BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

THIS DECISION DESIGNATES FORMER BENEFIT
DECISION NO. 5572 AS A PRECEDENT
DECISION PURSUANT TO SECTION
409 OF THE UNEMPLOYMENT
INSURANCE CODE.

In the Matter of:

KATHERINE F. STOLLER
(Claimant)

PRECEDENT
BENEFIT DECISION
No. P-B-277

FORMERLY
BENEFIT DECISION
No. 5572

The above-named, claimant on June 15, 1949, appealed to a Referee (SF-10351) from the determination of the Department of Employment which held that the claimant was ineligible for benefits for a period of five weeks on the ground that the claimant had voluntarily left her last employment without good cause within the meaning of Section 58(a)(1) of the Unemployment Insurance Act [now section 1256 of the Unemployment Insurance Code]. Subsequent to the issuance of the Referee's decision the California Unemployment Insurance Appeals Board on December 30, 1949, set aside the decision of the Referee and removed the matter to itself under 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

The claimant was last employed as a full charge bookkeeper for a San Francisco theatre chain for a period of approximately five weeks. On February 15, 1949, the claimant left this employment under circumstances hereinafter set forth.

On March 7, 1949, the claimant registered for work at the San Francisco commercial office of the Department and filed an additional claim for benefits. On June 9, 1949, the Department issued a determination that the claimant was ineligible for benefits for a period of five weeks under the provisions of Section 58(a)(1) of the Act [now section 1256 of the code].

The claimant had been hired by her last employer at a salary of $225 a month with the promise of an increase of $25 at the end of the first month of employment. Approximately a month before leaving work the claimant was notified by a private employment agency with whom she was registered that an opening existed for the position of a full charge bookkeeper with an established law firm in San Francisco. The claimant reported to the agency and was interviewed there by a senior partner of the law firm. She was interviewed a second time by this partner at the offices of the firm, at the end of which interview she was told that she was hired for the position. At that time the attorney told the claimant that it would be some time before she could begin work because she was being hired to replace a bookkeeper of long standing with the firm who had reached the age for retiring. It was explained to the claimant that it would require two or three weeks to arrange for the retirement of this employee. On or about January 18, 1949, in a telephone conversation with the attorney, the claimant was told that she could plan on starting work on February 16, 1949. A week before the date of leaving her work the claimant informed the attorney that she had given her employer notice, to which he replied that it was all right, that everything would work out as planned. The claimant left work on February 15, 1949, having given due notice to her employer. She was unable to begin work for the law firm on February 16, 1949, as planned because the elderly bookkeeper had not yet been retired. On March 7, 1949, the attorney who had hired the claimant expressed regret that conditions did not yet permit the claimant's beginning work and he suggested that she find other employment in the interim.

The private employment agency which referred the claimant to this employment had specified that the salary was $275 a month. The partner who had hired the claimant had promised that after three months' employment the salary would be raised to $300 a month. The claimant was to have an office of her own.

REASON FOR DECISION

The issue presented in this appeal is whether a leaving of work in order to accept other employment which has been definitely promised but which fails to materialize due to the failure of the intended new employer to provide the promised employment is a leaving of work with good cause within the meaning of Section 58(a)(1) of the Act [now section 1256 of the code]. In prior decisions we have held that a leaving of work in order to seek other employment was not with good cause within the meaning of that section (See Benefit Decisions Nos. 3413-6065 and 4752-9758). In none of those prior decisions did the claimant have the firm and definite offer or promise of permanent employment which exists in the instant case. In Benefit Decisions Nos. 5088-10474 and 5458-12967, where we held that the leaving of work was without good cause, we took particular note of the fact that the claimants therein involved had no definite prospects or offers of other work at the time of their leaving. In Benefit Decision No. 5432-12858 the Appeals Board based its decision on the fact that the primary and efficient cause of the claimant's leaving work was the employer's refusal of her request for a wage increase, which the Board concluded did not constitute good cause for leaving. It is clear therefore that none of the above-cited decisions is controlling in the instant case. The precise issue presented in this case has been considered by administrative tribunals in other states whose statutes are similar to Section 58(a)(1) of the California Act [now section 1256 of the code]. (C.C.H., Nebr. Sec. 1975.043; New Mexico, Sec. 1975.01; Pa., Sec. 1975.033; R.I., Sec. 1975.33 and Sec. 1975.371; So. Carolina, Sec. 1975.09; Tenn., Sec. 1975.07 and Wash., Sec. 1975.05) Practically without exception the rulings have been that the leaving is with good cause. The underlying theory in these cases seems to be that the claimant has done all that he could do to assure himself of continuous employment; he left his work only because he had definite assurance that he was to have new permanent employment, and his subsequent unemployment was attributable solely to the prospective new employer's failure to provide the promised employment.

Even in states whose statutes have the added requirements that good cause be attributable to the employer or connected with the work it has been held that a leaving under the circumstances present in the instant case is with good cause. (C.C.H., Mich. Sec. 8230; Ariz., Sec. 1975.472 and Minn., Sec. 1975.204) We agree with the principle set forth in these decisions and we conclude that the claimant in the present case had good cause for leaving her work. We hold, therefore, that the claimant is not subject to disqualification under Section 58(a)(1) of the Act [now section 1256 of the code].

DECISION

The determination of the Department is reversed. Benefits are allowed for the period from March 7, 1949, to April I7, 1949, provided the claimant is otherwise eligible.

Sacramento, California, June 15, 1950.

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. 5572 is hereby designated as Precedent Decision No. P-B-277.

Sacramento, California, March 23, 1976.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

DON BLEWETT, Chairperson

MARILYN H. GRACE

CARL A. BRITSCHGI

HARRY K. GRAFE

RICHARD H. MARRIOTT