

BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

THIS DECISION DESIGNATES FORMER BENEFIT
DECISION NO. 5497 AS A PRECEDENT
DECISION PURSUANT TO SECTION
409 OF THE UNEMPLOYMENT
INSURANCE CODE.

In the Matter of:

LEO O. RIEDE
(Claimant)

TAYLOR FELT AND SUPPLY COMPANY
(Employer-Appellant)

PRECEDENT
BENEFIT DECISION
No. P-B-223

FORMERLY BENEFIT DECISION No. 5497
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The above-named employer on August 12, 1949, appealed from the decision of a Referee (LA-22935) which held the above-named claimant 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 registered for work and filed a claim for benefits in the Torrance office of the Department of Employment on May 16, 1949. On the same day the Department issued a determination holding that the claimant's discharge by the above-named employer on April 30, 1949, was not for misconduct and that the claimant was not subject to disqualification under Section 58(a)(2) of the Act (now section 1256 of the code). The employer thereupon appealed this determination to a Referee who issued the aforesaid decision from which the instant appeal was taken.

The claimant was last employed by the appellant as a salesman for about a year ending April 30, 1949, by his said discharge. The appellant's place of business is in San Francisco. The claimant was employed as a salesman with Southern California as his territory and Los Angeles as his headquarters. The claimant was expected to call upon old customers and develop new customers in his territory, and as a part of his duties was required to submit weekly reports showing the calls he had made. His discharge resulted from the appellant's belief that the claimant had for several months been neglecting his work by failing to make sufficient customer calls and by filing late reports. During the period prior to the claimant's termination, the appellant wrote him several letters requesting reports and expressing dissatisfaction with the claimant's performance of his duties.

The claimant admitted that during the last months of his employment he had filed late reports and that at the time of his termination his last three weekly reports had not yet been filed. He alleged that the appellant had made it difficult for him to perform satisfactorily because the appellant, despite several requests, failed to supply him with certain price lists necessary to the sale of the product, and asserted that this had caused him to lose his "enthusiasm" for doing the paper work necessary in filing reports.

The evidence discloses that the claimant in five weeks within the several months preceding his termination made 14 calls in one week, 19 in another and 12 calls in each of three other weeks. The appellant testified from his knowledge of the claimant's territory and his own sales experience therein that a good salesman should be able to average eight calls per day. The claimant testified that a salesman of the products in question in his territory should be able to make from six to fifty calls per day and asserted that on some days he would make six or seven calls and on others forty. On one occasion the appellant sent the claimant a list of so-called "hot prospects" upon whom the claimant was directed to call. The evidence shows that the claimant did not call on these customers for ten days to two weeks. The claimant offered no explanation for his delay in making these calls. The record is inconclusive as to whether or not the appellant supplied the claimant with adequate price lists. It does not establish, however, that the lack of such lists prevented the claimant from performing his duties satisfactorily.

REASON FOR DECISION

A claimant who has been discharged from his employment is subject to disqualification for benefits under Section 58(a)(2) of the Act (now section 1256 of the code) if the discharge was for misconduct. Disqualifying misconduct consists of acts or omissions in intentional and substantial

disregard of an employer's interests or an employee's duties and obligations to his employer (Benefit Decision No. 5376-12229).

The evidence in this case satisfies us that the claimant without good reason was seriously remiss in the performance of his duties as a salesman, and that his failure in this connection was intentional and in substantial disregard of the employer's interests. In none of the five weeks hereinbefore mentioned did the claimant contact 30 customers, the minimal number which, by his own estimate, should have been contacted. A single instance of conduct of the type here involved might not constitute misconduct, but in our judgement, the claimant's continued failure to file reports and to contact customers in a number which could be reasonably expected of the average salesman, does amount to disqualifying misconduct, especially where, as here, the employer has placed the employee on notice that his performance is unsatisfactory (Benefit Decision No. 4828-8588).

We find no justification for the claimant's conduct in the appellant's alleged failure to provide him with adequate price lists. There is nothing to show and it cannot be inferred, even if the appellant had failed to provide price lists, that the claimant was thereby prevented from calling on customers or mailing his reports. We therefore conclude that the claimant's discharge on April 30, 1949, was misconduct, by reason whereof he is subject to disqualification for benefits under Section 58(a)(2) of the Act (now section 1256 of the code).

DECISION

The decision of the Referee is reversed. Benefits are denied for the first week subsequent to April 30, 1949, in which the claimant first registered for work and for four additional weeks pursuant to Section 58(b) of the Act (now section 1256 of the code).

Sacramento, California, December 16, 1949.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

MICHAEL B. KUNZ, Chairman

GLENN V. WALLS

PETER E. MITCHELL

Pursuant to section 409 of the Unemployment Insurance Code, the above Benefit Decision No. 5497 is hereby designated as Precedent Decision No. P-B-223.

Sacramento, California, February 5, 1976.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

DON BLEWETT, Chairperson

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