

BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

THIS DECISION DESIGNATES FORMER BENEFIT
DECISION NO. 6294 AS A PRECEDENT
DECISION PURSUANT TO SECTION
409 OF THE UNEMPLOYMENT
INSURANCE CODE.

In the Matter of:

ROBERT F. TAYLOR
(Claimant-Appellant)

WILMINGTON BOAT WORKS, INC.
(Employer)

PRECEDENT
BENEFIT DECISION
No. P-B-271

FORMERLY BENEFIT DECISION No. 6294
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STATEMENT OF FACTS

The claimant appealed from the decision of a referee which held that he was unavailable for work and ineligible for benefits under section 1253(c) of the Unemployment Insurance Code and also that he left his work with the employer without good cause within the meaning of section 1256 of the code. The referee further ruled in favor of the employer under section 1032 of the code.

The claimant was employed as a combination welder by the employer herein from October, 1952 until April 1, 1954 when he left voluntarily. Approximately two weeks prior to his resignation, the claimant was offered a position as an airplane pilot dusting crops in Arkansas. Inasmuch as the claimant had heard that the boat works was probably going to lay off workers, the claimant consulted his immediate supervisors and the employer's personnel manager. The claimant was advised that he would be laid off in about two weeks; and those company officials recommended that the claimant accept the position as crop duster. Before resigning, the claimant also consulted the business agent of his union and was informed that there were no immediate prospects of work for him. The claimant accepted the position as crop duster and entered into such services immediately after leaving the employer herein. He continued in such occupation until mid-September

when the season ended because of poor crops. The claimant was of the opinion that his crop dusting services were in self-employment since he leased a plane from the company with which he was connected and was paid for his services on a commission basis. The record contains no evidence to the contrary. Crop dusting is seasonal work and, in Arkansas, is normally performed from early April to November.

Upon the conclusion of the crop-dusting season, the claimant sought work in a number of cities near his home. However, on October 8, 1954, the date he filed his initial claim the claimant stated that he was available for work until December when he would go to Peru to dust crops. There is no evidence of record that there were opportunities for temporary work in the area during the period commencing October 3, 1954 for a person of the claimant's experience.

As of the date of the hearing in this matter, December 1, 1954, the claimant had contracted, with the same company, to perform crop-dusting services in Peru. He was to leave for that country on December 15, 1954.

Effective October 3, 1954, the claimant filed a claim for benefits in the Jonesboro office of the Arkansas Employment Security Division with California as the liable state. On October 28, 1954, the department determined that the claimant had left his work with the employer herein voluntarily and without good cause within the meaning of sections 1256 and 1032 of the code. The claimant was also determined ineligible for benefits for an indefinite period commencing October 3, 1954 under section 1253(c) of the code. The employer did not respond to a notice that a hearing would be scheduled for its convenience provided it requested such hearing within 10 days (letter of Nov. 18, 1954). On appeal by the claimant, a referee affirmed the determinations and ruling of the department. The claimant duly appealed to this Appeals Board.

The issues before us are:

1. Did the claimant leave his most recent work without good cause within the meaning of sections 1256 and 1032 of the code?
2. Was the claimant available for work during the period commencing October 3, 1954?

REASONS FOR DECISION

Section 1256 of the Unemployment Insurance Code provides in part:

"An individual is disqualified for unemployment compensation benefits if the director finds that he left his most recent work voluntarily without good cause . . ."

In Benefit Decision No. 5686 we stated:

"If the facts disclose a real, substantial, and compelling reason for leaving employment of such nature as would cause a reasonable person genuinely desirous of retaining employment to take similar action, then there is good cause for such leaving . . ."

In Benefit Decision No. 5531, we held that the claimant therein had left his work without good cause when he left in anticipation of discharge. In that case, the employer had indicated dissatisfaction with the claimant's production and had warned him that his services would be terminated if he did not improve. However, the employer had taken no definite steps to discharge the claimant and the latter had no prospects of other work. We reached a similar conclusion in Benefit Decision No. 6041 wherein the claimant left her work prior to the date she was to be terminated by her employer, in order to accompany her husband on a vacation.

In Benefit Decisions Nos. 5236 and 5342, the claimants left work to enter into self-employment which was later discontinued. We held that self-employment is not "work" within the meaning of the Unemployment Insurance Act (now Code) and that the claimant's "most recent work" was the employment in which they were engaged immediately prior to their entrance into self-employment. In considering the circumstances surrounding the leaving of such "work" in each case, we concluded that the claimants had left their "most recent work" without good cause. In each case, the claimant left permanent work to enter into an uncertain venture. Thus, the above decisions may be distinguished from the matter now before us.

In the instant case, the claimant conceded that his work as a crop duster was in self-employment. It is our view that the mere act of leaving "work" to enter into self-employment is not in and of itself a disqualifying action. We must consider all of the reasons for such leaving. The claimant herein was faced with the loss of his work as a welder within a short time. He investigated and found that he could not hope to obtain new employment in the Los Angeles area within the foreseeable future. On the other hand, crop dusting offered him a certain livelihood for himself and his family for several months. In our opinion, the claimant had a compelling reason for his resignation and did what a reasonable man would do under similar circumstances. We therefore hold that the claimant left his work as a welder with good cause within the meaning of sections 1256 and 1032 of the code (Ruling Decision No. 1).

Section 1253 of the Unemployment Insurance Code provides in pertinent part:

"An unemployed individual is eligible to receive unemployment compensation benefits with respect to any week only if the director finds that:"

* * *

"(c) He was able to work and available for work for that week, and had made such effort to seek work on his own behalf as may be required in accordance with such regulations as the director shall prescribe."

When the claimant filed his claim for benefits, he stated that he was going to Peru to dust crops in December, 1954. This indicates that he would have accepted only temporary work during the interim. There is nothing in the record to show that there was a substantial labor market for temporary workers in the area. The claimant's restriction to temporary work materially reduced his chances of obtaining employment. We therefore conclude that the claimant was unavailable for work and not eligible for benefits within the meaning of section 1253(c) of the code (Benefit Decisions Nos. 5237 and 5266).

DECISION

The decision of the referee is modified. The claimant was unavailable for work and ineligible for benefits for the period commencing October 3, 1954. Any benefits paid to the claimant based on wages earned from the employer prior to April 1, 1954 are chargeable under section 1032 of the code to Employer Account No. 001-6356.

Sacramento, California, May 27, 1955.

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. 6294 is hereby designated as Precedent Decision No. P-B-271.

Sacramento, California, March 16, 1976.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

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