BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

THIS DECISION DESIGNATES FORMER BENEFIT DECISION NO. 6429 AS A PRECEDENT DECISION PURSUANT TO SECTION 409 OF THE UNEMPLOYMENT INSURANCE CODE.

In the Matter of:

PAULINE T. THOMAS
(Claimant-Appellant)

PRECEDENT
BENEFIT DECISION
No. P-B-182

FORMERLY
BENEFIT DECISION
No. 6429

STATEMENT OF FACTS

The claimant was a machine operator with approximately 13 years of experience in food processing plants located in Turlock, California. For the past seven years she had been employed in weighing and packing beans for the same company. She was laid off temporarily on June 2, 1955 and expected to return to work for the same employer on or about August 15, 1955. The extended layoff was due primarily to construction and machinery moving at her prior employer's plant. The claimant's normal hours of employment were from 8:00 a.m. to 5:00 p.m. five days a week, for which she was paid $1.75 per hour. The claimant's husband also worked; and the family car was in a car pool and was unavailable to the claimant usually one day out of the week. On those days, the claimant walked or took a taxicab to her prior employer's place of business, which was approximately five blocks from her home.

The claimant established a benefit year effective May 4, 1955 in the local office of the Department of Employment when she filed her claim as a partially employed individual. The claim was reopened on June 22, 1955 when the claimant was totally unemployed. The department issued a determination on July 1, 1955 holding the claimant not available for work within the meaning of Section 1253(c) of the code and ineligible to receive benefits for an indefinite period commencing June 22, 1955. The claimant filed a timely appeal from such determination; and the hearing was held before

a referee on August 8, 1955. The referee affirmed the determination of the department but denied benefits under Section 1253(c) of the California Unemployment Insurance Code on the ground that the claimant was not offering her services without material restrictions. The claimant appealed to the Appeals Board from the referee's decision.

The referee's finding that the claimant was not offering her services without a material restriction was based upon the following testimony of the claimant:

"Q And if you want permanent work, what will you have to have in the line of wages?

"A Well, what they usually pay. I don't think that any of them pay less than one dollar or ninety-five cents.

"Q Have you checked with your dime stores?

"A No, I don't know the wages. I know when I worked there two weeks, that was years ago it was about thirty-five cents an hour, I think.

"Q Their pay isn't that high, I am sure - their pay isn't ninety or ninety-five an hour. I don't know just what they pay, but it isn't that much. . . ."

With respect to the wages in that community, the departmental representative testified as follows:

"Q What is the prevailing wage in the Turlock area for help?

"A For sales work in the five and ten cents usually starts at seventy-five cents an hour. The other store would run possibly a little higher, eighty cents, eighty-five cents, and for experienced up to ninety cents. It is pretty low in Turlock. We have orders for work in kitchen helpers and various things of that sort. As agricultural season comes on, why, everything improves and there is hiring in the area."

The department had originally disqualified the claimant because she had contacted only two employers prior to the interview on July 1, 1955. The claimant was "on call" with her last employer but did not know from day to day when work would commence again. In prior years, she had usually worked at least one day each week during the slack season. There was only one other employer who could offer the claimant her type of work. When the claimant was advised that she should seek work outside her normal occupation, she immediately sought work in other types of employment.

The issue is whether the claimant was ineligible for benefits under section 1253(c) of the code.

REASONS FOR DECISION

Section 1952 of the California Unemployment Insurance Code provided as follows:

> "1952. The Appeals Board and its representatives and referees are not bound by common law or statutory rules of evidence or by technical or formal rules of procedure but may conduct the hearings and appeals in such manner as to ascertain the substantial rights of the parties."

In either an interview before a departmental representative or a hearing before a referee where the question of wage restriction is involved, we believe it is essential to the preservation of the rights of the claimant that the claimant be made aware of the wage scale in existence at the particular locality before a categorical answer be elicited as to the wage scale which is acceptable to him. If the claimant is required to state what wage scale he will accept before he is informed as to the wage scale prevailing in the locality, the claimant is required to speculate. We believe that the proper method requires an exploration by the departmental representative or the referee of the claimant's state of mind with respect to an acceptable wage scale after first making known to the claimant the prevailing rate. If such procedure is not followed, it is the opinion of this board that such interview or hearing does not fully meet the requirements of affording the essential protection to which a claimant is entitled.

In the instant matter, we are of the opinion that the claimant did not impose a wage restriction in excess of the prevailing rate. We further

conclude that, under the facts of this case, the claimant was eligible for benefits within the meaning of section 1253(c) of the code.

DECISION

The decision of the referee is reversed. Benefits are payable providing the claimant is otherwise eligible.

Sacramento, California, January 6, 1976

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

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