

BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

THIS DECISION DESIGNATES FORMER BENEFIT
DECISION NO. 4648 AS A PRECEDENT
DECISION PURSUANT TO SECTION
409 OF THE UNEMPLOYMENT
INSURANCE CODE.

In the Matter of

PERRY H. JENKINS

PRECEDENT
BENEFIT DECISION
No. P-B-222

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| FORMERLY BENEFIT DECISION No. 4648 |
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The above-named claimant on August 18, 1947 appealed from the decision of a Referee (LA-6619) which held that the claimant had been discharged for misconduct and was ineligible for benefits under Section 58(a)(2) of the Unemployment Insurance Act (now section 1256 of the Unemployment Insurance Code) from March 2, 1947, through April 5, 1947.

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 one year as a pasteurizer for a large creamery in Riverside, California at a terminating wage of \$1.15 per hour. He was discharged on March 8, 1947, for reasons hereinafter set forth.

On March 11, 1947, the claimant registered for work and filed a claim for benefits in the Riverside office of the Department of Employment. On May 8, 1947, the Department issued a determination which disqualified the claimant for five weeks from March 2, 1947 to April 5, 1947, on the ground that he had been discharged for misconduct connected with his most recent work within the meaning of Section 58(a)(2) of the Unemployment Insurance Act (now section 1256 of the code). From such determination the claimant appealed and a Referee affirmed the determination.

According to the record, claimant was discharged by the employer's superintendent on March 8, 1947, because the claimant did not perform his work to the satisfaction of the superintendent. Prior to the date of discharge there had been several discussions between the superintendent and the claimant in connection with the quality of the claimant's services and although the claimant testified that his work improved after those discussions, his superintendent believed that the claimant had failed to improve sufficiently to warrant retention of the claimant's services. The principal complaint against the claimant appears from the record to be a failure to pasteurize milk on occasions at proper temperature and that the claimant at times held milk in the vats an excessive time, resulting in the milk acquiring an undesirable flavor. The evidence discloses one instance in which about three hundred gallons of milk were spoiled due to improper pasteurization, thereby resulting in a considerable financial loss to the employer.

REASON FOR DECISION

The statutory provision applicable in determining the issue involved in this appeal reads as follows:

"Sec. 58(a) [now section 1256 of the code]. An individual shall be disqualified for benefits if:

* * *

"(2) He has been discharged for misconduct connected with his most recent work, if so found by the commission. . . ."

Appeals involving the application of Section 58(a)(2) of the Act (now section 1256 of the code) have been before us in a number of prior cases and we have held that in order to constitute misconduct within the meaning of the statutory disqualification, the claimant must have materially breached a duty owed the employer under the contract of employment, which breach tends substantially to injure the employer's interest. (See Cases Nos. 2619-4261, 3721-6348, and others.) As stated by the Supreme Court of Wisconsin in Boynton Cab Co. vs. 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."
(Emphasis added)

A careful review of the entire evidence in the instant matter does not disclose, in our opinion, more than inefficiency or unsatisfactory performance on the part of the claimant which culminated in the claimant's discharge on March 8, 1947. The record does not establish that the claimant wilfully or intentionally disregarded the employer's interest or that the occurrences forming the basis for the discharge were deliberate violations of standard good behavior which the employer has the right to expect of his employee. Although the claimant was unquestionably discharged, we are of the opinion that the termination is not for misconduct on the part of the claimant within the meaning of that term as used in the Act. Therefore, he is not subject to disqualification from benefits under the provisions of Section 58(a)(2) (now section 1256 of the code) quoted above.

DECISION

The decision of the Referee is reversed. Benefits are allowed provided the claimant is otherwise eligible.

Sacramento, California, December 12, 1947.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

TOLAND C. McGETTIGAN, Chairman

MICHAEL B. KUNZ

HIRAM W. JOHNSON, 3rd

Pursuant to section 409 of the Unemployment Insurance Code, the above Benefit Decision No. 4648 is hereby designated as Precedent Decision No. P-B-222.

Sacramento, California, February 5, 1976.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

DON BLEWETT, Chairperson

MARILYN H. GRACE

HARRY K. GRAFE

RICHARD H. MARRIOTT

Dissenting

CARL A. BRITSCHGI