BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

In the Matter of:

KENNETH E. MOSS
(Claimant)

COVINA VALLEY UNIFIED SCHOOL DISTRICT
(Employer)

PRECEDENT
BENEFIT DECISION
No. P-B-154
Case No. 73-739

The employer appealed from Referee's Decision No. ONT-20374 which held that the claimant was not disqualified for benefits under section 1256 of the Unemployment Insurance Code. Written argument has been submitted by the employer.

STATEMENT OF FACTS

The claimant, a classified school employee, was hired by the employer as a groundsman on April 29, 1969. He remained in that classification until June 30, 1972 when he was laid off because of budget reductions. He was rehired on July 1, 1972 as a custodian and remained in this position until October 6 when he resigned because of dissatisfaction with supervision.

On October 10, 1972 the claimant was again rehired, this time as a temporary employee in the capacity of a grounds equipment operator. He was laid off on October 20 when another employee who had seniority in that classification was reemployed.

Effective November 5, 1972 the claimant filed a claim for unemployment compensation benefits. It was determined by the Department that the claimant was not subject to disqualification under section 1256 of the Unemployment Insurance Code since he had been laid off on October 20 due to the reemployment of a senior employee.

In written argument the employer takes the position that the claimant's resignation from employment on October 6, 1972 is material to a proper

resolution of the matter and that the claimant should be disqualified for benefits under section 1256 of the code.

REASONS FOR DECISION

Section 1256 of the Unemployment Insurance Code provides in pertinent part as follows:

> "An individual is disqualified for unemployment compensation benefits if the director finds that he left his most recent work voluntarily without good cause or that he has been discharged for misconduct connected with his most recent work." (Emphasis added)

In determining whether the claimant is subject to disqualification under this section of the code, as contended by the employer, we must ascertain the meaning of the words "most recent work."

In Appeals Board Decision No. P-B-5, we noted that nowhere in the code or regulations do we find a definition of the word "work" as used above. We did comment on the fact that the words "work" and "employment" as they appear in the code are used interchangeably as substitutes for one another and may logically be accepted as synonymous terms (see sections 1258 and 1259 of the code).

We further noted that the word "employment," subject to certain specific exemptions, is defined in section 601 of the code to mean ". . . service . . . performed by an employee for wages or under any contract of hire, written or oral, express or implied." The term "wages" as used above is further defined in section 926 of the code as follows:

> "Except as otherwise provided in this article 'wages' means all remuneration payable to an employee for personal services, whether by private agreement or consent or by force of statute, including commissions and bonuses, and the reasonable cash value of all remuneration payable to an employee in any medium other than cash."

From reading the language in these definitions, we are impressed with the repeated reference to wages being paid in exchange for services. In other words, the definition of employment appears to envision work in the service of another for which wages are received, which would, in turn, seem to imply a direct relationship between the type and extent of the services and the remuneration received. Logically, it then follows that we must find a claimant's "most recent work" to be that work in which an employer-employee relationship existed in connection with his services.

The claimant's approximate ten days' temporary employment for the employer as grounds equipment operator was "work" within the meaning of section 1256 of the code.

Necessarily, "most recent work" must be determined in relation to some act or event. In our opinion the logical act or event is the filing of a valid claim for benefits. Prior to such a claim the Department has no occasion to perform its administrative functions as set forth in section 1326, 1327 and 1328. It would serve no useful purpose to disqualify an individual from the receipt of benefits for which he is not even asserting a claim or potential right. An employer has no interest in the matter prior to the filing of a valid claim, for in the absence of such a claim, no potential charge to its account exists. It is only when a valid claim is filed, and a base period and benefit year established thereby, that any potential charge to an employer's account comes into being.

In construing "most recent work" as meaning that work which the claimant last performed for wages in an employment relationship prior to the filing of a valid claim, we are necessarily considering the immediate cause for the claimant's unemployment. This comports with section 100 of the code which directs that we are to provide benefits for persons "unemployed through no fault of their own." The fault in which we are interested is the immediate, not remote, cause of the claimant's current unemployment.

In this case there is no evidence of subterfuge nor intent to avoid the disqualifying provisions of section 1256. The claimant simply took a job in good faith.

In summary then as applied to the instant case, the claimant's most recent work prior to filing his claim for benefits effective November 5, 1972 was that temporary work which he performed for the employer ending October 20, 1972. This employment ended when the claimant was replaced

by another employee who had more seniority. Since the claimant neither voluntarily left work nor was he discharged, the disqualifying provisions of code section 1256 are not applicable.

DECISION

The decision of the referee is affirmed. The claimant is not disqualified for benefits under section 1256 of the code.

Sacramento, California, July 19, 1973.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

ROBERT W. SIGG, Chairman

JOHN B. WEISS

CARL A. BRITSCHGI

Concurring - Written Opinion Attached

DON BLEWETT

EWING HASS

CONCURRING OPINION

We agree with the reasoning of the decision as to the meaning of "most recent work" and with the conclusion that the claimant is not disqualified for benefits under section 1256 of the code since he did not voluntarily leave his work nor was he discharged for misconduct. He simply was replaced by another employee who had more seniority.

Our only reservation with respect to the decision relates to the next to last paragraph of the reasons for decision. This paragraph reads as follows:

> "In this case there is no evidence of subterfuge nor intent to avoid the disqualifying provisions of section 1256. The claimant simply took a job in good faith."

As we read the record, none of the parties to this appeal, not even the employer, have questioned the claimant's motives or reasons for accepting the employment on October 10. His reasons would be significant if he had refused the offer of work for it would raise an issue under section 1257(b) of the code. But, having accepted it and thereafter having performed the work until replaced, why should we suggest the possibility that he may have had some ulterior motive in accepting it.

In our opinion the language is superfluous. We would delete it from the decision for it only raises doubts where admittedly none exist.

DON BLEWETT

EWING HASS