BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

THIS DECISION DESIGNATES FORMER BENEFIT
DECISION NO. 5280 AS A PRECEDENT
DECISION PURSUANT TO SECTION
409 OF THE UNEMPLOYMENT
INSURANCE CODE.

In the Matter of:

HELEN MARGARET BARINGER
(Claimant)

SEARS, ROEBUCK AND COMPANY
(Employer)

PRECEDENT
BENEFIT DECISION
No. P-B-263

FORMERLY
BENEFIT DECISION
No. 5280

The above-named claimant on August 12, 1948, appealed from the decision of a Referee (LA-14362) which held that the claimant (1) met the availability requirements of Section 57(c) of the Act [now section 1253(c) of the Unemployment Insurance Code], (2) voluntarily left her work without good cause under the provisions of Section 58(a)(1) [now section 1256 of the code], and (3) without good cause refused an offer of suitable employment within the meaning of Section 58(a)(4) of the Unemployment Insurance Act [now section 1257(b) of the 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 for one year as a general office worker by a department store located in Glendale at a wage of $36 per week when she voluntarily terminated her employment on April 17, 1948, under circumstances hereinafter set forth. Prior to that work, the claimant had over two years' employment experience as a general office clerk and release clerk in the aircraft and telephone industries.

On June 16, 1948, the claimant registered for work as a clerk-typist and filed a claim for benefits in the Glendale office of the Department of Employment. On July 7, 1948, the Department issued a determination which held that the claimant was not subject to the disqualifying provisions of Section 57(c) [now section 1253 (c)], 58(a)(1) [now section 1256] and 58(a)(4) of the Act [now section 1257(b) of the code]. The determination of the Department was predicated on the following findings as set forth in the determination of eligibility which reads in part as follows:

> "The claimant stated that she quit her job because of a susceptibility to colds and because of nervousness. She said the air-conditioning in the place of business caused her to have constant colds and that there was so much noise and confusion she became extremely nervous. The claimant presented a statement from her physician which states in part - 'Because of an extreme nervous state and hypersusceptibility to colds, I have advised that she (the claimant) be employed in the type of work which lessens nervous strain or where there is no air-conditioning.' "

The claimant was examined by her physician on April 18, 1948, and thereafter has been seeing him at regular intervals. He prescribed rest until the condition which caused her nervousness had ceased. He informed the claimant, however, that her condition was not such as to render her eligible for benefits under a disability insurance plan.

The claimant had been absent about six days during the previous year due to colds, and before she terminated she was absent two days during each of two weeks. The claimant ascribed her present condition to the air-conditioning and pressure of work. She explained these circumstances were serious to her because she was an arrested tuberculosis case and had had a perforated ulcer which gave her trouble again prior to leaving her work. While employed the claimant had been moved to another place in the room in an effort to escape the draft from the air-conditioning and she herself moved about, but after an aggravated cold, she feared she might contract pneumonia.

The claimant by letter refused an offer of work in two different classifications from her former employer because of the air-conditioning.

Further, both of these positions required standing and were too fatiguing in view of her physical condition. The claimant was aware of the responsibilities of both positions having previously refused one even though it was promotional and having worked in the other for three months. Had she not then been given a desk job she would have been forced to quit.

The claimant is available for work in her usual occupation as a general office worker or as a receptionist in a place that does not have an air-conditioning system. The Department representative presented some evidence which tended to indicate that the majority of the employers in the area did not use air-conditioning systems. All of the last employer's plants use air-conditioning.

The employer contends that the claimant voluntarily terminated her employment without good cause, because if she had been ill at the time of leaving her employment she could have filed a claim for disability insurance benefits under the provisions of a voluntary plan covering the company's employees.

REASON FOR DECISION

We agree with the Referee that the claimant's limitation to work in an establishment in which an air-conditioning system was not used did not render her unavailable for work within the meaning of Section 57(c) [now section 1253(c) of the code] since there is a substantial labor market for her services in establishments without air-conditioning facilities. The next issue is whether the claimant voluntarily left her work without good cause.

We have previously held that a leaving of work for health reasons was with good cause even though the claimant did not consult a physician but relied upon self-treatment, in view of the claimants past continuous employment and the nature of his illness which was "pleurisy" and colds (Benefit Decision No. 5201-10766).

The claimant herein was an arrested case of tuberculosis and had suffered a series of colds which made her fearful of pneumonia. It was her belief these colds were caused by air-conditioning. Further, the claimant had had a perforated ulcer and due to nervousness caused by work pressures and the air-conditioning, she experienced a recurrence of her ulcer symptoms. As a precautionary health measure she left her work and saw her physician who prescribed a rest. We do not agree with the Referee that the claimant’s

leaving of work immediately prior to consulting her physician nullified the primary cause of her leaving, namely her health. That the claimant did see a physician and did take the prescribed rest for approximately two months prior to seeking work again is evidence of her good faith. Her continuous period of employment for one year and her efforts to find a place free of the air-conditioning drafts before finally resigning is further indication that the claimant did not leave her employment because of any personal whim. After reviewing all of the evidence in this case, we hold that the claimant left her work voluntarily with good cause within the meaning of Section 58(a)(1) of the Act [now section 1256 of the code].

The employer's contention that the leaving of work was without good cause because had she been ill, she could have received disability benefits under the voluntary plan is untenable. The claimant might have been able to perform her customary work in an establishment where the conditions causing her nervousness and colds did not exist.

Since the claimant's reason for refusing the offer of work in two different classifications by her former employer was the same as compelled her to leave this employment, namely air-conditioning, we hold that the claimant had good cause for voluntarily refusing such offer, as the work was unsuitable in view of her health history within the meaning of Section 13(a) of the Act [now section 1258 of the code].

DECISION

The decision of the Referee is modified. The claimant is not 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 she meets the availability requirements of Section 57(c) of the Act [now section 1253(c) of the code]. Benefits are allowed.

Sacramento, California, February 4, 1949.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

MICHAEL B. KUNZ, Chairman

GLENN V. WALLS

PETER E. MITCHELL

P-B-263

Pursuant to section 409 of the Unemployment Insurance Code, the above Benefit Decision No. 5280 is hereby designated as Precedent Decision No. P-B-263.

Sacramento, California, March 9, 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 have no quarrel with the job-termination provisions of this case, but I cannot close my eyes to the technological advances made since 1948 in the air-conditioning of establishments in the greater Los Angeles area. The claimant left her most recent work because the air-conditioning had an adverse effect on her health. This case holds that the claimant had good cause for leaving her job within the meaning of section 1256 of the code, and I agree. However, the case also holds that the claimant is not unavailable for work within the meaning of section 1253(c) "since there is a substantial labor market for her services in establishments without air-conditioning facilities." With this conclusion I do not agree.

The claimant was an office clerical worker who had last been employed in Glendale on April 17, 1948. It is a tribute to the genius of modern design, manufacturing, marketing, sales and service that in the 28 years since the facts of this case, air-conditioning has largely become a commonplace fixture in business offices located in the temperate zones of Southern California, such as Glendale and other environs of Los Angeles within the reasonable commuting distance for a person in the shoes (sweater?) of the claimant here. To state flatly, as do my colleagues, that there exists in contemporary Los Angeles "a substantial labor market . . . in establishments without air-conditioning facilities" is to retreat from reality. This carries the nostalgia craze too far. It is tantamount to saying that there is a current substantial labor market for the mechanic whose talents are limited to the repair of Auburn automobiles, or for the assembly-line worker for Studebaker whose skill is limited to the installation of running boards. Although such may have been once true, today it "T'ain't so McGee," to borrow a phrase from that bye-gone era.

HARRY K. GRAFE