BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

THIS DECISION DESIGNATES FORMER BENEFIT DECISION NO. 5429 AS A PRECEDENT DECISION PURSUANT TO SECTION 409 OF THE UNEMPLOYMENT INSURANCE CODE.

In the Matter of:

VIOLET G. CLARK
(Claimant)

HARTFORD FIRE INSURANCE COMPANY
(Appellant-Employer)

PRECEDENT
BENEFIT DECISION
No. P-B-248

FORMERLY
BENEFIT DECISION
No. 5429

The above-named employer on April 14, 1949, appealed from the decision of a Referee (SF-5833) which held that the claimant was eligible for benefits under the Unemployment Insurance Act [now Unemployment Insurance 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 for three months by the employer herein as an International Business Machine typist. She voluntarily left this employment on December 6, 1948, for reasons hereinafter set forth. The claimant has had prior experience as an IBM billing machine operator, and is qualified to perform general office work.

On January 13, 1949, the claimant registered as an IBM operator and filed a claim for benefits in the South San Francisco office of the Department of Employment. The employer herein on January 27, 1949, protested the payment of benefits on the ground that the claimant had voluntarily left her work without good cause within the meaning of Section 58(a)(1) of the Act [now section 1256 of the code]. On February 3, 1949, the Department

issued a determination which held that the claimant met the availability requirements of Section 57(c) of the Act [now section 1253(c) of the code] but did not rule on the question of disqualification under Section 58(a)(1) of the Act [now section 1256 of the code]. On February 4, 1949, the employer further protested the payment of benefits on the ground that the claimant was not available for work and thereafter appealed to a Referee contending that the claimant was subject to disqualification under Section 58(a)(1) [now section 1256] and 58(a)(4) of the Act [now section 1257(b) of the code], and that she was not available for work. The Referee ruled against the employer on all issues.

During the three month period in which the claimant was employed by the appellant herein she and her husband resided at a San Francisco address. On or about December 6, 1948, the claimant's mother, who was living in Merced, became seriously ill and the claimant immediately left San Francisco to assist her during her illness. On December 12, 1948, the claimant's husband advised the employer by letter of the reason for the claimant's absence and submitted her resignation. The claimant remained with her mother until the attending physician placed her mother in an institution, whereupon the claimant then rejoined her husband in a newly purchased home in South San Francisco.

On January 27, 1949, the employer addressed an offer of re-employment to the claimant. The claimant replied by letter dated January 31, 1949, in which she refused the proffered employment because of the time required to commute to San Francisco from her residence in South San Francisco. The evidence discloses that public transportation facilities from South San Francisco to the San Francisco business district are excellent, involving a travel time of approximately twenty-five minutes. San Francisco is considered a normal labor market for residents of South San Francisco and vicinity. The claimant's husband is employed in San Francisco during daytime hours and regularly drives to work in the family car. On February 8, 1949, the claimant obtained employment in San Francisco as an IBM typist. The claimant rides to and from work with her husband.

Employment opportunities for IBM operators in South San Francisco are limited and the claimant would have greatly enhanced her opportunities to obtain work within her qualifications and experience had she been willing to accept employment in San Francisco prior to February 8, 1949.

The employer, upon appeal to this Appeals Board, has contended that the claimant's leaving of work was without good cause inasmuch as the employer regularly grants leaves of absence to accomodate private problems of its employees. No evidence was produced at the hearing before the Referee to show that the claimant was aware of the employer's policy in this respect nor does the record disclose that the claimant was afforded the opportunity to avail herself of the leave privileges. Nor does the evidence reveal that the employer would have granted a leave to the claimant had a request been made. The employer further contends that the claimant unduly restricted her availability for work and that she refused an offer of suitable employment without good cause.

REASON FOR DECISION

In prior decisions of this Appeals Board we have recognized moral and legal obligations and compelling domestic circumstances as constituting good cause for a voluntary leaving of work within the meaning of Section 58(a)(1) of the Act [now section 1256 of the code]. The nature of the circumstances in each individual case must be evaluated and the compulsive pressure of subjective as well as objective forces may well become the controlling factors (Benefit Decision No. 5304-11318). In the instant case it is our opinion that the claimant has submitted substantial and compelling reasons for her leaving of employment sufficient to constitute good cause. However, a further issue on this point is raised by virtue of the employer's contention that the claimant should have requested a leave of absence, thereby preserving the employer-employee relationship until she was able to return to work. This contention was made by the employer for the first time upon appeal from the Referee's decision. There is no evidence in the record before us to establish that a leave of absence was offered to the claimant or that she would have been granted same upon request. Nor does it appear that the claimant was aware of the employer's policy to grant leaves in such cases. The employer was represented at the Referee's hearing and full opportunity was afforded to present such facts as were material to the issues involved. Under those circumstances, it is our conclusion that the employer has failed to submit facts which, if established by competent evidence, would place the burden upon the claimant to show that she did everything that could reasonably be expected of her to preserve the employment relationship. As the record now stands it appears that the claimant did follow a reasonable course of action in view of the emergency situation with which she was confronted.

With respect to further issues involved in this case it is our opinion that the claimant did not meet the availability requirements of Section 57(c) of the Act [now section 1253(c) of the code] during the period involved herein. It is clear that the claimant limited the geographical area in which she was willing to accept employment to South San Francisco. The facts disclose that employment opportunities within her prior experience as an IBM operator were limited in that area. While this restriction upon acceptable work did not entirely remove the claimant from the labor market, she did make herself unavailable for the much more abundant employment opportunities in the San Francisco business district where she was last employed because she objected to the commuting time. However, the travel time via public transportation was not excessive and San Francisco is considered a normal labor market for residents of South San Francisco. Further, private transportation was available to the claimant with her husband who was employed in San Francisco during daytime hours. Upon these facts we conclude that the claimant, by her restriction on acceptable employment to South San Francisco, so materially reduced the field of employment opportunities open to her as to render her unavailable for work within the meannng of Section 57(c) of the Act [now section 1253(c) of the code].

Whether the claimant became available for work on and after February 8, 1949, when she obtained employment, is not an issue which we are called upon to determine in this appeal. As far as the record shows, the claimant ceased seeking benefits after February 8 because she again became a part of the labor force and continued in this status for the remainder of the period involved in this appeal.

We further find that the claimant refused an offer of suitable employment without good cause on January 31, 1949. The only objection voiced by the claimant directed to the suitability of the employment was the distance of the work from her home and travel time involved. We already have determined in this case that the distance and travel time was not excessive and that transportation facilities were adequate. Therefore, the claimant is subject to disqualification under Section 58(a)(4) [now section 1257b) of the code] for the maximum period provided by Section 58(b) of the Act [now section 1260 of the code].

DECISION

The decision of the Referee is modified. The claimant is held not subject to disqualification under Section 58(a)(1) of the Act [now section 1256 of the code]. The claimant is held disqualified under Section 58(a)(4) of the Act [now section 1257(b) of the code] for five weeks commencing with

the week in which January 31, 1949, occurred, in accordance with Section 58(b) of the Act [now section 1260 of the code]. The claimant is held unavailable for work and benefits are denied under Section 57(c) of the Act [now section 1253(c) of the code] commencing with the week in which January 13, 1949, occurred and thereafter until she meets the availability requirements of the Act.

Sacramento, California, July 14, 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. 5429 is hereby designated as Precedent Decision No. P-B-248.

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.

I cannot share my colleagues' penchant for 1949 cases which antedate contemporary applicable law. This is the third such case today (see Benefit Decision No. 5319 (Appeals Board Decision No. P-B-246) and Benefit Decision No. 5407 (Appeals Board Decision No. P-B-247)) which is being invested with precedent status notwithstanding the fact that it precedes by four years the "domestic leaving" provisions of section 1264, which was added to the Unemployment Insurance Code in 1953. Here again, the facts appear to bring this case within the sphere 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. Once more, I must assert that a case exhumed from this far in the past is not reflective of current law and, thus, is a poor candidate for a precedent decision.

HARRY K. GRAFE