

BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

THIS DECISION DESIGNATES FORMER BENEFIT
DECISION NO. 5869 AS A PRECEDENT
DECISION PURSUANT TO SECTION
409 OF THE UNEMPLOYMENT
INSURANCE CODE.

In the Matter of:

JOHN F. VILLALOBOS

PRECEDENT
BENEFIT DECISION
No. P-B-227

FORMERLY BENEFIT DECISION No. 5869
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The above-named claimant on December 19, 1951, appealed from the decision of a Referee (S-27235 and S-27236) which held the claimant subject to disqualification under Section 58(a)(1) of the Unemployment Insurance Act (now section 1256 of the Unemployment Insurance Code) and ineligible for benefits under Section 57(c) of the Act (now section 1253(c) of the 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 last employed as a service station attendant for approximately three months by a California oil company at a service station in Yuma, Arizona, This employment terminated on August 12, 1951, under the circumstances hereinafter set forth. The claimant had previously been employed as a service station attendant by the same employer in El Centro and Calexico, California.

On August 21, 1951, the claimant registered for work and filed a claim for benefits against California as the liable State in the Yuma office of the Arizona Employment Security Commission. On September 21, 1951, the Department issued two determinations. The first held the claimant subject to five weeks disqualification commencing August 21, 1951, on the ground that the claimant had voluntarily left his most recent work without good cause within the meaning of Section 58(a)(1) of the Act (now section 1256 of the code). The second held the claimant ineligible for an indefinite period as being unavailable within the meaning of Section 57(c) of the Act (now section 1253(c) of the code). The claimant appealed and a Referee affirmed the Department's determinations.

Prior to the claimant's last assignment in Yuma, the claimant had been transferred by his employer due to unsatisfactory performance. Approximately one week prior to the claimant's termination, he had made an error in the size of tire which he had installed on a customer's automobile. The claimant worked under the direct supervision of the manager of the station where he was employed but the manager did not have authority to discharge employees as this authority was retained by a supervisor who had jurisdiction over a number of stations. On or about the date of the claimant's termination, this supervisor departed on a three weeks' vacation and, shortly after his departure, the service station manager notified the claimant that he would not be permitted to work pending the supervisor's return. The claimant made inquiry as to the possibility of a transfer to another station and was informed that a transfer would not be recommended. The manager further recommended that the claimant resign, which the claimant did. The employer subsequently reported that the claimant's supervisor would not have reinstated him or transferred him to another station.

During the two-week period August 21 through September 3, 1951, inclusive, the claimant's only effort to seek work in his own behalf other than registering with the Employment Service was an application to a local sewing machine agency, an application to the Bureau of Reclamation by whom he had been previously employed and one other employer. In connection with the claimant's application at the Bureau of Reclamation, he was offered employment on an out-of-town job but refused the employment on the ground that he did not have transportation and, in addition, did not have sufficient funds to pay for a physical examination which was required prior to employment. During these same two weeks, the claimant was offered referral to work in the City of Yuma approximately 13 blocks from his residence. The claimant refused this referral on the ground that he did not have funds for transportation and that he considered the distance excessive for walking.

On or about September 7, 1951, the claimant obtained employment and was still employed on November 5, the date of the hearing before a Referee in Arizona. The claimant has not claimed benefits with respect to any period after September 3, 1951.

REASON FOR DECISION

Section 58 of the Act (now section 1256 of the code) provides in part as follows:

"(a) An individual shall be disqualified for benefits if:

"(1) He has left his most recent work voluntarily without good cause, if so found by the commission;

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

In Benefit Decision No. 5421, we considered various decisions of this Board dealing with the issue of voluntary leaving of work under Section 58(a)(1) of the Act (now section 1256 of the code), and we determined that a claimant could not be held to have left work voluntarily in a situation where an employer had the choice of retaining his services or discharging him since the issue in such situations was one of misconduct discharge under Section 58(a)(2) of the Act (now section 1256 of the code). In the instant case, it appears that the manager of the station where the claimant was employed did not have the authority to actually terminate the claimant's employment but did have authority to at least dispense with the claimant's services on a temporary basis pending the return of the supervisor. It is also acknowledged by the employer that the supervisor would not have returned the claimant to work at this or any other station. It is unquestioned that the claimant was willing to continue to perform services for the employer but that the employer, as represented by the local station manager, would not permit the claimant to perform his duties. Although the claimant signed a "resignation", this does not change the fact that the employer would not permit the claimant to work in any event and, under the particular facts in this case, we hold the claimant not subject to disqualification under Section 58(a)(1) of the Act (now section 1256 of the code). It is our further conclusion that the evidence will not justify any finding that the claimant was guilty of such misconduct as to make him subject to disqualification under Section 58(a)(2) of the Act (now section 1256 of the code).

Section 57(c) of the Act (now section 1253(c) of the code) provides:

"An unemployed individual shall be eligible to receive benefits with respect to any week only if the commission finds that;"

* * *

"(c) He was able to work and available for work for such week."

This section of the Act has been construed by this Appeals Board to require a claimant to be in a labor market where there is a reasonable demand for his or her services, without unreasonable restrictions or limitations on acceptable work, either self-imposed or created by force of circumstances, so that it may be found that the claimant is genuinely in that labor market, ready, willing and able to accept suitable employment.

In the instant case, the claimant was unable to accept employment with a former employer due to a combination of lack of transportation and lack of finances to take a physical examination which was necessary prior to reemployment. Although the claimant did not advise the Yuma Office of any specific restriction with regard to the area in which he would accept employment, his refusal to accept a referral to employment approximately 13 blocks from his residence solely due to a lack of transportation indicates a material restriction on the area in which he would accept employment. The claimant's negligible search for work while not in and of itself a sufficient factor to establish unavailability for work indicates a definite limitation on acceptable work. In our opinion, the cumulative effect of all the factors enumerated established that the claimant was not genuinely in a labor market ready, able and willing to accept suitable work if offered and, hence, not available for work within the meaning of Section 57(c) of the Act (now section 1253(c) of the code) (Benefit Decisions Nos. 5772 and 5816).

DECISION

The decision of the Referee is modified. The claimant is ineligible for benefits under Section 57(c) of the Act (now section 1253(c) of the code). The claimant is not subject to disqualification under 58(a)(1) or (2) of the Act (now section 1256 of the code). Benefits are denied.

Sacramento, California, April 4, 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. 5869 is hereby designated as Precedent Decision No. P-B-227.

Sacramento, California, February 9, 1976.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

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