BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

THIS DECISION DESIGNATES FORMER BENEFIT DECISION NO. 6807 AS A PRECEDENT DECISION PURSUANT TO SECTION 409 OF THE UNEMPLOYMENT INSURANCE CODE.

In the Matter of:

JOHN MYERS
(Claimant-Appellant)

TRANS WORLD AIRLINES, INC.
(Employer-Respondent)

PRECEDENT
BENEFIT DECISION
No. P-B-245

FORMERLY
BENEFIT DECISION
No. 6807

The claimant appealed from Referee's Decision No. LB-665 which held that the claimant was disqualified for benefits under section 1256 of the Unemployment Insurance Code and that the employer's reserve account was relieved of charges under section 1032 of the code.

STATEMENT OF FACTS

The claimant worked for the above employer for a period in excess of 38 years. He was classified as a lead aircraft mechanic at the time he voluntarily left work on May 31, 1966.

The claimant, although working at the International Airport in Inglewood, California, has been a resident of Orange County for at least the last ten years of his employment. Prior to January 1966 he lived in Costa Mesa, commuting to and from work daily, approximately 50 miles each way. In January 1966, the claimant moved to Laguna Beach to reside on property in which he had an interest. As a result of the move, he was required to commute an additional ten miles each way. The overall travel time was approximately two hours each way.

The claimant is now 66 years of age. Under company policy he was eligible for retirement at age 65 but could remain in employment if physically able to perform his work and acceptable to the employer. The claimant elected to so continue working when he first became eligible for such retirement. He has not consulted a physician with regard to his health and considers himself in good physical condition. He has missed no work due to illness throughout the terminal period of employment. The nature of his work, however, required him to perform his duties off ladders and to climb in and out of planes. Due to his age, the nature of his work and, in effect, a 12-hour work day, the claimant began to suffer from excess fatigue. On one or two occasions, he dozed off while commuting; in one instance, driving his car off the main traveled portion of the highway, striking a barricade. It was at this time that he elected to leave work and seek other employment closer to his place of residence. Although he had hoped to obtain work closer to home, he had no immediate prospects of employment at the time of his leaving of work.

REASONS FOR DECISION

Section 1256 of the Unemployment Insurance Code provides that a claimant shall be disqualified for benefits if he has left his most recent work voluntarily without good cause. If it is so ruled under section 1030 of the code, an employer's reserve account may be relieved of charges under section 1032 of the code.

Transportation and willingness to commute to and from work have long posed a problem with respect to a claimant's eligibility for benefits. Suitability of offered work, the availability of a claimant for work, and good cause for leaving work all must be considered within the concept of that which is reasonable as to time, distance, or cost of travel or any combination thereof.

The adequacy of public transportation was before us in Benefit Decisions Nos. 5008 and 5948. We found good cause for leaving work where the overall time of travel in excess of one hour was deemed to be unreasonable even though the distance of travel was but 10 to 15 miles. In Benefit Decision No. 5290, we pointed out that one hour in a metropolitan area is reasonable commuting time despite possible inconvenience of public transportation.

The normal commuting pattern between a place of residence and a normal labor market without reference to distance was considered in Benefit Decisions Nos. 4815 and 4970 where the claimant's availability for work was in issue and again in Benefit Decisions Nos. 6170, 6261 and 6595 where the cost, time or distance of travel was a moving force for the claimant's separation from employment.

In Benefit Decision No. 6081, a claimant traveled 45 miles each way to work for approximately four and one-half months. Without discussion we considered such distance excessive. In Benefit Decision No. 6170 (25 to 30 miles), we found both the distance and cost of travel excessive. In Benefit Decision No. 6173 (27 miles, requiring an hour and a quarter to travel), we found the distance and time to be excessive.

In Benefit Decision No. 6310, a claimant was offered a transfer to a new office 24 miles distant. The only available transportation was by bus and travel time to meet the hours of employment would have increased her daily work day by three hours. Although the actual cost of travel was not before us, we considered such time and cost of travel to be excessive. On the other hand, in Benefit Decision No. 6426, a claimant was similarly transferred to a new office 25 miles distant. The commuting time between bus terminals was approximately 40 minutes at a round trip cost of 86¢ per day. Here, we found that there was no good cause for leaving work and that the time and distance under such circumstances were not excessive. Our conclusions in part were based upon a $3.50 per week increase in wages which would have compensated the claimant for the additional inconvenience in travel.

In Benefit Decision No. 6475, the claimant moved from Napa to Fairfield, 19.7 miles away. At an estimated 5¢ per mile for travel, we considered the cost excessive in view of her possible earnings of 85¢ per hour. Conversely, in Benefit Decision No. 6595, a claimant established a new residence 20 miles from her place of employment. Her earnings were $1.56 per hour. Cost of travel between the new residence and the place of employment was within the normal commuting pattern although requiring $7.50 per week in bridge tolls and automobile expenses. We found under such circumstances the claimant did not have good cause for leaving work.

Analysis of such cases heretofore decided shows that no definite standards or criteria may be established. Although we have held that 30 and 45 miles are excessive, distance and cost to and from work must be considered in light of the commuting pattern of any given community, including the feasibility of public transportation. Travel time may similarly be viewed as to that which is normal. Cost of travel may be excessive to one claimant in view of her earnings; whereas, a greater cost may be nominal to another claimant having a greater earning capacity. Additional factors may also be relevant and require consideration. Specifically, the age and physical condition of a claimant which may well affect the safety with which he travels.

Considering the facts now before us, we must decide the eligibility of a claimant, age 66, driving 60 miles to and from work and requiring a commuting time each way of up to two hours, depending upon traffic conditions. This claimant had driven in excess of 100 miles round trip to work over a prolonged period of time. As a result of his move to Laguna Beach, however, the distance of travel was increased by ten miles each way with a corresponding increase in travel time. He had attempted in good faith to continue commuting and had previously declined retirement in favor of continued employment. The inevitable fatigue caused by his advanced years coupled with the nature of his duties and excessive commuting made travel to and from work hazardous. Under such circumstances, we find the claimant had good cause for leaving work under the code.

It may well be argued that the claimant, by selecting a place of residence which increased the distance he was required to travel, voluntarily created the conditions which made the distance and travel time to his place of employment excessive. However, it is our opinion that the distance and travel time from his former residence in Costa Mesa to his place of employment was also excessive and had he left employment for this reason in January 1966 he would have had good cause for doing so. Thus, we can attach no significance to his change of residence, particularly when he continued to work for approximately five months thereafter. The move was not the proximate cause of the termination of employment, and we have held in prior decisions that we should be concerned with the immediate, not remote, cause for the termination (Benefit Decisions Nos. 5643 and 6636).

In Benefit Decision No. 6753, involving an issue under section 1264 of the code, we stated:

". . . A claimant who has every intention of continuing to work in spite of increased transportation problems because of a change of residence and who, in fact, does continue to work for a substantial period is not an employee who leaves her employment to accompany or to join her spouse, even though ultimately she leaves because of the commuting problem. We consider section 1264 of the code to be applicable only where it may be reasonably concluded from the facts that the decision to move to the new residence and the decision to leave work are practically simultaneous, although either the move or the leaving may be postponed temporarily. . . ."

Under all of the circumstances of this case, we hold the claimant had good cause for leaving work within the meaning of sections 1256 and 1030 of the code.

DECISION

The decision of the referee is reversed. The claimant is not disqualified for benefits under section 1256 of the code. The employer's reserve account is not relieved of benefit charges under section 1032 of the code.

Sacramento, California, March 1, 1967.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

GERALD F. MAHER, Chairman

LOWELL NELSON

NORMAN J. GATZERT

Pursuant to section 409 of the Unemployment Insurance Code, the above Benefit Decision No. 6807 is hereby designated as Precedent Decision No. P-B-245.

Sacramento, California, February 24, 1976.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

DON BLEWETT, Chairperson

MARILYN H. GRACE

HARRY K. GRAFE

RICHARD H. MARRIOTT

DISSENTING - Written Opinion Attached

CARL A. BRITSCHGI

DISSENTING OPINION

I dissent.

In 1967 when this case was first issued, the rationale may or may not have had some validity. I do not believe, however, that the factual situation set forth by this case has any validity as guidelines for the commuting problems which confront this Board at the present time.

In Appeals Board Decision No. P-B-25, we referred to and cited various cases from other jurisdictions in the absence of any judicial decisions in this state. In reviewing the rationales expressed, we concluded that where the problems of transportation are the motivation for the abandonment of work, a claimant must exert a more than casual personal effort to resolve the solutions. We specifically pointed out the change in the trend in the following language:

> "The man who walked to work or rode a horse car has been replaced by the automobile driver on the freeway. Persons who live great distances from their work do so usually from personal preference. Small town neighborhoods have become lost in a spreading and exploding population. Small town industry is no longer the mainstay of our economy. Individuals who choose to avail themselves of the advantages of suburban metropolitan living must nevertheless accept the obligation to provide themselves with adequate transportation to centers of employment. This the claimant herein failed to do."

This case was decided in 1968, and I believe that the validity of such case is even more cogent at this time. Since the issuance of such case, a comparable situation has been decided by the District Court of Appeal in Zorrero v. California Unemployment Insurance Appeals Board (1975), 47 Cal. App. 3d 434, 120 Cal. Rptr. 855, a hearing was denied by the California Supreme Court in July 1975. In the circumstances presented for consideration, there was no dispute as to the facts. The claimant had worked for the same employer for approximately five years. The distance between his place of residence and place of employment was 43 miles. Approximately three months prior to his termination, the claimant's personal automobile broke down and required substantial and expensive repairs. For the last three months of his employment, the claimant rode to and from work on a bus,

requiring a total commute time of approximately two hours each way. As a result of the inconvenience of public transportation, the claimant quit his job. Relying upon Appeals Board Decision No. P-B-25, this Board denied benefits and the matter was thereafter submitted to the court for a judicial determination.

Many of the cases relied upon by this Board in arriving at the ultimate conclusion in Appeals Board Decision No. P-B-25 were similarly referred to by the court. After considering the definition and concept of good cause in setting forth the basic policy as enunciated in section 100 of the Unemployment Insurance Code, the court went on to state:

> "Transportation to and from work is basically the personal responsibility of the employee unless special circumstances require the employer to furnish transportation. Cases from other jurisdictions so hold. Even in situations where the employer has moved his place of operation so as to increase the transportation problem for the employee it is held that the employee is not justified in terminating his employment for that reason. (Szojka v. Unemployment Compensation Board of Review, 187 Pa. Super. 643, 146 A. 2d 81 (Where the distance was 32 miles one way and public transportation took less than two hours); Faulkiner v. Unemployment Compensation Board of Review, 200 Pa. Super. 398, 188 A. 2d 803 (the distance was 32 miles); Mississippi Employment Security Commission v. Ballard, 252 Miss. 418, 174 So. 2d 367.)
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> "Given the geographical configuration of the Los Angeles area it is not unusual for persons to live in excess of 20 miles from their employment and while the public transportation system in this area may not be what many would like it to be, the fact is that vast numbers of workers in this area are forced to commute by public transportation on trips which run between an hour and two hours in each direction.
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> "Furthermore, while transportation by private automobile may be more comfortable than public transportation, it is not uncommon in Southern California for persons to spend an hour and a half to two hours in driving over congested streets and freeways to reach their places of employment.

> "Claimant's disinclination to acquire another vehicle and his disinterest in other types of employment suggest that his voluntary termination of employment was not the result of necessary and compelling reasons. A two hour bus ride to work may be distasteful but it is no excuse for quitting one's job.
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> "The judgement is affirmed."

In Appeals Board Decision No. P-B-151, this Board specifically stated that the precedential values of the Board should be observed except as modified by judicial decisions which have become final. The Zorrero case has since become final. It completely affirms the conclusions reached in Appeals Board Decision No. P-B-25. As I view the factual situation in the instant case, I can only consider it a complete disregard of Appeals Board Decision No. P-B-25 and the ultimate decision of the court in Zorrero.

Without reference to what may have been a normal commute pattern in 1966, it is clear that today's laboring force travels equal or greater distances to and from work either by personal vehicles or public commuting systems. The problems ultimately confronting the claimant herein were a direct result of his own election to move a greater distance merely to establish a more preferential residency. Despite his age of 66, the claimant admittedly was in good health and, in applying today's standards of commute, I believe that such claimant would have been disqualified based on such accepted facts.

To establish precedential value to the instant case can only result in confusion.

CARL A. BRITSCHGI