BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

THIS DECISION DESIGNATES FORMER BENEFIT
DECISION NO. 6659 AS A PRECEDENT
DECISION PURSUANT TO SECTION
409 OF THE UNEMPLOYMENT
INSURANCE CODE.

In the Matter of:

BEVERLY A. WHITE (NISSEN)
(Claimant)

AMERICAN AIRLINES, INC.
(Employer-Respondent)

PRECEDENT
BENEFIT DECISION
No. P-B-252

FORMERLY
BENEFIT DECISION
No. 6659

The claimant appealed from Referee's Decision No. LA-42273 which held that she had voluntarily left her most recent work without good cause within the meaning of section 1256 of the Unemployment Insurance Code and that the employer's account was relieved of charges under section 1032 the code.

STATEMENT OF FACTS

The claimant had been employed by the employer herein as an airline stewardess for about one year. The claimant accepted such employment with the knowledge that she must remain unmarried in order to retain such employment. This was in accordance with a rule of the employer.

On May 25, 1961, the claimant, since she was contemplating marriage, approached two supervisors with the request to be transferred to other work which the employer permitted married women to perform. She was discouraged from submitting a formal request for transfer to such other work. The claimant then submitted her resignation, effective May 27, 1961, since she planned to be married on June 3, 1961.

Effective June 4, 1961, the claimant filed a claim for unemployment insurance benefits. In response to information submitted by the employer, the department on July 5, 1961, held that the claimant had been discharged for reasons not constituting misconduct within the meaning of section 1256 of the code and issued a ruling unfavorable to the employer under section 1032 of the code. Upon the employer's appeal, a referee reversed the determination and ruling. Neither the department nor the referee treated the claimant's eligibility for benefits under section 1264 of the code.

The issues before us are:

(1) Whether the claimant voluntarily left her most recent work with good cause under section 1256 of the code,

(2) Whether the claimant is ineligible for benefits under section 1264 of the code, and

(3) Whether the employer's account may be relieved of charges under section 1032 of the code.

REASONS FOR DECISION

Section 1256 of the code provides for the disqualification of a claimant who has voluntarily left her most recent work without good cause or who has been discharged for misconduct connected with such work. Section 1052 of the code provides that the employer's account may be relieved of charges under such circumstances.

Section 1264 of the code provides:

"Notwithstanding any other provision of this division, an employee who leaves his or her employment to be married . . . 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. . . ."

We have considered situations similar to this in Benefit Decisions Nos. 59-1821 and 59-2392. In those cases, we held that the claimant had left her work without good cause; that the employer's account was relieved of charges; and that the claimant, having left her work to be married, was ineligible for benefits under section 1264 of the code. However, we must review these decisions in the light of Douglas Aircraft Company, Inc. v. California Unemployment Insurance Appeals Board (1960), 180 Cal. App. 2d 636, 4 Cal. Rptr. 723 (hearing denied by Supreme Court). In the Douglas case, the court considered a situation in which a claimant was required to take a leave of absence because of pregnancy. This requirement resulted from a provision of the collective bargaining agreement between the claimant's union and the employer. The claimant was able to work and wished to do so. The court held that, although on a leave of absence, the claimant had left her work, but that such leaving was involuntary. In so holding, the court stated:

> '. . . As stated in Warner (citation omitted), '. . . the collective bargaining agreement should not control in determining the eligibility of a retired employee for unemployment compensation; rather, the factual matrix at the time of separation should govern.
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> "As later stated in Smith v. Unemployment Compensation Bd. of Review, supra, 154 A. 2d 492, wherein the Supreme Court of Pennsylvania reversed a ruling denying compensation benefits to a pregnant employee, 'Here, although the pregnancy provision is a binding condition of employment, it cannot in any way thwart the appellant's right to unemployment benefits. The appellant was willing and able to work; and when her employment was discontinued, it was against her will. Therefore, she did not 'voluntarily leave' work as far as her state-granted employment benefits are concerned.'
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> "It is further held in the Smith case that it was immaterial whether the provisions prohibiting a female employee from continuing at work beyond the fifth month of pregnancy, was a contractual part of the collective bargaining agreement or whether it was a private agreement between the employee and the employer. (Emphasis added.)

"In Campbell Soup Co. v. Board of Review, etc., supra, 100 A. 2d 287, the Supreme Court of New Jersey reversed a judgment holding that employees, retired on pension at age 65 as required by a collective bargaining agreement, had left their employment 'voluntarily without good cause,' and were disqualified for unemployment compensation benefits. The opinion states in part: 'If the inquiry is isolated to the time of termination, plainly none of the claimants left voluntarily in the sense that on his own he willed and intended . . . to leave his job. . . . They left because they had no alternative but to submit to the employer's retirement policy, however that policy as presently constituted was originated. Their leaving in compliance with the policy was therefore involuntary . . .' (Emphasis added.)

"Subsequently in Myerson v. Board of Review, etc. (N.J. Appellate Div.), supra, 128 A. 2d 15, the appellate court therein stated, in rejecting a contention that a distinction should be drawn between cases where the employment relationship is permanently severed at retirement age and cases where the employee is only given a pregnancy leave of absence: 'Unemployment compensation is not to be denied persons merely because the employer or the collective bargaining agreement designates a period of unemployment as a leave of absence . . . Hence the fact that Mrs. Myerson (a pregnant employee) was given a leave of absence, with seniority rights and other privileges protected, is not determinative of the case.'

"We are convinced that the New Jersey and Pennsylvania cases are soundly founded and that the doctrine so clearly set forth therein should be followed in this state. The cases cited and relied upon by respondent are either not in point or, in our opinion, unsoundly reasoned."

* * *

". . . Indeed and as pointed out in Campbell Soup Co. v. Board of Review, etc., supra, 100 A. 2d 287, the provisions of a collective bargaining agreement cannot be construed as constituting a waiver of a statutory right to unemployment compensation without rendering such provisions illegal in New Jersey, as would also be the case in California under the provisions of section 1342 of the Unemployment Insurance Code."

* * *

"Respondent concedes, as indeed it must, that the employee would not have been disqualified for benefits if the employee had been 'let out as a result of company pregnancy policy alone' and that 'her leaving (in such case) would have been involuntary and she would have been entitled to unemployment benefits.'

"It is entirely immaterial, however, whether her leaving was the result of company policy or a collective bargaining agreement. (Smith, etc. v. Unemployment Compensation Bd. of Review, supra, 154 A. 2d 492; Klaniecki v. Unemployment Comp. Bd. of Review, supra, 154 A. 2d 419.

"As the Supreme Court of Pennsylvania further stated in Warner Co. v. Unemployment Comp. Bd. of Review, supra, 153 A. 2d 906, 909: 'Were Gianfelice not covered by the collective bargaining agreement involved here, the company could have dismissed him at its pleasure . . . Were he so discharged, however, he would be entitled to unemployment compensation . . . Does the fact that a collective bargaining agreement is present change these considerations? . . . It would be anomalous to say that, in gaining . . . (protection under the collective bargaining agreement), an employee has lost a benefit which he otherwise would receive from the state . . . on the theory that he has voluntarily agreed to quit.' "

In the instant case, the claimant desired to continue her work with the employer but was not permitted to do so, because of the employer's rule that married women could not work as stewardesses. Her request for a transfer to other work was discouraged. It would appear, therefore, that the claimant's leaving of work was involuntary within the rule of the Douglas case. Therefore, the provisions of sections 1256 and 1264 of the code are not applicable, and the employer's account may not be relieved of charges under section 1032 of the code.

We no longer subscribe to the principles set forth in Benefit Decisions Nos. 59-1821 and 59-2392 insofar as circumstances such as these are concerned.

DECISION

The decision of the referee is reversed. Benefits are payable if the claimant is otherwise eligible. The employer's account is not relieved of charges under section 1052 of the code.

Sacramento, California, October 20, 1961.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

GERALD F. MAHER, Chairman

ERNEST B. WEBB

ARNOLD L. MORSE

Pursuant to section 409 of the Unemployment Insurance Code, the above Benefit Decision No. 6659 is hereby designated as Precedent Decision No. P-B-252.

Sacramento, California, March 2, 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.

On February 2, 1968, the California Unemployment Insurance Appeals Board adopted Appeals Board Decision No. P-B-3, which contained the following holding: "We approve the result reached by us in Benefit Decision No. 6659." The facts and the conclusion in this case (Benefit Decision No. 6659) are identical to those in Appeals Board Decision No. P-B-3. In both this case and in Appeals Board Decision No. P-B-3, the non-marriage provision was established by a rule of the employer and the collective bargaining agreement between the employer and the claimant 's union was silent regarding the marital status of stewardesses.

In Appeals Board Decision No. P-B-3, the Board carefully set forth, examined and discussed the various facets of law bearing on the issue, finally syllogistically concluding that "the public policy of this State as expressed in its statutes is opposed to unreasonable employment discrimination in general and [to] employment contracts in restraint of marriage in particular." In Appeals Board Decision No. P-B-3, the Board carefully distinguished the case of Douglas Aircraft Company v. California Unemployment Insurance Appeals Board (1960), 180 Cal. App. 2d 636, correctly pointing out that that case dealt with the enforcement of provisions of a collective bargaining agreement, whereas the legal question in issue is the qualification for unemployment benefits under State law, not under contractual provisions.

In the instant case, although the correct result is achieved, the means used to reach that result is the Douglas case. As Appeals Board Decision No. P-B-3 has already established the rule of law by a path of reasoning which has stood well the passage of time, there is no need to adopt, some eight years later, another precedent decision which merely parrots that rule. But, to reiterate said rule in a case which uses a questionable course of legal reasoning and a singular judicial authority which is inapposite to the resolution of the issue, can only produce confusion and needless questions.

The Board said in Appeals Board Decision No. P-B-3: "We approve the result" in Benefit Decision No. 6659, not the reasoning. The Board should now abide by that wise edict of our predecessors, leaving Benefit Decision No. 6659 where we found it and not raising to precedent status a case whose legal rationale is syllogistically unsound.

HARRY K. GRAFE