

BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

THIS DECISION DESIGNATES FORMER BENEFIT
DECISION NO. 6472 AS A PRECEDENT
DECISION PURSUANT TO SECTION
409 OF THE UNEMPLOYMENT
INSURANCE CODE.

In the Matter of:

JOHN E. McCOY
(Claimant-Appellant)

WILLIAM J. MORAN COMPANY
(Employer)

PRECEDENT
BENEFIT DECISION
No. P-B-183

FORMERLY BENEFIT DECISION No. 6472
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STATEMENT OF FACTS

The claimant registered for work and filed a claim for benefits in the Pomona office of the Department of Employment effective August 28, 1955. On October 7, 1955 the department issued a determination under section 1256 of the code and a ruling under section 1030 of the code holding that the claimant had been discharged for other than misconduct connected with his work and that the account of the employer was chargeable. The employer filed a timely appeal; and a hearing was held November 25, 1955. The determination and ruling of the department were reversed by the referee's decision.

The claimant was last employed as an office manager for this employer from August 5, 1948 until August 23, 1955, with a terminating wage of \$650 per month. The claimant, who was interested in entering into the construction business on his own behalf, had tentatively discussed with three other employees the possibility of organizing a new company. Such discussions were concerned with general qualifications of the claimant and the other employees and the possibility of securing adequate financing for a new business. It does not appear that the claimant's activities had in any way caused any dissatisfaction among the employer's employees or disrupted the employer's business.

One of the employer's partners learned of the claimant's desire to initiate a new organization and of his discussions with the other employees. He told the claimant that the claimant would have to forget about his idea of going into business and cease his discussions with other employees or he would have to leave the employer's employment. The claimant refused to agree to abandon his idea of going into business for himself or to cease discussions with other employees; and the employer thereupon requested his resignation, which the claimant then gave.

Two issues are herein involved:

(1) Whether the employer's request that the claimant abandon his idea of going into business for himself and to cease discussions with other employees was reasonable.

(2) Whether the claimant was discharged for reasons other than misconduct.

REASONS FOR DECISION

Although an employer may discharge an employee for failure to comply with a reasonable order designed to further the employer's business (Benefit Decision No. 5672), we believe that, in this case, the claimant's conduct was not such that it had interfered with the orderly conduct of the employer's business or that the employer's order was in any way necessary to protect or preserve its business. The evidence before us merely shows that, whatever may have been the claimant's intentions with respect to starting his own firm, he and the other employees involved had always performed their duties for the employer in a satisfactory manner. Under such circumstances, we cannot classify the claimant's activities as misconduct in connection with his work.

While it appears that the claimant resigned from his employment, the evidence shows that the employer was the moving party in requesting the resignation if the claimant did not abandon his desire to start his own company and cease discussing the matter with other employees. Hence, we hold that the claimant did not voluntarily resign but was in effect discharged by the employer (Benefit Decision No. 5193).

Because the claimant was discharged for other than misconduct, he was not disqualified under code section 1256.

DECISION

The decision of the referee is reversed. Benefits are payable if the claimant is otherwise eligible. Benefits paid to the claimant which are based upon wages earned from the employer prior to August 23, 1955 are chargeable under section 1032 of the code to Employer Account No. 077-4012.

Sacramento, California, January 13, 1976

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

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