BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

THIS DECISION DESIGNATES FORMER BENEFIT DECISION NO. 6702 AS A PRECEDENT DECISION PURSUANT TO SECTION 409 OF THE UNEMPLOYMENT INSURANCE CODE.

In the Matter of:

DARLENE A. MORALES
(Claimant-Respondent)

OCCIDENTAL LIFE INSURANCE COMPANY
(Employer-Appellant)

PRECEDENT
BENEFIT DECISION
No. P-B-259

FORMERLY
BENEFIT DECISION
No. 6702

The employer appealed from Referee's Decision No. LB-02702 contending that the claimant was not eligible for benefits under sections 1253(c) and 1253(e) of the Unemployment Insurance Code on the ground that the claimant was not available for work and had not conducted a reasonable search for work. The decision of the referee held that the claimant was not disqualified under section 1256 nor ineligible for benefits under section 1264 of the code for the leaving of work on July 13, 1962, but that the claimant would be disqualified under section 1256 of the code and ineligible for benefits under section 1264 of the code if she filed for benefits after the birth of her child. The decision also held that benefits paid after July 13, 1962 and prior to the birth of the claimant's child were chargeable to the employer's reserve account under section 1032 of the code, but that benefits paid after the birth of the child were not so chargeable.

STATEMENT OF FACTS

The claimant was employed as a secretary from June 24, 1960 until July 13, 1962 by the above-named insurance company at a wage of $285 per month. The policy of the employer required that clerical employees either be placed on leave of absence at the end of the seventh month of pregnancy or

terminate the employment. This leave of absence extended for a maximum time of ninety days after termination of the pregnancy. An employee who accepts the leave of absence may return to work in less than ninety days' time provided she obtains a medical release from a physician.

The claimant's eighth month of pregnancy began in July 1962. She was offered a leave of absence but refused it because she and her husband had moved in April 1962 to a residence farther removed from the employer's place of business, and the claimant believed that the additional cost of transportation and the expense of child care made it impractical for her to resume her work with the employer after the birth of her child. Her employment was then terminated when the claimant completed an employment termination form giving the reason for resignation as pregnancy.

The claimant's husband, an apprentice carpenter, was employed throughout the period involved and had contributed more than one-half of the family's income.

The claimant's physician certified that the claimant could work in her usual occupation until September 1, 1962. The claimant testified that she did not wish to cease work at the time her employment was terminated, but wanted to continue to work as long as possible in order to be able to pay for the hospital and other expenses.

There is a limited labor market in the area for individuals in advanced stages of pregnancy. The only real employment opportunity for such individuals is in organizations seeking temporary help. The claimant had been instructed at a departmental interview to look for work not only in the large organizations, but also in the smaller companies, such as real estate offices and finance companies. The claimant stated that she had sought work at a large number of locations but did not have a list of organizations at which she had inquired. As of the date of the referee's hearing on September 7, 1962, the claimant's pregnancy had not been terminated

She further testified that she was willing to travel ten miles to employment. At the time she was claiming benefits her automobile needed repairs and was inoperative. However, the claimant testified that she would have the car repaired if she obtained employment. The family has two cars but her husband uses the other one to commute to his place of employment. The claimant's claim for benefits was effective July 15, 1962.

REASONS FOR DECISION

Section 1256 of the Unemployment Insurance Code provides in part that a claimant is disqualified for benefits if he voluntarily leaves his most recent work without good cause or is discharged for misconduct in connection with his most recent work. If such finding is made, the employer's reserve account may be relieved of benefit charges under sections 1030 and 1032 of the code.

Section 1264 of the code provides in part that a claimant whose marital or domestic duties cause her to resign from her employment is ineligible for benefits for the ensuing period of unemployment, and until bona fide employment is secured, unless the claimant was the sole or major support of the family both at the time of leaving and at the time the claim for benefits is filed.

We have had before us a series of cases involving mandatory leaves of absence for pregnancy, either with an intention of returning to the employment after the expiration of the leave, or accompanied either at the time of leaving of work by a resignation from the employment, or by a resignation at some time during the period of the leave.

We have followed the principle that during the period which would have been covered by a mandatory leave of absence for pregnancy, the cause of the claimant's unemployment, if a claim for benefits is filed during such period, is the claimant's involuntary separation from her work in accordance with the employers policy; therefore, during such period it is immaterial whether the claimant resigns at the time the leave of absence is offered, or accepts the leave and resigns at some later time within the period. However, after the expiration of the period covered by the pregnancy leave, the claimant's refusal to accept the leave or resignation is the primary cause of her unemployment, and the reason for the refusal to accept the leave or the resignation must be ascertained in order to determine whether the claimant is subject to the disqualification provisions of section 1256 or the ineligibility provisions of section 1264 of the code (Benefit Decisions Nos. 6636 and 6638).

In Benefit Decision No. 6686, somewhat analogous to the present case, the claimant had refused a leave of absence, after she had reached her seventh month of pregnancy, stating that she would be unable to work after her child was born. She did not file a claim for benefits until after the birth of her child. In discussing such case we stated:

> "In contrast to the situations in Benefit Decisions Nos. 6636 and 6638 (in which the claimants accepted leaves of absence and resigned from their employment during the term of their leaves) the claimant herein, at the time of involuntary leaving on September 23, 1960, declined a leave of absence which would have enabled her to return to work after the termination of her pregnancy, thereby effectively severing the employer-employee relationship, whereas in Benefit Decisions Nos. 6636 and 6638 the claimants initially accepted but later abandoned the leaves of absence and did not return to work for their respective employers following their pregnancies. Nevertheless, the principles established in those cases, in which we looked to the cause of the claimants' unemployment at the time the claims for benefits were filed, are applicable in the present case. By analogy then, it was the claimant's action in the present case, in declining a leave of absence to remain at home to care for her child which brought about the severance of the employer-employee relationship and the claimant's unemployment following the birth of her child. Therefore, the claimant herein has subjected herself to the disqualification and ineligibility provisions of sections 1256 and 1264 of the code."

In the present case, in which we are considering only the period of unemployment after the claimant's termination of employment with the insurance company until the date of the hearing before the referee, the claimant's unemployment at the time the claim for benefits was filed was due to the fact that she had been compelled to leave under the employer's mandatory rule concerning pregnancy. Therefore, her leaving was involuntary, and under the rule expressed in Douglas Aircraft Company, Inc. v. California Unemployment Insurance Appeals Board, et al. (1960), 180 Cal. App. 2d 636, 7 Cal. Rptr. 723, she is not subject to disqualification under section 1256 of the code, and although the employer is entitled to a ruling under section 1030 of the code, it necessarily must be adverse (Benefit Decision No. 6607).

Although the claimant at the time the employment was terminated submitted a resignation to the employer, she had no real choice in the matter as far as a leaving of work was concerned since in any case she would not have been permitted to work. At the time she filed her claim for benefits, neither her resignation nor the fact that she had refused a leave of absence was the cause of her unemployment. Therefore, as of that time, there was no issue under section 1264 of the code to be considered.

Whether the claimant may be subject to disqualification under section 1256 or ineligible for benefits under section 1264 of the code subsequent to the termination of her pregnancy is not an issue before us and should not have been considered by the referee. If she should claim benefits subsequent to the termination of her pregnancy, it will then be necessary for the department to ascertain the cause of her unemployment in relationship to that claim and to determine her eligibility for benefits.

Section 1253(c) of the code provides that an individual must be able to work and available for work during the week for which benefits are claimed.

We have previously construed this section to require a claimant to be in a labor market where there is a reasonable demand for his or her services, and without unreasonable restrictions or limitations on acceptable employment, either self-imposed or created by the force of circumstances so that it may be found that the claimant is genuinely in that labor market, ready, willing and able to accept suitable employment (Benefit Decision No. 5015).

Here, the claimant's physician certified that she could perform her usual work until September 1, 1962, so that there is no question of her ability to work. While job openings were limited because of the claimant's pregnancy, we have held in Benefit Decision No. 5079 that the test to be applied in determining whether there is a labor market for a claimant in a particular locality is whether there is a reasonable potential employment field, and the fact that there are but a limited number of job openings is immaterial in determining availability for work.

There is a question concerning the claimant's transportation inasmuch as her car was inoperable during the period in which benefits were claimed. However, the claimant's husband was available to take her to work in his vehicle if the times and directions coincided, and she testified that she would have her vehicle repaired if she obtained employment. In addition, while the record is silent, it is inferable that there was public transportation available sufficient to permit the claimant to report to work if employment was secured. Under these facts, we hold that the claimant was available for work within the meaning of section 1253(c) of the code.

The employer raised the issue of search for work under section 1253(e) of the code, both at the hearing before the referee and in its appeal to the board.

Section 1253(e) of the code provides that a claimant must conduct a search for suitable work in accordance with specific and reasonable instructions of a public employment office.

In this case the claimant followed the instructions of the local office to enlarge her search for work to include small business establishments. She testified that she had done so. As a general rule, the unimpeached and uncontradicted testimony of a witness, not inherently improbable, cannot be arbitrarily disregarded and should be accepted as true by the trier of the fact (Camp v. Ortega (1962), 25 Cal. Rptr. 873). The claimant's testimony was not contradicted nor was it inherently improbable. Although she had not retained a list of places at which she had sought work, this factor alone is insufficient to reject her testimony. Accordingly, we find that the claimant had satisfied the provisions of section 1253(e) of the code regarding search for work and is not ineligible for benefits under such section.

DECISION

The decision of the referee is modified. The claimant is not disqualified under section 1256 of the code. The claimant is not ineligible for benefits under section 1264 of the code. The claimant is not ineligible for benefits under sections 1253(c) and 1253(e) of the code. Benefits are payable. The employer's reserve account is not relieved of benefit charges under section 1030 and 1032 of the code.

Sacramento, California, April 12, 1963.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

GERALD F. MAHER, Chairman

ARNOLD L. MORSE

LOWELL NELSON

Pursuant to section 409 of the Unemployment Insurance Code, the above Benefit Decision No. 6702 is hereby designated as Precedent Decision No. P-B-259.

Sacramento, California, March 9, 1976.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

DON BLEWETT, Chairperson

MARILYN H. GRACE

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