BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

THIS DECISION DESIGNATES FORMER BENEFIT
DECISION NO. 5780 AS A PRECEDENT
DECISION PURSUANT TO SECTION
409 OF THE UNEMPLOYMENT
INSURANCE CODE.

In the Matter of:

WILMA L. ROSSI
(Claimant)

NORTH AMERICAN AVIATION, INC.
(Employer)

PRECEDENT
BENEFIT DECISION
No. P-B-256

FORMERLY
BENEFIT DECISION
No. 5780

The above-named claimant on May 11, 1951, appealed from the decision of a Referee (LA-42115) which held that she was disqualified for benefits under the provisions of Section 58(a)(1) of the Unemployment Insurance Act [now section 1256 of the Unemployment Insurance Code].

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

STATEMENT OF FACT

The claimant was last employed by the above employer for approximately four months as a file clerk at a terminating wage of $190 per month. She terminated her employment on September 8, 1950, under circumstances hereinafter set forth.

On March 2, 1951, the claimant registered for work and filed a claim for benefits in the Hollywood office of the Department. As a result of a protest to the payment of benefits received from the claimant's last employer, the Department on March 22, 1951, issued a determination holding the claimant not subject to disqualification from benefits under Section 58(a)(1) of the Act [now section 1256 of the code] on the ground that she had good cause for voluntarily leaving her most recent work. The employer appealed and a Referee reversed the Department's determination and held the claimant subject to disqualification for five weeks.

The claimant is the mother of two children, ages six and one-half and two and one-half years. The claimant's mother was also living in the home during the period of the claimant's last employment and, although not in good health, providing care for the aforesaid children. On or about September 1, 1950, the claimant's mother was examined by a physician who submitted a preliminary diagnosis of possible stomach cancer and recommended that the mother rest and cease any activity as to the care of the claimant's children.

On learning of this recommendation and her mother's inability to continue the supervision of her children, the claimant discussed the matter fully with her foreman after which she submitted her resignation. No mention was made of any leave of absence. The claimant knew that the company had a regular established leave policy and customarily granted authorized leaves of absence which could be extended upon written application. The claimant did not inquire as to a possible leave of absence because she assumed she would receive no more than thirty days due to the short period of her employment and she did not feel that this amount of time would be sufficient. The claimant's supervisor did not suggest a leave of absence. A representative of the employer questioned that the supervisor would have granted a leave of absence for an indefinite period of time but pointed out that there is no stipulation in the company's policy that a leave of absence can be granted for a period of thirty days only.

The claimant made no effort to seek other care for her children and her mother who needed attention at the time of the claimant's resignation, and the employer argues that this failure on the part of the claimant negated any good cause she might otherwise advance for her resignation, since a leave would have been granted to the claimant to permit such a search or to personally attend her mother. The claimant considered it necessary that she personally care for her mother and her children. The claimant 's mother was confined to bed at the time of the claimant's resignation.

The claimant argues that it would have been difficult if not impossible to secure adequate care for both her mother and her children and that even had she been able to secure such care, it would have been economically impractical. The claimant further contends that under these circumstances and considering the nature of her mother's illness and the indefinite period that she would be unable to work that a leave of absence was out of the question.

REASON FOR DECISION

Section 58(a) of the Act [now section 1256 of the code] provides in part that an individual shall be disqualified for benefits if:

> "(1) He has left his most recent work voluntarily without good cause, if so found by the commission."

The claimant in the instant case clearly left her most recent work voluntarily and the sole question therefore is whether or not she had good cause for the leaving. We have repeatedly held that the necessity for caring for one's children constitutes good cause for voluntarily leaving work. (Benefit Decisions Nos. 4984, 5047, 5304, 5319, and 5457) We have also held that a claimant otherwise having good cause for leaving his work who is offered and refuses a leave of absence or knows of but fails to avail himself of a leave of absence does not have good cause for leaving (Benefit Decisions Nos. 5296 and 5407). In Benefit Decision No. 5296, we considered the situation where a claimant left her work due to difficulty in securing child care. In that case, the employer had an established leave of absence policy and the claimant had previously had a leave of absence and was familiar with the company's leave policy. The claimant was specifically offered a leave of absence and we held that her refusal of the leave made her leaving of work without good cause within the meaning of Section 58(a)(1) of the Act [now section 1256 of the code]. In Benefit Decision No. 5407, we considered a claimant employed by the same employer as in Benefit Decision No. 5296. The claimant in that case had previously been given a six months' maternity leave of absence and two three months' extensions for child care. After returning to work for two months, the claimant resigned without requesting any leave and we held that she did not have good cause for her leaving within the meaning of Section 58(a)(1) of the Act [now section 1256 of the code].

In Benefit Decision No. 5319, we considered the situation where a claimant left her work due to the necessities of child care. In that case, the employer had an announced leave policy but the claimant was not aware of this policy and no leave was offered. In that case, we held the claimant had done everything that could be reasonably expected of her to preserve her position and that she had good cause for leaving. In Benefit Decision No. 5455, we considered a situation where a claimant left her work due to pregnancy. In that case the employer had a leave of absence policy which did not guarantee reemployment and there was no evidence that the claimant would have been granted a leave had she requested one. In that case, the claimant did not request a leave of absence in full knowledge of all the effects and we held that her leaving was with good cause. In Benefit Decision No. 5457, we considered a situation where a claimant regularly worked two nights per week and found that it was impossible to secure adequate child care during her night hours. She requested day work but this was refused and she was offered a leave of absence. The claimant refused the leave of absence because it was necessary for her to secure work during the hours when she could secure child care and to have taken the leave of absence would have been an idle act. In that case, we held under the circumstances that the claimant had good cause for leaving her work.

A review of our prior decisions shows that good cause for leaving work is negated by failure to secure a leave of absence only in those cases where the claimant was offered a leave of absence, knew of an established leave of absence policy or should have known of such policy and in addition an effort to maintain the employer-employee relationship appeared reasonable in the circumstances. In the instant case, the claimant informed her supervisor fully of the circumstances and the supervisor concurred with the claimant that termination was indicated without offering a leave of absence. (See Benefit Decision No. 5409) Although the employer had an established leave of absence policy of which the claimant was aware, there is no evidence that the claimant would have been granted such a leave but to the contrary the employer representative questioned whether or not an indefinite leave would have been granted. Considering all the circumstances presented in this case, we conclude that the claimant acted reasonably in the circumstances and had good cause for leaving her work within the meaning of Section 58(a)(1) of the Act [now section 1256 of the code].

DECISION

The decision of the Referee is reversed. Benefits are allowed providing the claimant is otherwise eligible.

Sacramento, California, July 13, 1951.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

MICHAEL B. KUNZ, Chairman

GLENN V. WALLS

EDWARD CAIN

Pursuant to section 409 of the Unemployment Insurance Code, the above Benefit Decision No. 5780 is hereby designated as Precedent Decision No. P-B-256.

Sacramento, California, March 9, 1976.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

DON BLEWETT, Chairperson

MARILYN H. GRACE

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HARRY K. GRAFE

RICHARD H. MARRIOTT