

BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

THIS DECISION DESIGNATES FORMER BENEFIT
DECISION NO. 6380 AS A PRECEDENT
DECISION PURSUANT TO SECTION
409 OF THE UNEMPLOYMENT
INSURANCE CODE.

In the Matter of:

MARYETTA CAMPBELL
(Claimant-Appellant)

NATHAN STONE AND S. KESSLER
(Employer)

PRECEDENT
BENEFIT DECISION
No. P-B-239

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| FORMERLY BENEFIT DECISION No. 6380 |
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Referee's Decision
No. LA-7704

STATEMENT OF FACTS

The claimant appealed from the decision of a referee which held her subject to disqualification under Section 1256 of the Unemployment Insurance Code. The referee further ruled in favor of the claimant's last employer under Section 1032 of the code.

The claimant and her husband were employed on September 1, 1954, as a couple, as managers of an apartment house. The husband, age 69, was an invalid and had been advised by his physician that he must not work. However, since the claimant had been unable to obtain employment as an individual, the husband decided that he would try to work so that the two of them could accept employment which was only available to a couple.

At the time they became employed, the apartment house was being renovated and refurnished. This entailed heavy work which the claimant's husband was unable to perform. The employer permitted the husband to employ assistants when necessary and paid for their services. However, it was not contemplated that assistants would be employed at the employer's expense with respect to the normal duties of the husband. Such normal

duties consisted of light maintenance work, sweeping, and cleaning. It developed that the husband was not able to perform even the normal, light duties; and he became increasingly nervous so that he could not meet the public. The claimant left her employment on January 7, 1955 inasmuch as she had been employed as one of a couple and she felt that her husband should be removed to a place where he would not be disturbed by the public.

All remuneration for the services performed by both the claimant and her husband was paid to the claimant. The employer informed the department that, although the claimant was hired, the husband was also required to perform certain services and that the claimant could have remained in employment as long as the work was done.

Having established a benefit year effective June 20, 1954, the claimant filed an additional claim for benefits as of January 9, 1955. On January 24, 1955, the department disqualified the claimant for benefits under Section 1256 of the code for a five-week period commencing January 9, 1955 on the ground that she had left her most recent work voluntarily and without good cause. On the same date, the department issued a ruling favorable to the employer. The claimant duly appealed. The department considered the claimant not ineligible under Section 1309 of the code [now section 1264 of the code] on the ground that she was the major support of the family, although no formal determination was issued with respect to this issue.

The issues before us are:

1. Did the claimant voluntarily leave her most recent work without good cause?
2. Is the claimant ineligible under Section 1309 of the code [now section 1264 of the code]?

REASONS FOR DECISION

Section 1256 of the Unemployment Insurance Code provides in part:

"1256. An individual is disqualified for unemployment compensation benefits if the director finds that he left his most recent work voluntarily without good cause . . ."

Section 1032 of the code provides:

"1032. If it is ruled under Section 1030 or 1328 that the claimant left the employer's employ voluntarily and without good cause or was discharged by reason of misconduct connected with his work, benefits paid to the claimant subsequent to the termination of employment due to such voluntary leaving or discharge which are based upon wages earned from such employer prior to the date of such termination of employment, shall not be charged to the account of such employer unless he failed to furnish the information specified in Section 1030 within the time limit prescribed in that section."

In Benefit Decision No. 4925 we stated:

"It is our opinion . . . that the claimant who left her work to be with her father during an operation for cancer and to remain with him during his convalescence, did so for reasons that were of an impelling nature constituting good cause . . ."

The evidence establishes that this claimant's husband was suffering from a serious illness which rendered him unable to perform services required of him and which necessitated his removal from a place where he must meet the public. The claimant left her work because she could not perform the services expected of both her husband and herself. Under the circumstances, it is our opinion that a compelling reason for leaving such work has been established by the claimant and that, as in the cited case, she did so with good cause. We therefore conclude that the claimant is not subject to disqualification under Section 1256 of the code. It follows that the employer's account is chargeable under Section 1032 of the code (Ruling Decision No. 1).

Section 1309 of the code [now section 1264 of the code] provides in part:

"1309. Notwithstanding any other provision of this division, an employee . . . whose marital or domestic duties cause him or her to resign from his or her employment shall not be eligible for unemployment insurance benefits for the duration of the ensuing period of unemployment and until he or she

has secured bona fide employment subsequent to the date of such voluntary leaving; . . . The provisions of this section shall not be applicable if the individual at the time of such voluntary leaving was and at the time of filing a claim for benefits is the sole or major support of his or her family."

In Benefit Decision No. 6111 we held that the claimant who left employment to care for her husband did so for domestic reasons. We stated therein:

"It is clear that the claimant left her work because of domestic duties."

The claimant herein also left her employment because of the illness of her husband. Therefore, she would be ineligible for benefits under Section 1309 of the code [now section 1264 of the code] unless it is established that she was the major support of the family at the time of leaving and at the time her claim was filed.

Section 1309-1(c) [now section 1264-1] of Title 22 of the California Administrative Code provides:

" 'Major support' of a family shall be presumed to be the family members, in the order provided below:

"(1) The husband or father

"(2) The wife or mother in any family in which there is no husband or father.

"Notwithstanding the above provisions, in any case in which a member of a family as defined above can show that he or she is providing the major means of support (more than one-half) then that individual shall be deemed the major support of the family. No more than one person may be the major support of the family."

In Benefit Decision No. 6126 the incomes of the claimant and her husband were equal. In determining who was the major support of the claimant's family we stated:

"From the evidence in this case, it is apparent that at the time she left her work the claimant was not providing more than one-half of her family's support. There is, thus, no basis to overcome the presumption that the claimant's husband was the major support of the family, and it follows that the claimant was not such major support at the time she left her work.

The evidence in this case shows that the claimant and her husband were hired as a couple and that each was expected to perform services for the remuneration which was paid to the claimant. Under such circumstances each must be considered an employee and each is entitled to a portion of the remuneration (Tax Decisions Nos. 26 and 1919). However, it is our opinion that, in this case, the claimant has overcome the presumption of Section 1309-1(d) [now section 1264-1] of Title 22 of the Administrative Code and should be credited with the greater portion of this remuneration in view of the fact that her husband was ill and unable to perform all of the duties expected of him. Since we have held that the claimant is to be credited with more than one-half of the family income, we conclude that the claimant was the major support of her family and that she is not ineligible for benefits under Section 1309 of the code [now section 1264 of the code].

DECISION

The decision of the referee is reversed. Benefits are payable provided the claimant is otherwise eligible. Any benefits paid to the claimant which are based on wages earned from the employer prior to January 7, 1955 shall be chargeable under Section 1032 of the code to Employer Account No. XXX-XXXX.

Sacramento, California, November 10, 1955.

California Unemployment Insurance Appeals Board

MICHAEL B. KUNZ, Chairman

GLENN V. WALLS

ARNOLD L. MORSE

Pursuant to section 409 of the Unemployment Insurance Code, the above Benefit Decision No. 6380 is hereby designated as Precedent Decision No. P-B-239.

Sacramento, California, February 17, 1976.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

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