BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

THIS DECISION DESIGNATES FORMER BENEFIT
DECISION NO. 4172 AS A PRECEDENT
DECISION PURSUANT TO SECTION
409 OF THE UNEMPLOYMENT
INSURANCE CODE.

In the Matter of:

ETHEL E. ANDERSON

PRECEDENT
BENEFIT DECISION
No. P-B-170

FORMERLY
BENEFIT DECISION
No. 4172

The above claimant on September 23, 1946, appealed from the decision of a Referee (R-14059-43192-46) which held that she was not available for work as required by Section 57(c) of the Unemployment Insurance Act [now section 1253(c) of the Unemployment Insurance Code] indefinitely commencing April 16, 1946. The claimant filed a claim for benefits on February 26, 1946.

STATEMENT OF FACT

The claimant was last employed at Los Angeles, California, for three years as a draftsman at a wage of eighty-five cents to $1.16 per hour. The claimant has had prior experience as a telephone operator for one year at a wage of fifteen dollars a week in Riverton, Wyoming. She voluntarily left her California employment on February 16, 1946, and moved to Riverton, Wyoming, population approximately 3,000. The claimant states that the reason for leaving California and returning to her former home in Wyoming was to be married.

On April 23, 1946, the Landers, Wyoming, local office reported that the claimant limited acceptable employment to work as a draftsman and that she had no prospects of obtaining such a position in the area where she had established her residence. On May 10, 1946, the claimant signed a statement in which she indicated that she would accept only work as a draftsman within

forty miles of her home. She knew of no employers in her community who hired draftsman, and stated that she was waiting for an opening on the Boysen Dam project. The local office stated that the Bureau of Reclamation planned on commencing construction work on such a project within three months, at which time it was expected that claimant could secure work, but not as a draftsman. Although the claimant was formerly employed in Riverton as a telephone operator, she made no attempt to secure such work because she stated "it made her nervous" and because the working conditions were allegedly undesirable.

On June 17, 1946, the claimant secured work as a draftsman with the Bureau of Reclamation in Riverton at a wage of $180 a month. The local office stated that the claimant was able to secure such a position due to an unexpected increase in the program of the Bureau in that area.

REASON FOR DECISION

In this case, the claimant, after voluntarily quitting her employment in a metropolitan area in California, moved to a relatively small community in Wyoming and after her arrival there, she restricted acceptable work to that as a draftsman in the immediate locality. At that time, the claimant admitted she knew of no employers in that locality who hired draftsmen. She further stated there was a possibility that such work might become available in three months, but in the meantime she was not willing to accept other work.

A restriction on acceptable employment, after voluntarily leaving California, to a type of work which is nonexistent in the claimant's new locality clearly brings this claimant within the rationale of many of our previous decisions where we have held that such a removal, considered together with restrictions on acceptable employment, must be viewed as a withdrawal from the labor market. Therefore it is our conclusion that the claimant in this case did not meet the availability requirements of Section 57(c) of the Act [now section 1253(c) of the Unemployment Insurance Code] during the period involved in this appeal.

In appealing to this Board, the claimant contends that since she subsequently obtained the type of work she sought, the conclusion that she was not available for work cannot be sustained.

It is not only generally but almost universally accepted in the various jurisdictions that availability for work cannot be measured entirely by a

person's willingness to work, although willingness is unquestionably an indispensable factor entering into the determination. Willingness to work must be considered in relation to the employment field in which the claimant voluntarily, or perhaps through force of circumstances, has marked as the area beyond which employment will not or cannot be considered. There must be a dual finding where availability for work is at issue: First, that there is a willingness as well as readiness and ability to work, and, second, that there exists some reasonable probability in the claimant's locality for obtaining suitable employment so that the willingness to work, coupled with some prospects of work, can result in a finding that during the weeks for which benefits are claimed, the claimant has been ready, willing, and able to accept suitable employment in a labor market where that willingness may result in gainful employment. If employment fails to materialize under such circumstances, due to the inability of the Employment Service to match the worker to a suitable job opening, the ensuing unemployment is properly viewed as involuntary and, unless some act of the claimant gives rise to a disqualification period, is compensable with benefits.

Examining the facts in this case in the light of the foregoing principles, we find that the claimant herein filed a claim in Wyoming on February 26, 1946. Thereafter she filed weekly claims for benefits until June 17, on which date she obtained employment with a governmental agency which had commenced work on a construction project in the locality. She was still so employed when this case was considered by the Referee on August 26, 1946. During the entire period for which she is claiming benefits the claimant was willing to work, but only as a draftsman, which work did not exist in the area claimant designated as her employment field. It seems to us that under these facts, and consonant with our prior decisions, the conclusion must be reached that the claimant did not meet the availability requirements of the statute during the weeks for which benefits are claimed.

Whether the claimant became available for work on and after June 17, 1946, when she obtained employment, is not an issue which we are called upon to determine in this appeal. As far as the record shows, the claimant ceased seeking benefits after June 17 because she again became a part of the labor force and continued in this status for the remainder of the period involved in the appeal. Her availability for work under the Act therefore would not again be an issue until such time as she might again become unemployed and seek benefits. At that time, and not presently, the facts would be subject to examination and a finding as to whether the claimant then was ready, willing and able to accept suitable work in a labor market where there were some reasonable possibilities of employment. If such a finding could be affirmatively made from the facts, the claimant would be considered available for work under the Act.

DECISION

The decision of the Referee is affirmed. Benefits are denied.

Sacramento, California, January 6, 1976

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

DON BLEWETT, Chairperson

MARILYN H. GRACE

CARL A. BRITSCHGI

RICHARD H. MARRIOTT

DISSENTING - Written Opinion Attached

HARRY K. GRAFE

DISSENTING OPINION

I dissent for the reasons set forth in my dissenting opinion in Appeals Board Decision No. P-B-168.

In addition, I believe the rule has been amply and adequately set forth in Appeals Board Decision No. P-B-141, and I can see no useful purpose in digging into ancient history and using a case almost 30 years old to restate that rule.

Moreover, in their haste to create new precedents, the majority not only refused to seek any outside input, but also would allow no discussion of the merits by fellow Board members before adopting this decision. Such precipitous action contravenes even minimal standards of due process of law.

HARRY K. GRAFE