BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

In the Matter of:

SHERRY M. PRATT
(Claimant)
SEARS, ROEBUCK & COMPANY
(Employer)

PRECEDENT
BENEFIT DECISION
No. P-B-131
Case No. 70-4368

The employer appealed from that portion of Referee's Decision No. OAK-1067 which held the claimant not ineligible for unemployment benefits under section 1264 of the Unemployment Insurance Code on the ground that her domestic duties did not cause her to resign from her employment. The referee's decision also held that the claimant had good cause for leaving her most recent work within the meaning of section 1256 of the code, that she was ineligible for benefits under section 1253(c) of the code, and that the employer's reserve account is not relieved of benefit charges under section 1032 of the code.

STATEMENT OF FACTS

The claimant was last employed as a cafeteria helper by the above identified employer from December 23, 1968 until April 21, 1970.

The claimant was pregnant and was experiencing pain. Her doctor advised her to leave the type of work she was doing because in his opinion it was detrimental to her well-being and might result in her miscarrying. The claimant requested another type of work which would not require continual standing but none was available. She therefore requested and was granted a pregnancy leave of absence which was to expire on October 14, 1970. The leave of absence which the claimant obtained guaranteed reinstatement in her job or a similar one at the termination of the leave.

Subsequent to leaving employment the claimant filed a new claim for benefits effective May 10, 1970. The Department held the claimant left her employment voluntarily and with good cause but denied benefits on the ground that the claimant was not able to work nor available for work. This finding was based on the fact that the claimant had no work experience other

than that of a waitress or a cafeteria helper, which type of work her doctor precluded her from performing.

It is the employer's contention that the claimant should be held ineligible under section 1264 of the code. The employer points out that had the claimant been physically able to continue work, employment would have been available to her.

REASONS FOR DECISION

Prior to filing her claim for benefits, this claimant requested and received a pregnancy leave of absence. Under the terms of this leave of absence the claimant is guaranteed reinstatement to her job or to a similar job at the termination of the leave. Thus, although the claimant left her work, the employer-employee relationship has not been terminated. It is necessary then to decide what effect this fact has upon the claimant's unemployment.

The California Court of Appeal in Douglas Aircraft v. C.U.I.A.B. (1960), 180 C.A. 2d 636, 4 Cal. Rptr. 723, considered a similar situation. In that case the claimant received a pregnancy leave of absence under the terms of a union contract requiring under certain conditions that the employer grant such a leave. She then filed a claim for benefits. The Court stated in that case:

> "It is preliminarily necessary to consider appellants' general contention that an employee cannot be deemed to have 'left his most recent work' and to be disqualified for unemployment compensation benefits, unless the employment relationship has been terminated; and that, since the employee herein was given a leave of absence, the employment relationship was not terminated.
>
> "The import of said contention is that, although an employee on leave of absence may not have performed services for which wages are payable and is therefore 'unemployed' within the meaning of section 1252 of the Unemployment Insurance Code, such employee on leave must nonetheless be held to be simultaneously sufficiently 'employed' within the meaning of sections 1256 and 1032 of said code so as not to be disqualified for unemployment compensation benefits and so as to deprive the employer of the right to a ruling as to the employee's eligibility for benefits.

"We are in accord with the trial court's opinion as expressed in its decision that said contention is untenable. . . ."

Thus, the court held in effect that so long as a claimant meets the criteria set forth in section 1252 of the Unemployment Insurance Code that claimant is unemployed and entitled to file a claim for benefits; the employer is entitled to protest such claim and receive a notice of determination and ruling as to the cause of the termination of the claimant's employment, regardless of whether an "employer-employee relationship" exists.

In the instant case the claimant, after leaving this employer's employ on a pregnancy leave of absence, performed no services and received no wages. She was therefore unemployed within the meaning of section 1252 of the code despite the fact that the employer-employee relationship had not been severed.

The situation in the instant case is somewhat different from that presented to the court in the Douglas case. As pointed out in the Douglas case, the employer was required to grant the claimant a leave of absence under the terms of the union contract, and the court held that the claimant was involuntarily unemployed. In the instant matter the employer was not required to grant the leave of absence but did so at the request of the claimant. Thus, the claimant voluntarily left her work and the provisions of sections 1256, 1030 and 1032 of the code are applicable. These sections provide for the disqualification of a claimant if it is found that the claimant voluntarily left the most recent work without good cause, and so finding, the employer's reserve account may be relieved of benefit charges.

Although continued work was available to the claimant at the time she left her work, the facts show that her physician had recommended that she no longer perform work as a waitress because of the possibility of this type of work causing her to miscarry. The claimant's doctor did not preclude her from doing all types of work. He recommended that she attempt to find a "sit-down job." When the employer was unable to furnish this type of work to the claimant, the claimant requested and was granted her leave of absence.

Since the work the claimant was doing appears to have been detrimental to her health, we conclude that she voluntarily left her most recent work with good cause.

As pointed out above, the employer contends that the claimant should be held ineligible under section 1264 of the code. This section of the code reads as follows:

> "Notwithstanding any other provision of this division, an employee who leaves his or her employment to be married or to accompany his or her spouse to or join her or him at a place from which it is impractical to commute to such employment or whose marital or domestic duties cause him or her to resign from his or her employment shall not be eligible for unemployment insurance benefits for the duration of the ensuing period of unemployment and until he or she has secured bona fide employment subsequent to the date of such voluntary leaving . . . . The provisions of this section shall not be applicable if the individual at the time of such voluntary leaving was and at the time of filing a claim for benefits is the sole or major support of his or her family."

The question presented here is whether the claimant's pregnancy which caused her to leave her employment may be construed as "marital or domestic duties" within the meaning of section 1264 of the code.

Section 1264-1, Title 22, California Administrative Code, provides in pertinent part as follows:

> "(a) 'Marital duties' include all those duties and responsibilities customarily associated with the married status.
>
> "(b) 'Domestic duties' include those duties which relate to the health, care, or welfare of the family or household and other duties reasonably required for the comfort and convenience of the family or household."

A normal pregnancy is a natural condition leading to motherhood. The status of motherhood necessarily exists in connection with the household or family and is therefore a status which is clearly "domestic." Thus, since the claimant left her work because of a domestic duty, she is ineligible for benefits unless it is held that she did not "resign" from her employment. (Appeals Board Decision No. P-B-94)

The wording of section 1264 of the code is replete with ambiguity and we believe that the intent of the entire section should be reexamined. The legislature has used three different terms with respect to the claimant's method of separation from employment:

1. "who leaves his or her employment to be married"

2. "whose marital or domestic duties cause him or her to resign from his or her employment"

3. "The provisions of this section shall not be applicable if the individual at the time of such voluntary leaving"

In our opinion it is only reasonable to conclude that the legislature intended the above three phrases to be synonymous and that both of the first two phrases should be categorized as voluntary leavings of work. This conclusion is based on our belief that the legislature intended to deny benefits to those individuals, not the sole or major support of the family, whose unemployment was caused by any of the reasons enumerated in section 1264 of the code.

Thus, although the claimant in this case did not "resign" or give up her employment for all time, she did so for the period of her requested leave. Her unemployment was due to her pregnancy which we have concluded is a domestic duty. Hence, she is ineligible for benefits unless she was the sole or major support of the family both at the time of leaving work and at the time of filing the claim for benefits. However, on the basis of the record as it now stands, we cannot decide this issue and therefore the matter must be returned to the Department for a determination in regard to this question. The reasoning applied in Benefit Decision No. 6610 and others holding a claimant not subject to the provisions of section 1264 if the claimant did not completely sever the employment relationship is disaffirmed.

Finally, the issue of the claimant's eligibility for benefits under section 1253(c) of the code must be resolved. This code section provides that an unemployed individual is eligible for benefits in any week in which the individual is able to work and available for work. Since this claimant is unable, due to her physical condition, to perform the duties of her regular employment and since she has experience in no other occupation, it must be held that the claimant is neither able to work nor available for work.

DECISION

The decision of the referee is modified. The claimant is not subject to disqualification under section 1256 of the code and the employer's reserve account is not relieved of benefit charges under section 1032 of the code. The claimant is ineligible for benefits under section 1253(c) of the code. The matter of the sole or major support of the claimant's family is returned to the Department for necessary action.

Sacramento, California, February 24, 1972

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

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