BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

THIS DECISION DESIGNATES FORMER BENEFIT DECISION NO. 5407 AS A PRECEDENT DECISION PURSUANT TO SECTION 409 OF THE UNEMPLOYMENT INSURANCE CODE.

In the Matter of:

JOY A. HUNTINGTON
(Claimant)

THE PACIFIC TELEPHONE
& TELEGRAPH CO.
(Appellant-Employer)

PRECEDENT
BENEFIT DECISION
No. P-B-247

FORMERLY
BENEFIT DECISION
No. 5407

The above-named employer on March 3, 1949, appealed from the decision of a Referee (LA-20761) which held that the claimant was ineligible for benefits under Section 57(c) [now section 1253(c)] and 57(f) of the Act [now section 1253(e) of the Unemployment Insurance Code] but did not treat with the issue of possible disqualification of the claimant under Section 58(a)(1) of the Act [now section 1256 of the code].

Based on the record before us, our statement of fact, reason for decision and decision are as follows:

STATEMENT OF FACT

Prior to filing a claim for benefits the claimant was last employed as a telephone operator by the employer herein at its exchange in the City of Long Beach. She left this employment on November 26, 1948, under circumstances hereinafter set forth. The claimant has had prior experience as a salesclerk and factory worker.

On January 11, 1949, the claimant registered for work and filed a claim for benefits in the Long Beach office of the Department of Employment.

On February 11, 1949, the Department issued a determination which held that the claimant was not subject to disqualification under Section 58(a)(1) of the Act [now section 1256 of the code], but held that she failed to meet the availability requirements of Section 57(c) of the Act [now section 1253(c) of the code]. The claimant appealed and a Referee modified the determination to hold the claimant ineligible for benefits under Section 57(c) [now section 1253(c)] and 57(f) of the Act [now section 1253(e) of the code]. The employer herein appealed therefrom on the ground that the claimant left her most recent work voluntarily without good cause within the meaning of Section 58(a)(1) of the Act [now section 1256 of the code].

The claimant was initially employed by the appellant-employer in February, 1946, and continued to work until October 18, 1947, when she obtained a maternity leave of absence of six months' duration. Her child was born on January 27, 1948. In March, 1948, she requested and was granted an additional three months' leave because she lacked care for her child and in July, 1948, an additional three months was granted for the same reason. The claimant returned to work on October 4, 1948, and continued in employment until November 26, 1948, when she submitted her resignation because she was experiencing difficulty in finding adequate care for her child and because of the child's illness. The claimant did not request a leave of absence because she believed that leaves were granted only for personal illness of the employee. The employer contends that had the claimant requested a leave it likely would have been granted, depending upon whether there was n assurance that she would return following her child's recovery from his illness.

Subsequent to filing a claim for benefits the claimant was offered re-employment by the employer which she refused on the advice of her physician because the work required evening hours and alternating shifts. The claimant's physician has advised her to consider the acceptance of day-shift work only because of an anemic condition. Since filing a claim for benefits the claimant has made no personal applications for employment and her work seeking activities have been confined to watching newspaper advertisements and making telephone calls to prospective employers. She explained that her failure to actively seek work was due to the fact that she was busy at home caring for her son.

REASON FOR DECISION

It appears that the Referee's conclusion that the claimant did not meet the eligibility requirements of Section 57(c) [now section 1253(c) of the code] and 57(f) of the Act [now section 1253(e) of the code] was a proper one under the facts of this case, and the claimant has not appealed therefrom.

However, the employer has contended that the claimant left her work voluntarily without good cause.

In Benefit Decision No. 5296-11002 we held that a claimant who although having compelling reasons for leaving work constituting good cause negated such good cause by refusing to apply for a leave of absence offered by the employer. We reasoned in that case that in view of the employer's offer of a leave of absence and the circumstances leading to her leaving of work being such that it could be adjusted within a reasonable time the claimant was under an obligation to accept the leave of absence and preserve her position with the employer.

In Benefit Decision No. 5319-11279, the claimant left her work because she lacked adequate child care. Prior to leaving she advised the employer of the nature of the emergency and requested a transfer to night work so that she could continue working, which request was not granted because the claimant lacked sufficient seniority. The claimant was not aware of the employer' s policy to grant leaves of absence in such cases and the employer did not offer to grant a leave despite the claimant's efforts to continue working. We held that under the circumstances the claimant had done everything that could be reasonably expected of her to preserve the employment relationship and that her leaving of work was with good cause.

The instant case, on the facts, does not fall squarely within the purview of our prior decisions. However, it is our opinion that the rationale of our holding in Benefit Decision No. 5296-11002 is applicable herein. The claimant was aware of the employer's policy to grant leaves of absence since she had availed herself of that privilege in the past and had effectively continued the employer-employee relationship until she was ready to return to work. We do not believe that the claimant has offered a satisfactory explanation for her failure to request a leave on November 26, 1948, for she was fully aware that the employer granted leaves of absence for reasons other than personal illness of the employee, since she had been granted two extensions of her original leave based upon her lack of care for her child. Under the facts of this case we do not believe there was any obligation upon the employer to extend the opportunity to the claimant to take further advantage of the leave provisions. In our opinion the claimant did not make a reasonable effort to preserve the employer-employee relationship, and, therefore, her leaving of work must be deemed to be without good cause.

DECISION

The decision of the Referee is modified. The claimant is held to have left her most recent work without good cause and is subject to disqualification 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 further held ineligible for benefits under Section 57(c) [now section 1253(c)] and 57(f) of the Act [now section 1253(e) of the code] as provided by the decision of the Referee.

Sacramento, California, June 16, 1949.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

MICHAEL B. KUNZ, Chairman

GLENN V. WALLS

PETER E. MITCHELL

Pursuant to section 409 of the Unemployment Insurance Code, the above Benefit Decision No. 5407 is hereby designated as Precedent Decision No. P-B-247.

Sacramento, California, February 24, 1976.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

DON BLEWETT, Chairperson

MARILYN H. GRACE

CARL A. BRITSCHGI

RICHARD H. MARRIOTT

DISSENTING - Written Opinion Attached

HARRY K. GRAFE

DISSENTING OPINION

I dissent.

Here, like Benefit Decision No. 5319 (Appeals Board Decision No. P-B-246), is another 1949 case being annointed with precedent status notwithstanding the fact that it fails to reflect the contemporary applicable law. This case also precedes by four years the "domestic leaving" provisions of section 1264, which was added to the Unemployment Insurance Code in 1953. The facts appear to bring this case within the purview of section 1264, and today the claimant's eligibility would have to be tested pursuant to the provisions of said section before a decision could be rendered. To me, an ancient case such as this, which arose before the enactment of a pertinent statute that has been on the books for more than 20 years, is a poor vehicle for a precedent decision.

HARRY K. GRAFE