BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

THIS DECISION DESIGNATES FORMER BENEFIT DECISION NO. 6451 AS A PRECEDENT DECISION PURSUANT TO SECTION 409 OF THE UNEMPLOYMENT INSURANCE CODE.

In the Matter of:

RAY PEYTON
(Claimant-Appellant)

AMERICAN TANSUL COMPANY
(Employer)

PRECEDENT
BENEFIT DECISION
No. P-B-267

FORMERLY
BENEFIT DECISION
No. 6451

STATEMENT OF FACTS

The claimant was employed by the above-named employer for one week ending on Friday, April 15, 1955, when he voluntarily left because of dissatisfaction in connection with the employment. The claimant was subsequently employed by a retailer on Monday, April 18, 1955 for two hours on a casual job as a laborer. He was laid off at the end of that work.

On Tuesday, April 19, 1955, the claimant registered for work in the San Francisco Industrial Office of the Department of Employment and filed an additional claim for benefits effective Sunday, April 17, 1955, in connection with a benefit year established effective December 26, 1954. Although the department had information concerning the claimant's employment on Monday, April 18, 1955, having referred the claimant to such employment, the employer herein was sent a notice of the claimant's claim as his most recent employer; and, on April 27, 1955, the department issued a determination which held that the claimant was subject to disqualification for five weeks commencing April 17, 1955 for voluntarily leaving his most recent work without good cause within the meaning of Section 1256 of the code and issued a favorable ruling to the employer herein under section 1032 of the code. It does not appear that a notice was sent to the claimant's employer of Monday, April 18, 1955, although inquiry was made of this employer by telephone

concerning the termination of the claimant's employment and to ascertain whether the employment was "covered employment" under the Unemployment Insurance Code. The claimant appealed to a referee who affirmed the determination and ruling of the department; and the claimant then appealed to the Appeals Board.

The question presented to us for consideration is:

> Was the claimant's "most recent work" within the meaning of Section 1256 of the code that which he last performed before the effective date of his claim for benefits or that which was last performed between the effective date and the actual date of his filing his claim for benefits?

REASONS FOR DECISION

Section 1256 of the Unemployment Insurance Code provides in pertinent part as follows:

> "1256. An individual is disqualified for unemployment insurance benefits if . . . he left his most recent work voluntarily without good cause . . ." (Emphasis added)

In Benefit Decision No. 4991, in discussing this same provision in the Unemployment Insurance Act, we stated as follows:

> "The language used in the above cited section of the Act is clear and unambiguous and provides that a claimant shall be denied benefits only if it is established that he voluntarily left his most recent work without good cause. In this case the evidence discloses that the claimant's position with the employer herein was not his most recent work prior to filing his claim for benefits. In addition the facts show that the causation of the claimant's unemployment in connection with his most recent employment was lack of work. Consequently, we conclude as did the Referee that there is no basis on which to support a conclusion that the claimant should be disqualified from benefits for voluntarily leaving his most recent work without good cause within the meaning of Section 58(a)(1) of the Unemployment Insurance Act."

We have followed this view with respect to a claimant's "most recent work" without regard to whether that work was covered employment under the code, or casual or temporary in nature, so long as there was an employment relationship (Benefit Decisions Nos. 5236, 5263, 5364, 5697, and 6277). If the regulations of the department provided for the establishment of the claimant's additional claim on a flexible week basis, that is commencing with the date of filing of his claim, there would be no question under our prior decision but that, in the present case, the claimant's casual two-hour employment on Monday was his "most recent work" in connection with the claim filed on Tuesday. However, because of the change from the flexible week to the calendar week, it is necessary for us to decide what effect, if any, this has upon determining a claimant's "most recent work" under Section 1256 of the code.

Under Section 143 of the code, "week" is defined as "a period of seven consecutive days as prescribed by authorized regulation." Under Title 22 of the California Administrative Code, Section 1253-1 provides as follows:

> "1253-1. The Term Week Defined. The term 'week' for benefit purposes means the seven consecutive days commencing at 12.01 a.m., Sunday, and ending 12 midnight the following Saturday."

In Benefit Decision No. 6368, we expressed the view that administrative regulations cannot conflict with statutory provisions. It is our opinion that the basic purpose of Section 1256 of the code is to disqualify claimants for reasons which may have caused the period of unemployment in connection with which the claimant is claiming benefits and that this basic purpose may not be subverted by an administrative regulation establishing a different weekly basis for claiming benefits. Therefore, we hold that the claimant's "most recent work" within the meaning of Section 1256 of the code was that which occurred on Monday, April 18, 1955, in connection with his claim filed on Tuesday of that week, even though his last employment prior to the effective date of his claim on a calendar week basis was with the employer herein.

Section 1327 of the code provides as follows:

> "1327. A notice of the filing of a new or additional claim shall be given to the employing unit by which the claimant was last employed immediately preceding the filing of such claim, and the employing unit shall submit within 10 days after the mailing of such notice any facts then known which may affect the claimant's eligibility for benefits."

Since the employer herein was not the "employing unit by which the claimant was last employed immediately preceding the filing of such claim", it was not entitled to a notice and not entitled to a ruling under Section 1032 of the code unless it was a base period employer, which does not appear from the facts (Benefit Decision No. 6095). Since apparently no notice was given to the actual "employing unit by which the claimant was last employed", to wit: his employer for two hours on Monday, April 18, 1955, the referee's decision and the department's determination and ruling will be set aside and the entire matter returned for appropriate action by the department.

DECISION

The decision of the referee and the determination and ruling of the department are set aside. The employer herein is not entitled to a ruling. The claimant's last employing unit is entitled to a notice of the filing of the claimant's additional claim under Section 1327 of the code and the claimant is entitled to a new determination of his eligibility for benefits in connection with his most recent work under section 1256 of the code.

Sacramento, California, March 2, 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. 6451 is hereby designated as Precedent Decision No. P-B-267.

Sacramento, California, March 16, 1976.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

DON BLEWETT, Chairperson

MARILYN H. GRACE

CARL A. BRITSCHGI

HARRY K. GRAFE

RICHARD H. MARRIOTT