BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

THIS DECISION DESIGNATES FORMER BENEFIT
DECISION NO. 6181 AS A PRECEDENT
DECISION PURSUANT TO SECTION
409 OF THE UNEMPLOYMENT
INSURANCE CODE.

In the Matter of:

PATRICIA J. CRAVEN
(Claimant)

NORTH AMERICAN AVIATION
(Employer)

PRECEDENT
BENEFIT DECISION
No. P-B-244

FORMERLY
BENEFIT DECISION
No. 6181

The above-named claimant appealed from the decision of a Referee (LA-64574) which held that the claimant was ineligible for benefits under Section 1309 of the Unemployment Insurance Code [now section 1264 of the code] and that the employer' s account is not chargeable with respect to benefits paid to the claimant under Section 1032 of the Code. The matter was orally argued before the Appeals Board in Los Angeles on May 27, 1954. An additional hearing was held October 5, 1954, in Inglewood, and a transcript of the testimony is now before the Board.

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 above-named employer in Inglewood, California, at a wage of $1.60 an hour. She performed no services after May 27, 1953, for reasons hereinafter set forth.

On November 23, 1953, the claimant registered for work and filed a claim for unemployment compensation benefits in the Compton office of the Department of Employment during a benefit year commencing December 28, 1952. Upon the expiration of this benefit year, a new claim was filed effective December 28, 1953.

On January 7, 1954, the Department issued a determination holding the claimant ineligible for benefits commencing November 23, 1953, under Section 1309 of the Code [now section 1264 of the code]. At the same time the Department issued a ruling under Section 1030 which held that the claimant had left her most recent work without good cause. The claimant appealed to a Referee who affirmed the determination and ruling of the Department. The Department also issued a determination holding the claimant ineligible for benefits under Section 1253(c) of the Code on the ground that she was not available for work. This determination was also appealed to the Referee, but he did not treat it in his decision. The Referee's decision was predicated on a finding that the claimant had voluntarily left her work on December 29, 1953, to move with her husband to Van Nuys from her residence in Compton.

In 1952 the claimant resided in Compton at two different residences, one of which was 19 miles from her employer's plant and the other 13 miles. She became ill December 28, 1952, and was hospitalized in Van Nuys, where her mother resides. She was placed on a leave of absence by her employer and returned to work March 31, 1953. At this time the claimant resided with her husband and family in Van Nuys and traveled to work a distance of 27 miles. She again became disabled on May 27, 1953, and was once more placed on a leave of absence.

On August 28, 1953, the employer notified the claimant by telegram that she was considered terminated as of that date. There is evidence that the employer took this action because its medical department was displeased with the reports submitted by the claimant's physician. This physician had advised the claimant that traveling to work both from Van Nuys and Compton was detrimental to her health. The claimant contacted the employer by telephone with respect to the termination and was advised that if reconsideration were in order she would be notified. On September 25, 1953, the claimant's physician notified the employer that the claimant was still disabled. She was released as physically able to work on October 1, 1953. She then moved back to Compton.

The claimant received disability benefits from the employer's voluntary plan insurer until October 1, 1953, and the insurer notified the claimant that she had been terminated by the employer, returning to her certain voluntary plan premiums which she had previously forwarded. On un undisclosed date the employer decided that the claimant had been improperly terminated and she was restored to her leave of absence. The employer never notified the claimant of this action. The leave was subsequently extended and the claimant was informed in January 1954, that she had been terminated, effective December 29, 1953, because of her failure to return to work at the conclusion of a trade dispute.

The claimant at first set her wage requirement at $1.40 an hour. Subsequently, she reduced this requirement to $1.30 an hour. She was not familiar with the starting wages allegedly prevalent. A Department representative testified that the prevailing wage paid to women employees starting with a new employer did not exceed $1.25 an hour, although an individual with the claimant's qualifications could expect to be raised within a week or two to $1.40 or $1.50 an hour. There are some employers not engaged in aircraft production in the Compton locality who pay a starting wage of $1.40 an hour. In addition, there are a large number of aircraft manufacturers who pay this wage.

REASON FOR DECISION

The first question to be resolved is whether the claimant voluntarily left her work or was discharged by the employer. The preponderance of the evidence indicates that the claimant was discharged by the employer on August 28, 1953, irrespective of the fact the employer subsequently determined, without notifying the claimant, that this action was in error and the claimant was again unilaterally placed on a leave of absence. Under these circumstances, which indicate that the claimant was dismissed for reasons which do not constitute misconduct, she is not subject to the ineligibility provisions of Section 1309 of the Code [now section 1264 of the code] and the employer is not entitled to a favorable ruling under Section 1030 of the Code (Benefit Decisions Nos. 5900 and 6074).

The final issue before us which was not treated by the Referee is whether the claimant was available for work as required by Section 1253(c) of the Code. As a general rule, an individual who unreasonably limits acceptable employment is not available for work, as such limitation materially reduces the likelihood that he may become employed (Benefit Decision No. 5836).

A wage restriction materially exceeding the prevailing wage has been held to be such a limitation (Benefit Decision No. 5071). In the instant case, the claimant set a wage requirement substantially below the wage she last received in an effort to accommodate herself to prevailing conditions as she thought them to be. She subsequently lowered the wage requirement still further to a figure only five cents an hour above the starting wage allegedly prevailing. The Department's evidence as to the prevailing wage is unconvincing considering that aircraft companies and several manufacturers in other lines pay a starting wage of at least $1.40 an hour, while other employers pay this wage within a week or two of hiring a qualified employee. The evidence will not support a conclusion that the claimant would not accept employment with this latter group of employers.

Accordingly we hold that the claimant did not impose a material restriction on acceptable employment (Benefit Decision No. 5243), and it is concluded that she was available for work as required by Section 1253(c) of the Code.

DECISION

The decision of the Referee and the determination of the Department, not treated by the Referee, are reversed. Benefits are payable provided the claimant is otherwise eligible. Any benefits paid to the claimant which are based upon wages earned from the employer prior to August 28, 1953, shall be chargeable under Section 1032 of the Code to employer account number XXX-XXXX.

Sacramento, California, December 3, 1954.

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. 6181 is hereby designated as Precedent Decision No. P-B-244.

Sacramento, California, February 24, 1976.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

DON BLEWETT, Chairperson

MARILYN H. GRACE

CARL A. BRITSCHGI

HARRY K. GRAFE

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