BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

THIS DECISION DESIGNATES FORMER BENEFIT DECISION NO. 6496 AS A PRECEDENT DECISION PURSUANT TO SECTION 409 OF THE UNEMPLOYMENT INSURANCE CODE.

In the Matter of:

ROSE MARIE RILEY
(Claimant-Appellant)

GRUNWALD-MARX
(Employer)

PRECEDENT
BENEFIT DECISION
No. P-B-188

FORMERLY
BENEFIT DECISION
No. 6496

STATEMENT OF FACTS

The claimant appealed from the decision of a referee which held that she was not entitled to benefits under the Unemployment Insurance Code and that the employer's account was not chargeable under section 1032 of the code for benefits paid to the claimant. The parties filed briefs and orally argued the matter before the Appeals Board on May 22, 1956 at Los Angeles.

The claimant was last employed for approximately 14 months by this employer as an inspector trimmer. She used a cutting machine to remove excess threads from shirts. The machine was equipped with a vacuum and a motor-driven blade covered by a shield. Each machine was equipped with a wide blade for use with heavy materials and a smaller blade for use with light materials. In theory, the use of the proper blade for the proper material would prevent damage to the shirts. The wage paid for this operation was on a piece-work basis, with a differential between the lighter and heavier materials. By using the small blade for lighter materials, the operator had to devote more time to the operation than if the wide blade were used.

Approximately four weeks prior to the claimant's discharge, because of what it considered excessive damage, the employer had instructed all inspector trimmers to exercise great care in using the proper blade for the proper material. In addition, a procedure was instituted whereby certain floor

girls cautioned the inspector trimmers to change the blade when there was a change of material. The employer's manager testified that, during the four-week period, all of the inspector trimmers except the claimant had exercised care in accordance with the instructions and that damaged shirts attributable to the other employees had been reduced to a minimum while those damaged by the claimant had continued to be excessive. The employer's assistant manager testified that he had cautioned the claimant on a number of occasions when he found her using the wrong blade and that, on one occasion, he had specifically warned her that a continued failure would lead to discharge. The claimant denied that any threat of discharge had been made. The claimant also denied that the floor girl had reminded her of the need to change the blade more than once during the four-week period.

Because of her repeated failure to follow instructions, the claimant was suspended at approximately 7:45 a.m. on January 10, 1956 when she was again using the wide blade for lighter materials. It is the employer's position that the claimant's failure in this regard was wilful, as the use of the wide blade with the light materials enabled her to increase her total earnings. The claimant conceded that she hadn't always changed to the small blade but contended that such failure had resulted from forgetfulness. Following her suspension, she appealed to her union for assistance in securing reinstatement. There was a conference of the claimant and representatives of the union and the employer at which the claimant admitted her mistake and offered no explanation for her failure to use the right blade. Therefore, the employer discharged her on January 16, 1956.

The collective bargaining agreement between the claimant's union and the employer provided that no employee should be discharged without just cause and also provided for an arbitration procedure for the settlement of disputes arising thereunder. It is the position of the claimant that, although there may have been a formal discharge, since the question of her discharge is presently pending under an arbitration proceeding, she had in fact not been discharged but that, if it is held that she was discharged, it was not a discharge for misconduct.

Effective February 5, 1956, the claimant registered for work in the Long Beach office of the Department of Employment and filed an additional claim for benefits. On February 21, 1956, the department issued a determination and ruling under sections 1256 and 1030 of the code holding that the claimant had been discharged for misconduct connected with her most recent work within the meaning of those sections and that she was disqualified for benefits for five weeks commencing February 5, 1956. The

department further ruled that the employer's account was not chargeable for benefits payable to the claimant.

The issues are:

1. Was the claimant discharged within the meaning of the Unemployment Insurance Code pending the settlement of her grievance through the arbitration proceeding under the collective bargaining agreement?

2. If so, was the claimant discharged for misconduct within the meaning of section 1256 of the code?

REASONS FOR DECISION

There can be no doubt from the evidence that the claimant was unequivocally discharged on January 16, 1956 by the employer following a suspension of her services on January 10, 1956 and following her failure to offer the employer a satisfactory reason for not performing her work according to the employer's standards and having been warned that continuance of such conduct would result in her discharge (Benefit Decision No. 5421). The fact that the propriety of her discharge was the subject of arbitration under the collective bargaining agreement has no effect upon the power of this board to decide the issue of whether the claimant, in the first instance, had been discharged for misconduct connected with her work. It is immaterial that, as a result of the arbitration proceeding, the claimant may be reinstated with the employer. The function of the arbitration panel and the function of this board differ in purpose and in result. (Benefit Decisions Nos. 5768 and 5361). To adjudicate an appeal fairly and impartially, this board must make an independent evaluation of the evidence before it without regard to the outcome of the grievance procedure. Furthermore, in such evaluation, we are not controlled or influenced by the fact that a discharged employee did or did not initiate any grievance procedure under a collective bargaining agreement to bring about a reinstatement with the employer (Benefit Decision No. 5433). Any language in our prior decisions which would imply or indicate otherwise is hereby disapproved.

This case is distinguished on the facts from Benefit Decision No. 5234 in which we held that the claimants had not been discharged but had left their work because of a trade dispute.

The referee, after considering all of the evidence, found that the claimant's failure to use the proper blade with light weight materials was a wilful disregard of the employer's interest. Since such finding is not against the weight of the evidence, it must be affirmed (Benefit Decision No. 5479). Therefore, we conclude that the claimant's behaviour constituted misconduct for which she was discharged; and she is subject to disqualification under section 1256 of the code for five weeks beginning February 5, 1956 as provided in section 1260 of the code (Benefit Decisions Nos. 6290 and 6116).

DECISION

The decision of the referee is affirmed. Benefits are denied. Any benefits paid to the claimant based on wages earned from the employer prior to January 16, 1956 shall not be chargeable under section 1032 of the code to Employer Account No. 024-5353.

Sacramento, California, July 20, 1956.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

MICHAEL B. KUNZ, Chairman

GLENN V. WALLS

ARNOLD L. MORSE

Pursuant to section 409 of the Unemployment Insurance Code, the above Benefit Decision No. 6496 is hereby designated as Precedent Decision No. P-B-188.

Sacramento, California, January 27, 1976.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

DON BLEWETT, Chairperson

MARILYN H. GRACE

CARL A. BRITSCHGI

HARRY K. GRAFE

RICHARD H. MARRIOTT