BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

THIS DECISION DESIGNATES FORMER BENEFIT DECISION NO. 6230 AS A PRECEDENT DECISION PURSUANT TO SECTION 409 OF THE UNEMPLOYMENT INSURANCE CODE.

In the Matter of:

ART DAKESSIAN
(Claimant)

LONG BELL LUMBER COMPANY
(Employer-Appellant)

PRECEDENT
BENEFIT DECISION
No. P-B-208

FORMERLY
BENEFIT DECISION
No. 6230

Referee's Decision
No. SF-1100

STATEMENT OF FACTS

The above-named employer appealed from the decision of a referee which held that the claimant was not subject to disqualification under section 1256 of the Unemployment Insurance Code and that the employer's account is chargeable with respect to benefits paid to the claimant under section 1032 of the code.

The claimant was last employed for approximately four years as a millwright and chain repairman by the appellant, a lumber company, at Weed, California. The claimant last worked on or about July 13, 1954, on which date he left his work because of a trade dispute.

Effective August 29, 1954, the claimant registered for work and filed a claim for benefits in the San Francisco Industrial Office of the Department of Employment. On September 16, 1954, the department issued a determination under section 1256 of the Unemployment Insurance Code which held that the claimant had left his work voluntarily with good cause. On September 20, 1954, the department issued a ruling under section 1030 of the code to the same effect. The employer appealed to a referee who affirmed the determination and ruling of the department.

Approximately two weeks after the claimant left his work because of the trade dispute, he, his wife and two children moved to San Francisco where the claimant looked for work. There was no work for the claimant in Weed due to the strike. It does not appear that the claimant had secured work in San Francisco, but his wife became temporarily employed there. The trade dispute terminated on or about August 13, 1954, but the claimant did not return to work at the end of the trade dispute. The claimant did not know when the strike was over, but in any event he would not have returned since he had insufficient funds to move back to Weed. Weed is a small town located in Northern California several hundred miles from San Francisco.

REASONS FOR DECISION

Section 1262 of the code provides that an individual is ineligible for benefits if he left his work because of a trade dispute and shall remain ineligible for the period during which he continues unemployed by reason of the fact that the trade dispute is still in active progress in the establishment in which he was employed. Although the claimant herein left his work because of a trade dispute, the ineligibility provisions of section 1262 are inapplicable since the trade dispute had terminated when the claimant filed his claim for benefits.

The trade dispute did not serve to terminate the employer-employee relationship but merely suspended such relationship (Benefit Decision No. 5501). An employee may terminate his employment while the strike is still in active progress by obtaining bona fide permanent full-time employment elsewhere (Mark Hopkins, Inc. v. C.E.C. (1944), 24 Cal. 2d 744, 151 2d 229). However, the mere moving by the claimant to another locality and establishing his residence there, in absence of other factors, will not render the claimant eligible for benefits where the claimant remains unemployed while the strike is still in active progress (Benefit Decision No. 4528). In such instance, it follows that the act of moving to a new locality while the strike is in progress will not be construed as a voluntary quit of the employment by the worker.

The claimant in the instant case did not terminate the employment relationship when he moved himself and his family to San Francisco and there established his residence. It must be presumed that when the trade dispute terminated on or about August 13, 1954, work was available for the claimant. The claimant's failure to return to work at such time either through choice or because he had not provided adequate means to keep himself informed when work was resumed constituted a volunatry leaving of work by the claimant as of the time work was resumed at the establishment of the employer. Accordingly, the issue presented is whether such voluntary leaving of work by the claimant was with good cause under section 1256 of the code.

We have previously held that in determining whether good cause existed for the leaving of work, the situation must be judged as of the time of the leaving (Benefit Decision No. 6054). When the leaving occurred in the instant case, the claimant resided in San Francisco several hundred miles from the place of his former employment and had insufficient funds to return to the place of his former residence. In Benefit Decision No. 4952, we held that a claimant who had removed himself from an area where he had been employed and resided several hundred miles distant had good cause to refuse an offer of employment in the locality which he had left and that such employment was not suitable. The principles we employed are equally applicable here with respect to the leaving by the claimant of work which was several hundred miles away. Accordingly, the leaving of work was with good cause.

DECISION

The decision of the referee is affirmed. Benefits are payable provided the claimant is otherwise eligible. Any benefits paid to the claimant which are based upon wages earned from the employer prior to August 13, 1954, shall be chargeable under section 1032 of the code to Employer Account Number XXX-XXXX.

Sacramento, California, January 28, 1955.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

MICHAEL B. KUNZ, Chairman

GLENN V. WALLS

EDWARD CAIN

Pursuant to section 409 of the Unemployment Insurance Code, the above Benefit Decision No. 6230 is hereby designated as Precedent Decision No. P-B-208.

Sacramento, California, February 3, 1976.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

DON BLEWETT, Chairperson

MARILYN H. GRACE

CARL A. BRITSCHGI

HARRY K. GRAFE

RICHARD H. MARRIOTT