

BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

In the Matter of:

LLOYD H. LONGMAN
(Claimant)

HOLLYWOOD ROOSEVELT HOTEL
(Employer)

PRECEDENT
BENEFIT DECISION
No. P-B-143
Case No. 72-931

The claimant appealed from Referee's Decision No. BK-14059 which held that the claimant was disqualified for benefits under section 1256 of the Unemployment Insurance Code and that the employer's reserve account was relieved of benefit charges under section 1032 of the code.

STATEMENT OF FACTS

The claimant worked for the employer for approximately three years. He was classified as a storeroom manager. His salary was \$600 per month at the time he was discharged on November 15, 1971.

One of the claimant's duties was to open the storeroom each morning at 7 a.m. so that supplies could be obtained for various needs of the hotel. During the last year of his employment the claimant customarily reported for work between ten and twenty minutes after seven. On October 14, 1971 the claimant was warned that if his tardiness continued he would be discharged. He continued reporting for work a few minutes after 7 a.m. On one occasion he did not report until 8:30 a.m.

On November 11, 1971 the claimant overslept and it was necessary for the employer to send someone to the claimant's home to awaken him. This occurred about 10:45 a.m. and the claimant reported in about 11:30 a.m. On November 15 the claimant reported for work at approximately 7:10 a.m. After evaluation of the claimant's record he was discharged on that day for repeated tardiness.

The claimant was not required to punch a time clock. Since he was not an hourly paid employee, he considered that he had status as an executive. Because of this status he did not regard himself as being late on those days when he reported for work between ten and twenty minutes after seven. He considered that he had no regularly assigned hours, although he conceded that he was supposed to be at work "around 7 a.m."

REASONS FOR DECISION

Section 1256 of the California Unemployment Insurance Code provides that an individual is disqualified for benefits and sections 1030 and 1032 of the code provide that the employer's reserve account may be relieved of benefit charges if the claimant has been discharged for misconduct connected with his most recent work.

In Appeals Board Decision No. P-B-3 we found that the four elements necessary to establish misconduct are:

1. a material duty owed by the claimant to the employer under the contract of employment;
2. a substantial breach of that duty;
3. a breach which is a wilful or wanton disregard of that duty; and
4. a disregard of the employer's interest which tends to injure the employer.

The claimant in this matter has maintained that he had no fixed time for reporting for work. The weight of the evidence is to the contrary. One of his duties was to open the storeroom at 7 a.m. so that supplies could be obtained. When he was warned on October 14 that his continued tardiness would result in his discharge, he could not have entertained any reasonable doubt that he was expected to be at work at 7 a.m. Nevertheless, he continued to report from ten to twenty minutes late and on two occasions was late in excess of an hour.

The claimant's pattern of reporting for work late without reasonable excuse was a course of conduct in substantial disregard of the employer's

interest. His resulting discharge was for misconduct connected with his most recent work.

DECISION

The decision of the referee is affirmed. Benefits are denied as provided in the referee's decision and the employer's account is relieved of charges.

Sacramento, California, July 18, 1972

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

ROBERT W. SIGG, Chairman

CLAUDE MINARD

JOHN B. WEISS

DON BLEWETT

CARL A. BRITSCHGI