

BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

THIS DECISION DESIGNATES FORMER BENEFIT
DECISION NO. 5236 AS A PRECEDENT
DECISION PURSUANT TO SECTION
409 OF THE UNEMPLOYMENT
INSURANCE CODE.

In the Matter of:

CECIL A. WHITE

PRECEDENT
BENEFIT DECISION
No. P-B-270

FORMERLY BENEFIT DECISION No. 5236
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The above-named claimant on May 20, 1948 appealed to a Referee from a determination of the Department of Employment which held that he had left his most recent work without good cause within the meaning of Section 58(a)(1) of the Unemployment Insurance Act [now section 1256 of the Unemployment Insurance Code]. On August 6, 1948, and prior to the issuance of the Referee's decision, this Appeals Board removed the case to itself for consideration and decision under the provisions of Section 72 of the Act [now section 1336 of the code].

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

STATEMENT OF FACT

Immediately prior to filing his claim for benefits, the claimant herein and a partner were engaged in operating a weather-stripping business for a short period of two months. The latter solicited business while the claimant made the actual installations on a profit-sharing basis. This partnership dissolved on or about April 4, 1948, because of a disagreement relative to certain financial matters. Previous to that the claimant was employed as a weather stripper for fifteen months by a contracting company in San Leandro, California. He voluntarily left this work on February 5, 1948, to enter the aforesaid partnership.

On May 4, 1948, the claimant registered for work and filed a claim for benefits in the Hayward office of the Department of Employment. On May 11, 1948, the Department issued a determination which disqualified the claimant for five weeks beginning May 4, 1948, on the ground that he had left his most recent work voluntarily without good cause within the meaning of Section 58(a)(1) of the Unemployment Insurance Act [now section 1256 of the code]. This determination was predicated on a finding by the Department that the claimant's employment terminating on February 5, 1948, was his "most recent work" within the meaning of that term as used in the statute, and not the later business enterprise in which he engaged.

In appealing from the aforesaid disqualification and at the hearing before the Referee on June 11, 1948, the claimant contended that (1) "My partner and myself were actually my last job" and (2) good cause existed for leaving the employment in San Leandro on February 5, 1948, since he "expected to do better financially by starting my own business."

REASON FOR DECISION

In the instant case the first question we must decide is whether, as the claimant contends, the Department erred in adopting the view that the work terminated on February 5, 1948, was his "most recent work" within the meaning of Section 58(a)(1) of the Act [now section 1256 of the code], rather than the self-employment as a "working partner" in a business venture abandoned two months later. In other words, the issue involves a definition and interpretation of the term "most recent work", as those words are used in the context of the cited section of the statute.

Our first observation concerning the issue is that nowhere in the Act or regulation do we find a definition of the word "work" as used above. In fact, whereas that term appears in Section 58(a)(1) of the Act [now section 1256 of the code], Section 58(a)(4) [now section 1257(b) of the code] provides that an Individual shall be disqualified for benefits if it is established that "he, without good cause, has refused to accept suitable employment when offered to him, or failed to apply for suitable employment when notified by a public employment office". In addition, Section 13(a) of the statute [now section 1258 of the code] states in part that " 'Suitable employment' means work in the individual's usual occupation or for which he is reasonably fitted regardless of whether or not it is subject to this Act Any work offered under such conditions is suitable if it gives to the individual wages at least equal to his weekly benefit amount for total unemployment". Furthermore, subsection (b) of this provision of the law reads in part that "notwithstanding any other

provisions of this act, no work or employment shall be deemed suitable and benefits shall not be denied to any otherwise eligible and qualified individual for refusing new work under any of the following conditions:" Thus, it would seem that the words "work" and "employment" as they appear in the statute are used interchangeably as substitutes for one another and may logically be accepted as synonymous terms. Accordingly, we may accept a definition of one as equally applicable to the other. In this connection it should be noted that the word "employment", subject to certain specific exemptions, is defined in Section 6.5 of the Act [now section 601 of the code] to mean "service . . . performed for wages or under any contract of hire, written or oral, express or implied". The term "wages" as used above is further defined in Section 11(a) of the Act [now section 926 of the code] as follows:

"(a) All remuneration payable for personal services whether by private agreement or consent or by force of statute, including commissions and bonuses, and the cash value of all remuneration in any medium other than cash".

From reading the language in these definitions we are impressed with the repeated reference to wages being paid in exchange for services. In other words, the definition of employment appears to envision work in the service of another for which wages are received, which would, in turn, seem to imply a direct relationship between the type and extent of the services and the remuneration received. Logically, it then follows that we must find a claimant's "most recent work" to be that work in which an employer-employee relationship existed in connection with his services, and not that in which he may have received or was entitled to receive for his services a profit or share thereof in a business venture. In our opinion this view is further supported by Section 9.2 of the Act [now section 1252 of the code] which reads as follows:

"Sec. 9.2. An individual shall be deemed 'unemployed' in any week during which he performs no services and with respect to which no wages are payable to him, or in any week of less than full-time work if the wages payable to him with respect to such week are less than his weekly benefit amount. Authorized regulations as may be necessary shall be prescribed applicable to unemployed individuals making such distinctions as may be deemed necessary in the procedures as to total unemployment, part-total unemployment, partial unemployment of individuals attached to their regular jobs, and other forms of short-time work."

Clearly in this quoted provision of the statute the legislature is referring to unemployed workers or those partially unemployed and not to an individual outside the employer-employee field. Furthermore, Section 1 of the Unemployment Insurance Act [now section 100 of the code] is pertinent to this discussion and sets forth the legislative declaration of public policy in establishing a system of unemployment insurance providing benefits for persons "unemployed through no fault of their own" in order to reduce "involuntary unemployment and the suffering caused thereby to a minimum."

While general in nature, the language in this intendment leads us to the inescapable conclusion that the leaving of work referred to in Section 58(a)(1) of the law [now section 1256 of the code] is intended to apply only to those individuals who, while working for wages, sever an employer-employee relationship. That this is a proper interpretation is further supported by Section 58(a)(2) of the statute [now section 1256 of the code], which provides in part that "an individual shall be presumed . . . not to have voluntarily left his work without good cause unless his employer shall have given notice to the contrary to the Commission in writing within five days after the termination of service". Obviously, if the Act contemplated an examination into the circumstances surrounding the failure of a private business or the unemployment of a businessman, such provision would be largely meaningless.

When the claimant herein filed his initial claim for benefits, he was in the same position as an individual who had previously left employment and for one reason or another retired from the labor market for a period of time. The mere fact that the claimant chose to become an entrepreneur during the period subsequent to severing an employer-employee relationship does not act to remove that severance as the original event in the sequence of circumstances leading to the unemployment for which he is now claiming benefits. Accordingly, pursuant to our conclusions and findings above, we agree with the Department's view that the claimant left his most recent work when he severed the employer-employee relationship which existed on February 5, 1948. In considering the claimant's reasons for quitting at that time, we have previously held the legislative declaration of public policy in Section 1 of the Act [now section 100 of the code] requires that we find good cause for quitting work exists only in those cases where the reasons for quitting are of a compelling nature. We cannot find that element of compulsion in this case. Although a desire for advancement is commendable,

nevertheless it does not, in our opinion, constitute good cause for leaving work. In Sun Shipbuilding and Dry Dock Company vs. Unemployment Compensation Board of Review, 358, P.A., 224 56A (2nd) 254 (1948), the Supreme Court of Pennsylvania held that a claimant who left work to engage in self-employment did so without good cause. In reaching this conclusion the court said in part as follows:

"(The claimant) became a businessman at his own risk. He could not assume his new status with the legal assurance that if his expectations of more favorable economic results from his new status was realized he would be the sole gainer, while if his venture failed he could fall back on compensation benefits The law does not make Pennsylvania employers the insurers to any extent whatsoever of the private ventures of their employees."

In conclusion, under the findings herein, we hold that the claimant left his most recent work voluntarily without good cause on February 5, 1948, within the meaning of Section 58(a)(1) of the Act [now section 1256 of the code] and is, therefore, subject to disqualification for benefits for the five-week term provided in Section 58(b) of the statute [now section 1260 of the code].

DECISION

The determination of the Department is affirmed. Benefits are denied.

Sacramento, California, December 16, 1948.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

MICHAEL B. KUNZ, Chairman

GLENN V. WALLS

PETER E. MITCHELL

Pursuant to section 409 of the Unemployment Insurance Code, the above Benefit Decision No. 5236 is hereby designated as Precedent Decision No. P-B-270.

Sacramento, California, March 16, 1976.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

DON BLEWETT, Chairperson

MARILYN H. GRACE

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