BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE A PPEALS BOARD

In the Matter of:

DAGMAR CASTIGLIONE
(Claimant)

ALLSTATE INSURANCE COMPANY
(Employer)

PRECEDENT
BENEFIT DECISION
No. P-B-145
Case No. 72-4828

The employer appealed from Referee's Decision No. ONT-16437 which held that the claimant had been discharged for reasons other than misconduct and that the employer's reserve account was not relieved of charges under section 1032 of the Unemployment Insurance Code.

STATEMENT OF FACTS

The claimant last worked for the above employer as a secretary for approximately four years. Her last day of work was September 24, 1971.

The claimant's husband is an electrical engineer. His employer transferred him to Europe for a year. The claimant informed the employer that she wished to accompany her husband and requested a year's leave of absence. The employer informed the claimant that a year's leave of absence was not possible but a six-month leave of absence would be approved. The employer indicated that later on the leave could probably be extended for another six months. The claimant applied for the leave of absence and it was granted for the period September 25, 1971 to March 25, 1972.

The leave of absence permitted the claimant to retain her profit-sharing account in an inactive status and to continue her group life and hospital insurance. During the leave of absence the claimant had to pay the premiums for her group insurance. The leave of absence did not guarantee the claimant reemployment. The employer specifically told the claimant that she would be rehired at the expiration of the leave of absence only if a job opening existed at that time.

The claimant accompanied her husband to Europe. Her husband was receiving a salary of $16,000 per year at the time she left work. After about five months in Europe, the claimant's husband lost his job. Shortly thereafter the claimant and her husband returned to California.

The claimant contacted the employer approximately ten days before the expiration of her six-month leave of absence and asked about going back to work. The employer informed the claimant that they did not have a job opening for her and that her leave would be extended on a month-to-month basis. The claimant then filed for unemployment insurance benefits. At the time she filed her claim she and her husband were both unemployed and were living on their joint savings.

The claimant found a job with another employer and returned to work on April 5, 1972.

REASONS FOR DECISION

Section 1256 of the 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 left his most recent work voluntarily without good cause or he has been discharged for misconduct connected with his most recent work.

In Appeals Board Decision No. P-B-37, we held that in determining whether there has been a voluntary leaving or a discharge under section 1256 of the code, it must first be determined who was the moving party in the termination. If the claimant left employment while continued work was available, then the claimant is the moving party. On the other hand, if the employer refuses to permit an individual to continue working, although the individual is ready, willing and able to do so, then the employer is the moving party.

We must first determine whether the claimant or the employer was the moving party in terminating the work and on what date the work actually came to an end. The referee found that the claimant entered upon a leave of absence and that her work terminated when the employer did not return her to work at the expiration of the leave. We would agree with the referee's finding if the leave of absence was bona fide. However, in our opinion it was not. A bona fide leave of absence must contain an assurance by the employer that

upon termination of the period of absence the employee will be returned to the same or like work. Here the employer told the claimant before she left that she would be reemployed only if there was an opening for her. In other words, there was no guarantee of return to work. The so-called leave of absence was only a promise of preferential rehire. The purely potential nature of the claimant's rehire status is evident in her choice of language when she called the employer at the expiration of her leave. The claimant stated that she called to tell the employer she was back and asked if she could come in to discuss the possibility of a job. In summary, we hold that a bona fide leave of absence for unemployment insurance purposes must contain a guarantee of reemployment. Because the claimant did not enter upon such a bona fide leave of absence, we must conclude that she voluntarily left her work at the time she went to Europe. We must now determine whether or not she had good cause for doing so.

We held in Appeals Board Decisions Nos. P-B-26 and P-B-44 that there is good cause for leaving work to accompany one's husband to a distant locality where he has established residence, if the claimant's leaving was In compliance with her husband's wishes or demands. Obviously, that decision applies to this case. The claimant's husband was moving to Europe to work for a year. The claimant in compliance with her husband's wishes moved to Europe with him. Therefore, she left her work with good cause within the meaning of section 1256 of the code. However, under the provisions of section 1264 of the California Unemployment Insurance Code, even though good cause exists for voluntarily leaving the work, an individual is ineligible for benefits for the ensuing period of unemployment and until after subsequent bona fide employment if he or she leaves work to accompany a spouse to or join a spouse at a place from which it is impractical to commute to such work, unless the claimant was the major support of the family both at the time of leaving work and at the time of filing the claim for benefits. The evidence reveals that at the time the claimant left work her husband was employed and receiving a salary of $16,000 per year. Therefore, the claimant was not the major support of the family at the time she left work. It follows that she should have been found ineligible for benefits under section 1264 of the code.

DECISION

The decision of the referee is modified. The claimant is not disqualified for benefits under section 1256 of the code and the employer's reserve account is not relieved of benefit charges. The claimant should have been found ineligible for benefits under section 1264 of the code.

Sacramento, California, August 3, 1972

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