

BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

THIS DECISION DESIGNATES FORMER BENEFIT
DECISION NO. 6433 AS A PRECEDENT
DECISION PURSUANT TO SECTION
409 OF THE UNEMPLOYMENT
INSURANCE CODE.

In the Matter of:

DOROTHY JEAN HUTTENHOWER
(Claimant)

HUGHES AIRCRAFT COMPANY
(Employer-Appellant)

PRECEDENT
BENEFIT DECISION
No. P-B-255

FORMERLY BENEFIT DECISION No. 6433
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Referee's Decision
No. LA-11681

STATEMENT OF FACTS

The employer appealed from the referee's decision which held that, although the claimant is ineligible for benefits under Section 1253(c) of the Unemployment Insurance Code, she is not disqualified or ineligible for benefits under Sections 1256 and 1309 of the code [now section 1264 of the code] and that the employer's account is chargeable under Section 1032 of the code for any benefits which might subsequently be paid to the claimant based on wages earned from the employer.

The claimant was last employed for three years and eight months by the employer herein. During this period, she performed general clerical duties at wages ranging from \$1.10 an hour to \$1.78 an hour. Previously, the claimant had worked for two years until July 1951 as a theatre cashier at 65¢ an hour and for about ten months until April 1949 as a theatre usherette at the same rate of pay. The claimant, who is 25 years of age, has had no other employment experience.

While employed by the employer herein, the claimant became pregnant; and she expected the birth of her child towards the end of June 1955. Under the operating rules of the employer, she was not permitted to work beyond the end of the sixth month of pregnancy. The employer notified the claimant that her services would be terminated effective March 25, 1955 and that she was entitled to a leave of absence, which would have maintained her seniority and guaranteed her return to work following her confinement. Leaves of absence granted by the employer contained no provision that the leave would terminate if the worker sought or accepted other employment. The claimant rejected the offer of the leave of absence in order to withdraw her contributions amounting to \$168.02 from the retirement fund because she was in need of money to meet expenses in connection with her pregnancy since she was no longer permitted to work for the employer. Had she accepted the offer of the leave of absence, she would not have received this money.

The claimant desired to work for the employer beyond March 25, 1955 but was not permitted to do so. She was in excellent health; and her physician had informed her that she was physically capable of performing her customary work until just before the date of her confinement.

Effective March 27, 1955, the claimant filed her initial claim for benefits at the Inglewood Office of the Department. On April 19, 1955, the department issued a ruling under Section 1030 of the code and a determination. The ruling and the first part of the determination held that the claimant had left her most recent work voluntarily without good cause. In this connection, the claimant was disqualified for benefits for a period of five weeks under the provisions of Section 1256 of the code. The notice of determination further set forth that the claimant was ineligible to receive benefits for an indefinite period beginning March 27, 1955 on the ground that she was not available for work within the meaning of Section 1253(c) of the code. The determination further held that the claimant was ineligible for benefits under Section 1309 of the code [now section 1264 of the code] effective March 27, 1955 on the ground that her marital or domestic duties had caused her to resign her employment.

Between the date that the claimant established her claim for benefits effective March 27, 1955 and the date of the referee's hearing on May 26, 1955, the claimant applied to five aircraft companies and two banks for employment. The applications to the aircraft companies were futile because of the fact that their policies regarding the employment of pregnant women were the same as those of the claimant's last employer. The claimant did not apply to any theatres for employment as a cashier. The claimant does not operate a typewriter or other office machines. Prior to the date of the referee's hearing, the claimant demanded a minimum wage of \$1.50 per hour.

The prevailing wage in the claimant's area for the kind of work which she was qualified to perform was not over \$45 a week.

The issues to be decided are:

(1) Did the claimant voluntarily leave her employment with the employer or were her services terminated by the employer?

(2) If the claimant voluntarily left her employment, did she do so with good cause?

(3) Did the claimant leave her work for domestic reasons as set forth in Section 1309 of the Unemployment Insurance Code [now section 1264 of the code]?

(4) Was the claimant available for work and did she make an adequate search for work as required by Section 1253(c) of the code?

REASONS FOR DECISION

In this case, the claimant was in good physical condition and capable of performing the duties of her position with this employer. She did not seek a leave of absence but desired to continue working so long as her pregnancy did not interfere with her work. Under these circumstances, the employer was the moving party in terminating the claimant's employment; and we therefore hold that the employer's actions resulted in the layoff of the claimant (Benefit Decisions Nos. 5082 and 5900).

Since the claimant did not voluntarily leave her employment and since the claimant's termination of employment was in no way caused by any misconduct on her part, she was not disqualified by reason of the provisions of Section 1256 of the Unemployment Insurance Code (Benefit Decision No. 5193) and she was not ineligible pursuant to the provisions of Section 1309 of the code [now section 1264 of the code] (Benefit Decision No. 6343).

It appears that the referee correctly concluded that the claimant did not meet the eligibility requirements of code Section 1253(c); and the claimant has not appealed therefrom.

DECISION

The decision of the referee is affirmed. The claimant is not disqualified for benefits nor ineligible therefor under Sections 1256 and 1309 [now section 1264] of the code. However, she is ineligible for benefits effective March 27, 1955, under Section 1253(c) of the code. The employer's account is chargeable under Section 1032 of the code.

Sacramento, California, February 10, 1956.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

MICHAEL B. KUNZ, Chairman

GLENN V. WALLS

ARNOLD L. MORSE

Pursuant to section 409 of the Unemployment Insurance Code, the above Benefit Decision No. 6433 is hereby designated as Precedent Decision No. P-B-255.

Sacramento, California, March 9, 1976.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

DON BLEWETT, Chairperson

MARILYN H. GRACE

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