

BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

In the Matter of:

LETITIA A. CAMPBELL
(Claimant)

SEARS, ROEBUCK AND COMPANY
(Employer)

PRECEDENT
BENEFIT DECISION
No. P-B-150
Case No. 72-5662

The employer appealed from Referee's Decision No. LB-20388 which affirmed a determination issued by the Department holding the claimant no longer ineligible for benefits under section 1264 of the Unemployment Insurance Code on the ground that she had obtained bona fide employment which terminated an "ensuing period of unemployment."

STATEMENT OF FACTS

The claimant was employed by the above identified employer as a retail salesclerk in San Francisco. She left that employment to accompany her husband to Newport Beach, California which was not within commuting distance of the place in which she last worked for this employer. The claimant filed a claim for benefits effective May 7, 1972. Her weekly benefit amount was established at \$53. On May 26, 1972 the Santa Ana Unemployment Insurance Office issued a determination holding the claimant ineligible for benefits under section 1264 of the code commencing March 26, 1972.

After filing her claim the claimant obtained work as a retail salesclerk with a large department store in Los Angeles. She started work for this subsequent employer on Wednesday, May 10, 1972 at \$1.85 per hour, the prevailing scale. For the calendar week ended May 13, 1972, she earned \$51.62. During the calendar week ended May 20, 1972 she earned \$40.15. During the seven-day period May 10 to May 17, 1972 she earned a total of \$65.43. On June 8, 1972 the Santa Ana Unemployment Insurance Office issued a determination holding the claimant no longer ineligible for benefits under section 1264 of the code.

In its appeal to us the employer contends that, although the employment the claimant obtained subsequent to leaving this employer's

employ was "bona fide," it did not interrupt "the ensuing period of unemployment" because the claimant's earnings were made within parts of two calendar weeks and in order to interrupt the ensuing period of unemployment, a claimant must earn more than the weekly benefit amount within one calendar week.

REASONS FOR DECISION

In 1953 the California State Legislature amended the Unemployment Insurance Code by adding section 1309. This section read 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; provided that, notwithstanding any other provision of this division, this section shall apply only to claims for unemployment compensation benefits and shall not apply to claims for unemployment compensation disability benefits. 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."

In 1955 section 1309 was renumbered as section 1264 but there was no change in the wording.

A claimant who was found to be ineligible for benefits under this section of the code cannot again be found eligible until the "ensuing period of unemployment" ends and the claimant has obtained bona fide employment. In 1954 the Unemployment Insurance Appeals Board addressed itself to the first criteria in Benefit Decision No. 6144. In that case the claimant had been held ineligible under section 1309 of the code because she had left her work due to pregnancy. She obtained work on Wednesday, March 31, 1954 and continued working full time until Wednesday, April 7, 1954 when she was laid off. There the board held that since the claimant had worked full time during a

seven-day period following her resignation the "ensuing period of unemployment" had ended.

This "rule of thumb" was reconsidered and refined by the Appeals Board in 1959. In that year Benefit Decision No. 6584 was issued and therein the Appeals Board stated:

". . . We therefore conclude that, for the purposes of terminating the 'ensuing period of unemployment' as provided in code section 1264, it is sufficient that a claimant be employed full time during five days in any consecutive seven-day period; or earn more than his weekly benefit amount during such seven-day period. . . ."

Since this later decision was issued, the refined rule of thumb has been followed both by this Appeals Board and by the Department. The legislature, which presumably is aware of our administrative interpretations of the law, has not seen fit to amend the law. Thus, this rule of thumb has assumed the authority of law.

To accept the contention of the employer would necessitate our overturning this long-held administrative interpretation of section 1264 and we are hesitant to do so unless we are convinced that the new interpretation would be more equitable, logical and reasonable. To accept the contention of the employer that a claimant must work full time or earn more than his weekly benefit amount within one calendar week could lead to inequitable results between claimants. That is, a question of whether a claimant purges the period of ineligibility should not depend upon the day of the week that he started to work. Therefore we reiterate that "the ensuing period of unemployment" shall be ended when a claimant obtains bona fide employment and is employed full time during five days in any consecutive seven-day period or earns more than the weekly benefit amount in bona fide employment during such seven-day period.

Since the claimant in this case earned more than her weekly benefit amount during a consecutive seven-day period, she terminated the "ensuing period of unemployment."

The work the claimant obtained was in her regular occupation, paid the prevailing scale and was accepted by the claimant because she was

unemployed and needed work. Therefore, the work was bona fide and the claimant is no longer ineligible for benefits under section 1264 of the code (Appeals Board Decision No. P-B-59).

DECISION

The decision of the referee is affirmed. The claimant is no longer ineligible for benefits under section 1264 of the code and benefits are payable provided she is otherwise eligible.

Sacramento, California, November 16, 1972

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

ROBERT W. SIGG, Chairman

JOHN B. WEISS

DON BLEWETT

CARL A. BRITSCHGI

EWING HASS