

BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

THIS DECISION DESIGNATES FORMER BENEFIT
DECISION NO. 5573 AS A PRECEDENT
DECISION PURSUANT TO SECTION
409 OF THE UNEMPLOYMENT
INSURANCE CODE.

In the Matter of:

MARVIN L. FINNEY

PRECEDENT
BENEFIT DECISION
No. P-B-294

FORMERLY BENEFIT DECISION No. 5573
--

The above-named claimant on January 18, 1950, appealed from the decision of a Referee (LA-28339) which held that the claimant was subject to disqualification for having left his most recent work voluntarily without good cause within the meaning of Section 58(a)(1) of the California 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 as a retail milk solicitor by a large Los Angeles milk distributing firm. This employment terminated during the latter part of October, 1949, when the claimant left his employment for reasons hereinafter set forth. The claimant's prior experience has been as a maintenance man, janitor, railroad waiter and chair car attendant. He has not had any previous sales experience.

On or about November 1, 1949, the claimant renewed his registration for work and filed an additional claim for benefits. He had previously registered for work and established a valid benefit year in connection with a claim for benefits filed on December 8, 1948. On November 10, 1949, the Department issued the determination that the claimant had not voluntarily 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 code]. From this determination the employer appealed and a Referee reversed the Department's determination.

The claimant in his last employment worked as a retail door-to-door solicitor on a straight commission basis based on the number of quarts of milk ordered per day and the duration of the order. The claimant worked regular hours of approximately 8:00 a.m. to approximately 5:00 p.m., five days a week, soliciting milk deliveries to residences in assigned territories. The claimant was paid approximately 3/5 of his commission after an order had remained in effect for approximately two weeks and was paid the balance of the commission after the order had remained on the books of the company for 30 days. The claimant's earnings during approximately the last two months of his employment were as follows: Period ending September 3, 1949, \$33.40; pay period ending September 17, 1949, \$20.25; pay period ending October 1, 1949, \$18.75; pay period ending October 15, 1949, \$20. Records of the earnings of other employees submitted by the employer showed that in the period ending September 3, 1949, only two other employees out of nine worked the entire two weeks and these two other employees earned \$99.90 and \$112.50, respectively. During the period ending September 17, 1949, the claimant was the only employee who worked the entire two weeks, the other six employees working periods ranging from two to eight days. During the period ending October 1, 1949, five of the other six employees worked the entire two weeks with earnings of ranging from \$51 to \$98 for the two-week period. During the period ending October 15, 1949, only two out of five other employees worked the entire two weeks earning \$74 and \$81, respectively. The claimant informed the Department that he left his work because of insufficient earnings. The employer contends that the claimant would have made better earnings had he followed instructions given by the employer and that his failure to earn more money was his own fault.

REASON FOR DECISION

The statutory provisions applicable in determining the issue involved in this appeal read as follows:

"Sec. 58(a) [now section 1256 of the code]. An individual shall be disqualified for benefits if:

"(1) He has left his most recent work voluntarily without good cause, if so found by the commission;"

Although the term "good cause" as used in Section 58(a)(1) of the statute [now section 1256 of the code] can only be broadly defined and is a circumstance which necessarily must be determined on the facts of each case, the following judicial observation as to the meaning of the term is helpful in arriving at a proper interpretation thereof: (Good cause implies) "real circumstances, substantial reasons, objective conditions . . . , adequate excuses that will bear the test of reason, just grounds for action and always the element of good faith." (Bliley Electric Co. v. Board of Review, 45 Atl. (2d) 898.) Also in Sturdevant v. U.C.C. (Pa) 45, Atl. (2d) 908, the Court observes that "real not imaginary, substantial not trifling, reasonable not whimsical, circumstances must compel the decision to leave employment or to refuse suitable work."

It is undisputed in the instant case that the claimant earned less than \$100 during a two-month period. The claimant had no prior experience as a salesman and had given the work an extended trial without success. The employer's contention that the claimant could have substantially increased his earnings by following a different course of action than that which he had been following is conjectural and there is insufficient evidence to support a finding that the claimant over an extended period of time deliberately followed a course of action which resulted in such low earnings for full-time work.

Under the circumstances in this particular case we believe the claimant has presented good cause for having left his work and should not be subject to any disqualification for leaving work which had produced such low earnings over an extended trial.

DECISION

The decision of the Referee is reversed. Benefits are allowed providing 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. 5573 is hereby designated as Precedent Decision No. P-B-294.

Sacramento, California, April 13, 1976.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

DON BLEWETT, Chairperson

MARILYN H. GRACE

CARL A. BRITSCHGI

HARRY K. GRAFE

RICHARD H. MARRIOTT