

BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

THIS DECISION DESIGNATES FORMER BENEFIT
DECISION NO. 5442 AS A PRECEDENT
DECISION PURSUANT TO SECTION
409 OF THE UNEMPLOYMENT
INSURANCE CODE.

In the Matter of:

NORMAN W. FREEMANTLE
(Claimant)

STANDARD OIL COMPANY
OF CALIFORNIA
(Appellant- Employer)

PRECEDENT
BENEFIT DECISION
No. P-B-274

FORMERLY BENEFIT DECISION No. 5442
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The above-named employer on May 13, 1949 appealed from the decision of a Referee (LA-22023) which held that the claimant was not subject to disqualification under Section 58(a)(1) of the Unemployment Insurance Act [now section 1256 of the Unemployment Insurance 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 by the employer herein for 3½ years as a lift truck operator and warehouse clerk. He submitted his resignation from this work on October 6, 1948 under circumstances hereinafter set forth.

On October 11, 1948, the claimant registered for work and filed a claim for unemployment insurance benefits in the Inglewood office of the Department of Employment. On October 19, 1948 the Department issued a determination which held the claimant ineligible for benefits under Section 56(a) of the Act [now section 1262 of the code] for an indefinite period commencing on August 29, 1948 based upon a finding that he had left his work because of a trade dispute. Effective October 17, 1948 the claimant

filed a claim for disability insurance which was disallowed by virtue of a determination issued by the Department on November 29, 1948. This determination was predicated upon a finding that the claimant had left his most recent work because of a trade dispute and was subject to disqualification under Sections 56(a) [now section 1262] and 151(a) of the Unemployment Insurance Act [now section 2602 of the code] inasmuch as the claimant's disability had not commenced until the trade dispute was in active progress. The claimant did not appeal from the aforementioned determinations.

Upon termination of the trade dispute on or about November 2, 1948, the claimant filed a further claim for disability insurance and was thereafter allowed disability benefits to March 14, 1949. On March 18, 1949, the claimant filed an additional claim for unemployment benefits which resulted in a protest to the payment of benefits being filed by the claimant's most recent employer. On April 4, 1949, the Department issued a determination which disqualified the claimant under Section 58(a)(1) of the Unemployment Insurance Act [now section 1256 of the code] based upon a finding that he had left his work with the employer herein voluntarily and without good cause. The claimant appealed and a Referee reversed the determination.

In August, 1948 the claimant contracted an infectious skin disease which became progressively worse in succeeding weeks. He sought medical attention immediately and was treated by a physician three times a week, at a cost of \$7.00 a treatment. The claimant stated that he last worked on or about August 30, 1948, and that he left his work because fellow employees had complained to his foreman as to the necessity of working in close association with the claimant because of the infectious skin disease. The employer's records disclose that the claimant continued to work through September 3, 1948 and that he was regularly scheduled to report for work on September 4, 1948, but that he did not report for work thereafter because of the trade dispute which commenced at the employer's establishment on September 4, 1948. The claimant was a member of the union which called a strike on September 4, 1948. Subsequent to September 4, 1948 and prior to October 17, 1948, the claimant sought other employment which he could safely perform without unduly exposing other persons to the risk of infection.

By letter dated October 6, 1948, the claimant submitted his resignation from employment with the employer herein without advising the employer of the reason therefor. The claimant stated that he resigned his employment because the costs of his medical treatments had depleted his finances and in order to obtain an amount of money due him under the employer's annuity plan it was necessary for him to tender his resignation.

The Referee's decision in this case was predicated in part upon the conclusion that the claimant had left his work due to a disability and not because of the existence of a trade dispute as evidenced by the fact that the claimant left his work several days prior to the inception of the strike. In appealing to this Appeals Board the employer disputes this finding and conclusion because the claimant would have been entitled to accumulated sick leave at full pay had he remained away from work because of illness rather than because of the trade dispute.

REASON FOR DECISION

The issue of whether or not the claimant left his work because of a trade dispute and was properly subjected to disqualification under Section 56(a) of the Unemployment Insurance Act [now section 1262 of the code] with respect to the claim for benefits filed on October 11, 1948 is not before us in this case. On October 19, 1948 and again on November 29, 1948, the Department issued determinations which held that the claimant had left his work due to a trade dispute and that he was disqualified under Section 56(a) of the Act [now section 1262 of the code] for the period during which he continued out of work by reason of the fact that the trade dispute was still in active progress. The claimant did not appeal from either of these determinations and they have since become final and conclusive on that issue. Therefore, the only issue before us in this case involves the question of whether, as to the additional claim filed on March 18, 1949, the claimant is subject to disqualification under Section 58(a)(1) of the Act [now section 1256 of the code] by reason of his voluntary termination of employment with the employer on October 6, 1948.

The evidence in this case discloses that the claimant submitted his resignation from employment with the employer on October 6, 1948 in order to obtain certain funds due him under the annuity plan. It appears that these funds could be made available to the claimant only upon termination of the employer-employee relationship which was only suspended but not severed by the strike (*Mark Hopkins, Inc. v. C.E.C.*, 24 Cal. (2d) 744). The claimant has testified that he had an immediate need for these funds because of the expensive medical treatments which he was undergoing. It is our opinion that the claimant was prompted to take this action for compelling reasons, not only because of the immediate necessity for funds which would not have otherwise been available to him, but also in view of the continuing nature of his disability. Under all the facts and circumstances of this case it is our opinion that the claimant had compelling personal reasons for terminating the employment relationship on October 6, 1948, and that these reasons constitute good cause within the meaning of Section 58(a)(1) of the Unemployment Insurance Act [now section 1256 of the code]. Therefore, he is not subject to disqualification thereunder.

DECISION

The decision of the Referee is affirmed. The claimant is not subject to disqualification under Section 58(a)(1) of the Act [now section 1256 of the code] with respect to the additional claim filed on March 18, 1949.

Sacramento, California, August 11, 1949.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

MICHAEL B. KUNZ, Chairman (Absent)

GLENN V. WALLS

PETER E. MITCHELL

Pursuant to section 409 of the Unemployment Insurance Code, the above Benefit Decision No. 5442 is hereby designated as Precedent Decision No. P-B-274.

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