BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

THIS DECISION DESIGNATES FORMER BENEFIT DECISION NO. 5825 AS A PRECEDENT DECISION PURSUANT TO SECTION 409 OF THE UNEMPLOYMENT INSURANCE CODE.

In the Matter of:

MARIETTA KRAKE
(Claimant)

THERMADOR ELECTRIC COMPANY
(Appellant-Employer)

PRECEDENT
BENEFIT DECISION
No. P-B-235

FORMERLY
BENEFIT DECISION
No. 5825

The above-named claimant on August 24, 1951, appealed from the decision of a Referee (LA-42006) which held that the claimant was disqualified for benefits under Section 58(a)(1) [now section 1256 of the Unemployment Insurance Code] and 58(a)(3) [now section 1257(a) of the code] and ineligible for benefits under Section 57(c) of the Unemployment Insurance Act [now section 1253(c) of the code]. Oral argument on behalf of the employer was heard on October 15, 1951, in Los Angeles. The claimant, although notified of the time and place for oral argument, did not appear.

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 by the employer herein intermittently from 1947 to 1951, as an electrical assembler. Her last period of employment was from June 16, 1950, to January 11, 1951. The claimant terminated her employment under circumstances hereinafter set forth. The claimant has also had about one and one-half year's experience as a silk finisher in dry cleaning establishments and seven or eight months' experience as a counter waitress.

The claimant registered for work and filed an additional claim for benefits on March 9, 1951. She had previously established a benefit year on March 23, 1950. On March 19, 1951, the Department, in response to her employer's protest, issued a determination holding the claimant eligible for benefits under Sections 57(c) [now section 1253(c) of the code], 58(a)(1) [now section 1256 of the code] and 58(a)(3) of the Unemployment Insurance Act [now section 1257(a) of the code].

The claimant last worked on January 11, 1951. She was granted a leave of absence for illness for a sixty to ninety-day period beginning January 12, 1951. On or about March 5, 1951, the claimant had sufficiently recovered to return to work. On March 9, 1951, she telephoned her employer and gave notice that she was unable to return to work due to lack of transportation. There is no adequate public transportation between the claimant's residence in Monrovia and the employer's plant in Alhambra. The employer's representative testified that a cooperative riders pool is maintained at the employer' s establishment The claimant denied the existence of such a pool at the particular plant where she was employed. She admitted, however, that it was a common practice for the employees to share their transportation. Although the claimant had on prior occasions inquired as to possible rides available for her with other employees, she made no such inquiry immediately prior to the time she terminated her employment.

At the hearing held on May 24, 1951, the claimant testified that prior to November 1950, she rode to work in a pick-up truck belonging to her husband; that her husband sold the truck in November, 1950, and purchased a heavier one and one-half ton truck which she was unable to operate; that thereafter she relied on a fellow employee (hereinafter designated as employee "A") for transportation; that employee "A" was laid off in January, 1951, while the claimant was on sick leave and that by reason thereof the claimant had no reliable means for getting to work thereafter. Upon further examination the claimant acknowledged the family possession of a passenger automobile, to wit, a 1937 Oldsmobile which was acquired on November 16, 1950. Although she at first testified that this vehicle was never in running condition she subsequently admitted that she may have driven it to work on several occasions. A statement from a mechanic was admitted in evidence showing that the vehicle had a cracked block and that it was badly in need of repairs.

On March 13, 1951, a former fellow employee of the claimant (hereinafter referred to as employee "B") filed a claim for benefits in the Alhambra office of the Department. Employee "B" gave as a reason for her loss of employment, in part as follows:

> "I then quit because about a month before I left, my rider took a year's sick leave."

At the hearing held on July 26, 1951, employee "B" appeared under subpoena and testified that the claimant was the individual referred to in her claim statement. Her further testimony as to the dates the claimant afforded her with transportation was vague and vacillatory. The substance of her testimony was that after November, 1950, the claimant experienced difficulties with her vehicles and that she therefore rode with the claimant intermittently. The claimant, in the face of this testimony, admitted that employee "B" might have driven with her after November, 1950, about one-half the time and probably less than that. The claimant attempted to introduce a letter from employee "A" for the purpose of corroborating her previous testimony that after November, 1950, she relied on employee "A" for transportation. Upon objection of the employer's representative, the Referee sustained the objection and refused to admit the letter into evidence on the ground that ". . . . the letter is not good evidence." The Referee on the other hand admitted into evidence a letter from the claimant's husband wherein he stated that ever since November 30, 1950, his truck had been in poor operating condition and in frequent need of repairs.

The Referee held that the claimant was subject to disqualification under Section 58(a)(3) of the Act [now section 1257(a) of the code] by reason of her false testimony at the first hearing with respect to her dependence on employee "A" for transportation after November, 1950, and by reason of her testimony at the first hearing that she had no transportation of her own after November, 1950, whereas, in fact, employee "B" depended upon her for transportation at that time. The claimant denied the falsity of her previous testimony since, in fact, she had no reliable means of transportation after November, 1950, as she could only avail herself of her family car and truck intermittently.

After filing her claim for benefits on March 9, 1951, the claimant, for the most part, sought work as a silk finisher in Monrovia and Arcadia. There are a considerable number of employers of silk finishers in these communities and the adjacent areas. The claimant is unwilling to accept waitress work because she had long ago abandoned this type of work when after trial she found herself unable to remember orders and incompetent in handling dishes. There are limited employment opportunities for electrical assemblers in the areas in which the claimant is seeking work. Considerable light industry exists in these areas which provides work for inexperienced individuals at the rate of eighty to ninety cents an hour. The claimant requires a minimum wage of one dollar an hour. The prevailing wage for silk finishers is from $1.25 to $1.50 an hour. During the period March 9, 1951, to May 24, 1951, the claimant filed applications for work with seven dry cleaning establishments employing silk finishers, seven factories and one market. All but two of her contacts were made from March 9, 1951, to the flexible week ending April 19, 1951. The claimant has submitted no evidence of employer contacts after May 24, 1951. The claimant remained continuously unemployed until July 10, 1951, when she accepted work in Monrovia pottery.

REASON FOR DECISION

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

> "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;"

In Benefit Decision No. 4752, in discussing the meaning of "good cause" for leaving employment under Section 58(a)(1) of the Act [now section 1256 of the code], we stated that "it is our opinion that the legislative declaration of public policy in Section 1 (of the Act) [now section 100 of the code] requires that we find that good cause for quitting work exists only in those cases where the reasons for quitting are of a compelling nature."

In Benefit Decision No. 5686, we reviewed a number of our previous decisions which treated with the issue of good cause for leaving work and concluded as follows:

> "If the facts disclose a real, substantial and compelling reason for leaving employment of such nature as would cause a reasonable person genuinely desirous of retaining employment to take similar action, then there is good cause for such leaving within the meaning of Section 58(a)(1) of the the Act [now section 1256 of the code]."

We have previously recognized that in certain situations good cause for leaving work may exist where the individual loses his means of travel to and from work by reason of a change of circumstance beyond his control (Benefit Decisions Nos. 1022, 2136). In the instant case the claimant has not established that any substantial change of circumstances relative to transportation accessible to her occurred between the time she went on sick leave and the time she recovered and was able to return to work. The claimant had previously relied on her own transportation as well as on sharing a ride with a fellow employee in order to get to work. However, prior to terminating her employment she failed to make any inquiry among the other employees to ascertain if she could share a ride with someone else. Considering the fact that it was the practice of her fellow employees to pool their means of transportation the claimant's failure to investigate what means were available to her indicates a lack of genuine desire on her part to retain her employment. We hold, therefore, that the claimant did not have good cause for leaving her work within the meaning of Section 58(a)(1) of the Act [now section 1256 of the code].

Section 58(a) of the Act [now section 1257(a) of the code] provides in part as follows:

> "An individual shall be disqualified for benefits if:
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> * * *
>
> "(3) He has wilfully made a false statement or representation or wilfully failed to report a material fact to obtain any benefits under the provisions of this act;"

We are of the opinion that the claimant is not chargeable with a wilful making of a false statement or representation in order to obtain benefits by reason of her testimony at the first hearing. The sum and substance of the claimant's testimony at both hearings was that she lacked reliable means of transportation of her own. When the claimant testified at the first hearing that she had no transportation other than the occasional use of her husband's truck it was in response to a general question as to whether or not she had other means of transportation of her own. Her subsequent admission that she did possess a 1937 Oldsmobile which was, most of the time, not in running condition could not be considered a false statement wilfully made to obtain benefits as the evidence clearly establishes that this vehicle could not be considered usable transportation. Upon objection of the employer's representative the Referee rejected the claimant's offer of proof at the second hearing to corroborate her testimony at the first hearing that after November, 1950, she relied on another employee for transportation. Since all the testimony of the employer's representative was in the nature of hearsay and since the Referee admitted other letters into evidence, his exclusion of the proffered evidence was erroneous.

Under Section 70 of the Unemployment Insurance Act [now section 1952 of the code] the common law or statutory rules of evidence need not be adhered to in proceedings of this nature and, accordingly, hearsay evidence, although of a lesser probative value than testimony under oath, is admissible for whatever weight the Referee, as the trier of fact, deems it worth (Benefit Decision No. 4142). In view of the exclusion of this evidence and the failure of the witness subpoenaed by the Referee to wholly contradict the claimant's sworn testimony, we cannot say that a preponderance of the evidence shows that she testified falsely. The claimant is, therefore, not subject to disqualification under Section 58(a)(3) of the Act [now section 1257(a) of the code].

Section 57 of the Unemployment Insurance Act [now section 1253(c) of the code] provides in part as follows:

> "Sec. 57. An unemployed individual shall be eligible to receive benefits with respect to any week only if the commission finds that:"
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> * * *
>
> "(c) He was able to work and available for work for such week."

We have construed this provision of the Act, in numerous decisions, to require as a condition for eligibility that the claimant must be in a labor market where there is a reasonable demand for his or her services, and 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 (Benefit Decision No. 5015).

In the instant case we are of the opinion that a reasonable labor market existed for the claimant in the geographic area where she was offering her services. We further find that she had imposed no unreasonable restrictions on acceptable work. Hence she was available for work within the meaning of Section 57(c) of the Act [now section 1253(c) of the code].

Section 57(e) of the Unemployment Insurance Act [now section 1253(e) of the code] provides as follows:

> "57(e) He has made such effort to seek work on his own behalf as may be required in accordance with such regulations as the commission shall prescribe."

Section 209 [now section 1253(c)-1] of Title 22 of the California Administrative Code sets forth certain standards by which the Department may determine whether a claimant has complied with Section 57(e) of the Act [now section 1253(e) of the code]. Among other things, it provides in substance, that a claimant is ineligible for benefits unless he makes a diligent effort to seek work by following a course of action reasonably designed to result in his prompt re-employment. In the instant case we are of the opinion that during the period March 9, 1951, to April 19, 1951, the claimant satisfied the requirements of Section 57(e) of the Act [now section 1253(e) of the code]. However, during the period April 20, 1951, to July 10, 1951, the claimant failed to follow such a course of action. From April 20, 1951, to May 24, 1951, the claimant applied for work with but two employers. She failed to establish any search for work after May 24, 1951. This clearly demonstrates a lack of effort to seek work on her own behalf and renders her ineligible for benefits under the aforementioned provisions of the Act and the Administrative Code during the stated period of time.

DECISION

The decision of the Referee is modified. The claimant is disqualified under Section 58(a)(1) of the Act [now section 1256 of the code] for the maximum period provided by Section 58(b) of the Act [now section 1260 of the code]. The claimant is not subject to disqualification under Section 58(a)(3) of the Act [now section 1257(a) of the code]. The claimant is held to have met the availability requirements of Section 57(c) of the Act [now section 1253(c) of the code]. The claimant is ineligible for benefits under Section 57(e) of the Act [now section 1253(e) of the code] from April 20, 1951, to July 10, 1951.

Sacramento, California, November 30, 1951.

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. 5825 is hereby designated as Precedent Decision No. P-B-235.

Sacramento, California, February 17, 1976.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

DON BLEWETT, Chairperson

MARILYN H. GRACE

CARL A. BRITSCHGI

HARRY K. GRAFE

RICHARD H. MARRIOTT