BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

THIS DECISION DESIGNATES FORMER BENEFIT
DECISION NO. 4601 AS A PRECEDENT
DECISION PURSUANT TO SECTION
409 OF THE UNEMPLOYMENT
INSURANCE CODE.

In the Matter of:

IRENE DAHL

PRECEDENT
BENEFIT DECISION
No. P-B-172

FORMERLY
BENEFIT DECISION
No. 4601

The above-named claimant on August 13, 1947, appealed from the decision of a Referee (S-2480) 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].

Based on the record before us, our statement of fact, reason for decision, and decision are as follows:

STATEMENT OF FACT

The claimant, age thirty-one, was last employed as a bookkeeper and typist for a period of approximately two years for an engineering company in Stockton, California. During this period the claimant worked from 1:00 p.m., to 5:00 p.m. each day and received a monthly salary of $155.48. The employment terminated when the company ceased business operations in April, 1947.

On April 10, 1947, the claimant registered for work as a general office clerk and filed a claim for unemployment insurance benefits in the Stockton office of the Department of Employment. On April 21, 1947, the Department issued a determination which disqualified the claimant for an indefinite period

commencing April 10, 1947, on the ground that she was not available for work as required by Section 57(c) of the Unemployment Insurance Act.

The evidence presented by the claimant discloses that about four years ago she had undergone thoracoplastic surgery whereby several ribs had been removed to effect a permanent collapse of one lung. She further discloses that the operation, accompanied by a lengthy convalescent period, had rendered her tubercular condition inactive. Medical advisors had informed her that the resulting orthopedic and general physical impairments to her health were of a permanent nature and that she would never be able to work more than five hours per day. The claimant presented the following certificate from her doctor, dated June 11, 1947:

> "Mrs. Irene L. Dahl has been examined by me 12 February and 11 June, 1946. She gives no evidence of having an active disease and moderate exertion will not be harmful (i.e. 4-5 hours work daily)."

The claimant stated she has no restrictions as to acceptable employment other than as to hours, which could not exceed five hours per day.

The Department representative testified that the claimant was disqualified because of her inability to work full time. It was conceded that employment of five hours per day in work that was suitable to the claimant existed in the city of Stockton. In appealing to this Board on August 13, 1947, the claimant disclosed that she had obtained the type of employment she sought.

REASON FOR DECISION

In a number of previous cases this Appeals Board has held that a claimant who has imposed restrictions, for personal reasons, which limit acceptable employment to abnormal part-time hours not customary in work within the claimant's training and experience has, to all intents and purposes, withdrawn from the labor market and is not available for work as required by the Act. (See Cases 1141-3702, 1375-3552 and others). It has been our consistent position that unless there are unusual circumstances in a case, a claimant who restricts employment to reduced hours of work and who is not

ready and willing to accept other suitable employment does not meet the eligibility provisions of the statute.

The facts in this case are readily distinguishable from those involved in our prior decisions. In the instant appeal, although the claimant stated that she would not accept employment in excess of five hours per day, the record shows she imposed this restriction only for the most compelling reason and upon the advice of her physician. Further, all of the claimant's earnings upon which her claim is based were acquired in the type of employment she sought. In addition, the claimant's occupation is that of a typist and bookkeeper, both of which are occupations where less than eight hours' employment are not unusual. From the record before us, employment in excess of five hours would not be suitable for the claimant and she therefore could exclude such employment without rendering herself unavailable for work, provided there remained a labor market in which there were reasonable prospects that the claimant could obtain the type of work she sought. That such a labor market existed in this particular appeal can be reasonably concluded from all of the evidence presented. For the foregoing reasons, we hold that the claimant was ready, willing and able to accept suitable employment which she had no good cause to refuse; that she was in a labor market for her services, and that she consequently met the availability requirements of the Act.

DECISION

The decision of the Referee is reversed. Benefits are allowed, provided the claimant is otherwise eligible.

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.

Once again the majority states that they base their decision "on the record before us," yet there is no record, it having been destroyed long ago. Moreover, the penultimate sentence in the final paragraph of the majority's Reasons for Decision avers that the existence of a labor market is shown by "all of the evidence presented." However, the majority have no way of knowing what that evidence was.

Thus, this case represents an anomaly in which a rule of law is purportedly established, but no one can ascertain with accuracy precisely what evidence of the existence of a labor market will suffice to make the rule applicable. Such is the antithesis of the purpose of a precedent decision. If my colleagues have attempted to create confusion and uncertainty among those who are bound by precedent decisions, they have fully succeeded in this decision.

Further, the majority rammed this decision through to adoption without permitting any discussion of the merits, contrary to the standard concept of due process of law.

HARRY K. GRAFE