employer to recall the worker. It only requires the employer to offer work to the holder of the right, before offering it to individuals with less seniority.

"Any offer made after the termination is of a new contract of employment, whether the duties offered to the worker are the same or different from those he had performed under his prior contract, or are under the same or different terms or conditions from those which governed his last employment. There is not, however, a termination of the existing contract when the worker is given a vacation, with or without pay, or a short-term layoff for a definite period. When the job offer is from an employer for whom the individual had previously worked, inquiry must be made as to whether the contract with the employer was terminated, and if so, how?

"Although it has been more difficult for some to see, the situation is no different when an individual's present employer tells him that he must either accept a transfer to other duties or a change in the terms and conditions of his employment, or lose his job. Applying the test, it is clear that an attempted change in the duties, terms, or conditions of the work, not authorized by the existing employment contract, is in effect a termination of the existing contract and the offer of a new contract. Not only is this a sound application of legal principles, but it is thoroughly in harmony with the underlying purpose of the prevailing conditions of work provision. That purpose would be largely frustrated if benefits were denied for unemployment resulting from the worker's refusal to submit to a change in working conditions which would cause these conditions to be substantially less favorable to a claimant than those prevailing for similar work in the locality. The denial of benefits in such circumstances would tend to depress wages and working conditions just as much as a denial of benefits for a refusal by an unemployed worker to accept work under substandard conditions. If a proposed change in the duties, terms, or conditions of work not authorized by the existing employment contract were not 'new work', prevailing wage and conditions-of-work standard could be substantially impaired by employers who hired workers at prevailing wages and conditions, and thereafter reduced the wages or changed the conditions, thereby depriving workers of the protection intended to be given

them by the prevailing wage and conditions-of-work standard. The terms of the existing contract, so important in this situation, are questions of fact to be ascertained as are other questions of fact."

I would further point out that I disagree with the majority opinion on another ground.

In Benefit Decision No. 6758 we held that where all conditions of employment are known at the time of hire, a subsequent change of view and dissatisfaction with the terms of the hiring agreement on the part of the employee would not establish a compelling reason for leaving work. Our conclusion in that case was predicated upon the fact that the claimant was bound by the terms of a valid agreement and a subsequent dissatisfaction with the agreement did not establish good cause to breach it. I think it only elementary justice that when an employer enters into a contract of hire, a subsequent change of the terms of the contract on the part of the employer does not impose a duty upon the employee to accept such a change. The law, with respect to a breach of contract, is a two-edged sword and the employing unit may not have the best of both issues.

It is not difficult to conceive many situations wherein an employee would enter into an unfavorable contract of hire for a limited period because of financial stress. To grant an employer, in such a case, the right to extend the term of the contract with impunity and to the detriment of the employee would obviously be unfair.

DON BLEWETT