BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

THIS DECISION DESIGNATES FORMER BENEFIT DECISION NO. 5965 AS A PRECEDENT DECISION PURSUANT TO SECTION 409 OF THE UNEMPLOYMENT INSURANCE CODE.

In the Matter of

EUGENE Q. YOUNG
(Claimant)

HOTEL SHATTUCK
(Appellant-Employer)

PRECEDENT
BENEFIT DECISION
No. P-B-221

FORMERLY
BENEFIT DECISION
No. 5965

The above-named employer on August 21, 1952, appealed from the decision of a Referee (SF-27348) which held that the claimant was not subject to disqualification for benefits under Section 58(a)(2) of the Unemployment Insurance Act (now section 1256 of the Unemployment Insurance Code).

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

STATEMENT OF FACT

The claimant was employed as a bellman in a hotel in Berkeley, California, from August 15, 1951, to April 20, 1952, when his services were terminated for reasons hereinafter set forth.

On June 5, 1952, the claimant registered for work and filed an initial claim for unemployment compensation benefits in the Berkeley office of the Department of Employment. Based upon the protest from the last employer on June 9, 1952, the Department issued a determination on June 25, 1952, holding the claimant entitled to receive benefits, after consideration of his eligibility under the provisions of Section 58(a)(2) of the Act (now section 1256 of the code), on the ground that he had not been discharged for misconduct.

On the same date, the Department issued a ruling holding the claimant had not been discharged for misconduct within the meaning of Section 39.1 of the Act (now sections 1030 and 1032 of the code). The employer appealed and the determination and ruling were affirmed by the Referee. The Referee further held that the claimant was subject to the maximum period of disqualification under Section 58(a)(3) of the Act (now section 1257(a) of the code) as provided by Section 58(b) of the Act (now section 1260 of the code).

At approximately 9:00 p.m. on April 19, 1952, room service was requested by one of the guests of the hotel. After arriving at the room, the claimant, who was the bellman on duty, found that the guest was intoxicated and desired to discuss her marital difficulties at some length. After approximately five minutes conversation the claimant returned to his post in the lobby. Approximately one hour later the guest placed a call for a bottle of liquor, which the claimant delivered to her room. The guest again engaged the claimant in a lengthy conversation and invited him to partake of the liquor. The claimant accepted one drink and left the room. A short time later the claimant was again called to the guest's room to deliver a carton of cigarettes and left the room after approximately five minutes. The claimant also had a drink with one of the other guests at the hotel during the course of the evening. He was off duty at 11:00 p.m. and left the hotel at approximately 11:45 p.m. The claimant testified that to the best of his recollection he stayed in the basement of the hotel reading a magazine or newspaper until he left the premises.

During the morning of April 20, 1952, the hotel manager learned of the previous night's incidents, telephoned the claimant and reprimanded him for drinking while on duty as well as spending an undue length of time in the room of a guest. He warned the claimant "I don't want it to ever happen again," and "I'll call you back as soon as I've learned more about this case." Shortly thereafter, the manager was called to the guest's room and a complaint was made that the claimant had taken a ring from the guest's room the previous evening. The manager immediately called the claimant and told him not to report for work, and then later called him again and informed him that he was discharged. It was later established that the guest's accusation against the claimant was unfounded.

The hotel manager testified that the claimant was discharged because he was drinking intoxicating liquor while on duty and spending time in a guest's room. He further stated that all employees of the hotel are informed at the time of hire that they are not to drink on the job or they will be subject to discharge. The claimant testified that he had never been told that drinking while on duty was prohibited, and that he saw nothing wrong with taking a drink during working hours.

At the time the claimant filed his claim for benefits, in an effort to avoid complexities that might affect his claim or involve his employer, he informed the Department that his termination was brought about by a reduction in force.

REASON FOR DECISION

The instant appeal raises no issue with respect to that portion of the Referee's decision which found the claimant subject to disqualification under Section 58(a)(3) of the Act (now section 1257(a) of the code), and therefore, that portion of the Referee's decision is affirmed. The issue before us is whether the claimant is subject to disqualification under Section 58(a)(2) of the Act (now section 1256 of the code). Section 58(a)(2) of the Unemployment Insurance Act (now section 1256 of the code) provides in part as follows:

> "An individual shall be disqualified for benefits if:
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> * * *
>
> "(a) He has been discharged for misconduct connected with his most recent work, if so found by the commission; . . ."

In Benefit Decision No. 5819 in defining the term misconduct we stated as follows:

> "The Appeals Board has consistently applied the definition of misconduct laid down by the Supreme Court of Wisconsin in Boynton Cab Company v. Neubeck, 296 N. W. 636:

> ". . . The term 'misconduct' as used in [the disqualification provision] is limited to conduct evincing such wilful or wanton disregard of an employer's interest as is found in deliberate violations or disregard of standards of behavior which the employer has the right to expect of his employee, or in carelessness or negligence of such degree or recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interest or of the employee's duties and obligations to his employer. On the other hand, mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances or good faith errors in judgement or discretion are not to be deemed 'misconduct' within the meaning of the statute."

In the instant case the evidence establishes conclusively that the claimant, while on duty on April 19, 1952, partook of at least two drinks of intoxicating liquors with guests of the hotel. He was discharged for this violation of the employer's rules and for spending time in a guest's room. While there is a conflict in the evidence as to whether the claimant was specifically made aware of the existence of the rule against drinking, it is our opinion that his actions were such as to evince a disregard of the standards of behavior which the employer had the right to expect of him and were not simply good faith errors in judgement or discretion. Under the circumstances we hold that the claimant was discharged for misconduct connected with his most recent work within the meaning of Section 58(a)(2) of the Act (now section 1256 of the code). (Benefit Decision No. 5273)

It follows from this conclusion that the discharge was for misconduct under Section 39.1 of the Act (now sections 1030 and 1032 of the code), as the term misconduct in that section must be given the same scope and meaning as its counterpart in Section 58(a)(2) of the Act (now section 1256 of the code) (Ruling Decision No. R-13).

DECISION

The decision of the Referee is modified. The claimant is disqualified under Section 58(a)(2) of the Act (now section 1256 of the code) for a five-week period as provided by Section 58(b) of the Act (now section 1260 of the code). The claimant is disqualified under section 58(a)(3) of the Act (now section 1257(a) of the code) for a five-week period as provided under Section 58(b) of the Act (now section 1260 of the code). Any benefits paid to the claimant which are based upon wages earned from the employer

prior to April 20, 1952, shall not be chargeable under Section 39.1 of the Act (now sections 1030 and 1032 of the code) to Employer Account Number XX-XXXX.

Sacramento, California, December 5, 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. 5965 is hereby designated as Precedent Decision No. P-B-221.

Sacramento, California, February 5, 1976.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

DON BLEWETT, Chairperson

MARILYN H. GRACE

CARL A. BRITSCHG

HARRY K. GRAFE

RICHARD H. MARRIOTT