

BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

THIS DECISION DESIGNATES FORMER BENEFIT
DECISION NO. 6297 AS A PRECEDENT
DECISION PURSUANT TO SECTION
409 OF THE UNEMPLOYMENT
INSURANCE CODE.

In the Matter of:

JOHN E. WELLINGTON
(Claimant-Appellant)

PRECEDENT
BENEFIT DECISION
No. P-B-296

FORMERLY BENEFIT DECISION NO. 6297
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STATEMENT OF FACTS

This claimant appealed from the decision of a referee which held that the claimant was not entitled to benefits under section 1256 of the Unemployment Insurance Code. The Appeals Board granted claimant's request to present written argument.

The claimant is an experienced carpenter. He has been engaged in this work in the Grass Valley area for about twenty years. He was last employed by the Sonoma Quicksilver Mine, located about fifty miles north of Winnemucca, Nevada, from the first part of November 1954 until December 3, 1954, at a wage of \$2.80 per hour. The claimant accepted this employment pursuant to an agreement that he would be able to work ten hours a day for six or seven days a week and that he would have to pay only \$2.00 per day for room and board. These conditions represented premium pay of two and one-half cents per hour over union scale and a work week of at least thirteen hours overtime with the union rate (time and one-half) for overtime. He terminated this work primarily because the employer did away with the overtime and increased the charge for board and room to \$3.00 a day.

Living conditions on this job left much to be desired. Physical facilities were poor; the weather was often below zero; it was a considerable distance from claimant's home. It was considered by claimant, at the time he accepted the employment, to be a "premium pay" job.

The claimant registered for work and filed an additional claim for unemployment insurance benefits on December 12, 1954. On December 20, 1954, the department determined that the claimant was subject to disqualification under section 1256 of the code for the five-week period beginning December 12, 1954 and ending January 15, 1955. On December 23, 1954, the claimant appealed to a referee. From the referee's decision affirming the department's determination, the claimant appealed to the Appeals Board on March 18, 1955.

The only issue to be decided is: Did the claimant voluntarily quit his position with good cause?

REASONS FOR DECISION

Section 1256 of the code provides in pertinent part as follows:

"1256. An individual is not eligible for unemployment compensation benefits if . . . he left his most recent work voluntarily without good cause. . . ."

We have discussed in many prior decisions the meaning of the phrase "good cause" as used in this code section. In Benefit Decision No. 5686, we stated:

". . . The mere advancing of an excuse is not sufficient to constitute 'good cause'; there must be a real and substantial reason for the action taken. In Benefit Decision No. 4752-9758, in discussing the meaning of 'good cause', we stated that it is our opinion that the legislative declaration of public policy in section 1 (of the Act) requires that we find that good cause for quitting work exists only in those cases where the reasons for quitting are of a compelling nature."

After reviewing a number of our previous decisions, we further stated as follows:

"In deciding the issue of good cause for voluntarily leaving work, the facts of each particular case must be examined and weighed in the light of the foregoing principles of law. 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 within the meaning of section 58(a)(1) of the Act." (Now section 1256 of the code).

In the instant case, the claimant left his work primarily because the agreement of employment concerning the amount of overtime to be worked and the cost of room and board was materially breached. The amount involved is significant; \$285.60 of the total of \$845.60 earned during the period of employment was overtime. Expressed as a proportion, the overtime received by the claimant during the period of employment was 33.73% of the total compensation paid. Broken down by pay periods, the percent of overtime received was: first period 39%; second period 32%; third period 11%. The proportion of overtime pay originally received was material, but it constantly diminished over the period of employment and finally ended altogether. Coupled with the increase in the cost of board and room, the potential earning power of the claimant was reduced from \$152.60 a week under the agreement of employment to \$91.00 a week with all overtime eliminated and the new rate for board and room in effect.

While the working conditions and location of the job are not the primary reason the claimant quit and he would return to the job in spite of them if he could earn sufficient wages they do indicate why the employer found it necessary to offer the inducements of overtime and inexpensive board and room in order to secure the necessary workers for its operation.

The claimant would have been justified in refusing this employment at the time it was offered as being unsuitable (Benefit Decision No. 4952). In that case, we said:

". . . in any event, the claimant had good cause to refuse employment offered several hundred miles from his home. Such employment is not suitable, and is not made so simply because the claimant had accepted similar employment in the past."

In the instant case, the claimant is well established in his occupation and in the community. He has spent twenty years as a carpenter in the Grass Valley area. He knows that winter is a slow season for his work. However, it can be assumed that, of the limited work available during this season, he will be aware of it as it is offered and in an advantageous position to accept it. Under the facts of this case, we conclude that the claimant left his last employment for good cause within the meaning of section 1256 of the Unemployment Insurance Code.

DECISION

The decision of the referee is reversed. Benefits are allowed provided the claimant is otherwise eligible.

Sacramento, California, June 3, 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. 6297 is hereby designated as Precedent Decision No. P-B-296.

Sacramento, California, April 13, 1976.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

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