

BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

THIS DECISION DESIGNATES FORMER BENEFIT
DECISION NO. 6226 AS A PRECEDENT
DECISION PURSUANT TO SECTION
409 OF THE UNEMPLOYMENT
INSURANCE CODE.

In the Matter of:

GERALDINE K. CLEM
(Claimant)

PRECEDENT
BENEFIT DECISION
No. P-B-211

FORMERLY BENEFIT DECISION No. 6226
--

Referee Decision
No. SF-35469

STATEMENT OF FACTS

The above-named claimant on May 21, 1954, appealed to a referee from a determination of the Department of Employment which held that the claimant was not subject to disqualification for benefits under section 1256 of the Unemployment Insurance Code but was ineligible for benefits under section 1309 of the code (now section 1264 of the code). Subsequent to the issuance of the referee's decision, the Appeals Board on August 13, 1954, set aside the decision of the referee and removed the matter to itself under section 1336 of the code.

The claimant was employed for one and one-half years as a detailer by a marine engineering company in San Francisco. On September 17, 1954, she received a telegram stating that her father who resided in Wyoming, was seriously ill because of a stroke. With her employer's permission, the claimant left work at once and upon arriving in Wyoming, found it necessary that she remain to assist in her father's care. She returned to San Francisco in November and visited her employer, who informed her she had been placed on a temporary leave of absence. The claimant indicated she had to continue caring for her father and would be absent for an indefinite period.

The claimant returned to San Francisco in April prepared to resume work, but was informed by her employer that no work was then available and that others had been laid off. There is no evidence that the claimant was the major support of her father at the time she filed her claim for benefits.

Effective April 25, 1954, the claimant registered for work and filed a claim for benefits. On May 21, 1954, the department issued a determination which held that the claimant was not subject to disqualification for benefits under section 1256 of the code but that she was ineligible for benefits under section 1309 of the code (now section 1264 of the code).

The question before us is whether there was a voluntary leaving of work by the claimant.

REASONS FOR DECISION

Section 1256 of the Unemployment Insurance Code provides in part:

"An individual is disqualified for benefits if . . . he left his most recent work voluntarily without good cause. . . ."

Section 1309 of the code (now section 1264 of the code) provides in part:

". . . an employee . . . whose marital or domestic duties cause him or her to resign from his or her employment shall not be eligible for unemployment insurance benefits for the duration of the ensuing period of unemployment and until he or she has secured bona fide employment subsequent to the date of such voluntary leaving; . . . The provisions of this section shall not be applicable if the individual at the time of such voluntary leaving was and at the time of filing a claim for benefits is the sole or major support of his or her family."

In Benefit Decision No. 6130, the employer granted leaves of absence with an expectancy but with no guarantee of reinstatement. The claimant was granted such a leave and at the termination thereof, failed to request an extension. The Appeals Board held that she voluntarily left her work without good cause and stated:

"While the leave did not guarantee reinstatement to her former job, there was an 'expectancy' and it could reasonably be assumed that barring unforeseen circumstances the claimant would be returned to work upon the expiration of that leave."

In the instant case, the claimant left her work on September 17, 1954, with the permission of her employer because of the sudden illness of her father. In November 1954, she was informed that she had been placed on a temporary leave. No action was taken by the claimant to terminate the employer-employee relationship and the employer, aware that she would be absent for an indefinite period, did not notify the claimant that the leave must be terminated. When the claimant returned to San Francisco to resume work, none was available because the employer had been compelled to curtail operations. The leave of absence was, in effect, similar to the leave of absence which existed in Benefit Decision No. 6130. The claimant had an expectancy but no guarantee of reinstatement. In our opinion the claimant herein was unemployed due to a lack of work and not due to any resignation, or any voluntary leaving of work on her part (Benefit Decision No. 6196). Therefore, she was not subject to disqualification for benefits under section 1256 of the code, nor was she ineligible for benefits under section 1309 of the code (now section 1264 of the code), which requires a resignation.

DECISION

The determination of the department is modified. The claimant is not subject to disqualification for benefits under section 1256 of the code. The claimant is not ineligible for benefits under section 1309 of the code (now section 1264 of the code). Benefits are payable provided the claimant is otherwise eligible.

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. 6226 is hereby designated as Precedent Decision No. P-B-211.

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