BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

THIS DECISION DESIGNATES FORMER BENEFIT DECISION NO. 5918 AS A PRECEDENT DECISION PURSUANT TO SECTION 409 OF THE UNEMPLOYMENT INSURANCE CODE.

In the Matter of:

JUANITA CEBALLOS
(Claimant)

SCHLAGE LOCK COMPANY
(Employer)

PRECEDENT
BENEFIT DECISION
No. P-B-215

FORMERLY
BENEFIT DECISION
No. 5918

The above-named claimant on March 26, 1952, appealed from the decision of a Referee (SF-25479) which held that the claimant was subject to disqualification under Section 58(a)(2) of the Unemployment Insurance Act (now section 1256 of the Unemployment Insurance Code). On April 17, 1952, the Appeals Board remanded the matter to a Referee for an additional hearing. Such hearing was held in San Francisco on May 7, 1952, and a transcript of the testimony so obtained is now before us for consideration.

Based on the record before us, our statement of fact, reason for decision, and decision are as follows:

STATEMENT OF FACT

The claimant was last employed for approximately three months by a lock manufacturer in San Francisco. She performed no services on and after October 8, 1951, for reasons hereinafter set forth.

On February 4, 1952, the claimant registered for work and filed a claim for benefits in the San Francisco office of the Department of Employment.

The employer submitted information with respect to the claimant's termination of employment and the Department on February 26, 1952, issued a determination that the claimant was not subject to disqualification under Section 58(a)(1) of the Act (now section 1256 of the Unemployment Insurance Code). In addition, the Department issued a ruling that the employer was not entitled to relief from charges under Section 39.1 of the Act (now sections 1030 and 1032 of the Unemployment Insurance Code). The employer appealed and a Referee reversed the determination of the Department, holding that the claimant had been discharged for misconduct in connection with her most recent work and that she was, therefore, subject to disqualification under Section 58(a)(2) of the Act (now section 1256 of the Unemployment Insurance Code).

The claimant was unable to work on October 8, 1951, because she had no one to care for her children. She did not notify her employer that she could not report for work that day. Thereafter the claimant attempted to obtain child care without success. She made no effort to return to work or contact her employer prior to October 12, 1951, on which date she received a telegram notifying her that she had been discharged effective at 8:00 a.m. that morning by reason of her failure to report for work or give any notification of her absence. The employer has a rule, of which the claimant was aware, that unscheduled absences must be reported "as far ahead of time as possible." The claimant had been reprimanded twice for violations of this rule. At the time the telegram was received, the claimant was still planning to return to work as soon as she obtained child care.

REASON FOR DECISION

The section of the Act which is pertinent to this proceeding reads in part as follows:

> "Section 58 [now section 1256 of the Unemployment Insurance Code]. (a) An individual shall be disqualified for benefits if:
>
> "(2) He has been discharged for misconduct connected with his most recent work . . . ."

In considering appeals in prior cases involving the application of Section 58(a)(2) of the Act (now section 1256 of the Unemployment Insurance Code),

we have held that in order to be discharged for misconduct within the meaning of this section, the claimant must have been discharged for a material breach of duty owed to the employer under the contract of employment, which breach tends substantially to injure the employer's interests (Benefit Decision No. 4828).

In Benefit Decision No. 5830, we held that a failure to notify the employer of intended absences was misconduct where the evidence establishes an obligation on the part of the employee to make such notification even though the absences were justifiable. Similarly, in the present case, the reason for the claimant's absences was such as to make the absences justifiable. However, she was not discharged for the absences, but rather for her failure to notify her employer thereof. Since she was aware of her duty in this respect, but failed, without excuse, to apprise her employer concerning her absence, it is our conclusion that the claimant was discharged for misconduct within the disqualifying provisions of Section 58(a)(2) of the Act (now section 1256 of the Unemployment Insurance Code). It follows from this conclusion that the discharge was also for misconduct under Section 39.1 of the Act (now sections 1030 and 1032 of the Unemployment Insurance Code), as the term misconduct in that section must be given the same scope and meaning as its counterpart in Section 58(a)(2) (now section 1256 of the Unemployment Insurance Code). (Ruling Decision No. 1)

DECISION

The decision of the Referee is affirmed. The claimant is subject to disqualification under Section 58(a)(2) of the Act (now section 1256 of the Unemployment Insurance Code) for the five-week period provided in Section 58(b) (now section 1260 of the Unemployment Insurance Code). The ruling of the Department is reversed. The claimant was discharged for misconduct within the meaning of Section 39.1 of the Act (now sections 1030 and 1032 of the Unemployment Insurance Code.

Sacramento, California, August 1, 1952.

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. 5918 is hereby designated as Precedent Decision No. P-B-215.

Sacramento, California, February 5, 1976.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

DON BLEWETT, Chairperson

MARILYN H. GRACE

CARL A. BRITSCHGI

HARRY K. GRAFE

RICHARD H. MARRI0TT