

BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

THIS DECISION DESIGNATES FORMER BENEFIT
DECISION NO. 5113 AS A PRECEDENT
DECISION PURSUANT TO SECTION
409 OF THE UNEMPLOYMENT
INSURANCE CODE.

In the Matter of:

WALTER KROEGER
(Claimant)

HIGHWAY TRANSPORT, INCORPORATED
(Appellant-Employer)

PRECEDENT
BENEFIT DECISION
No. P-B-298

FORMERLY BENEFIT DECISION No. 5113
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The above-named employer on February 11, 1948, appealed from the decision of a Referee (SF-7610) which held 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 Unemployment Insurance Code], that he had not wilfully made false statements or failed to report a material fact in order to obtain benefits within the meaning of Section 58(a)(3) of the Act [now section 1257(a) of the code], that he was available for work as required by Section 57(c) of the Act [now section 1253(c) of the code], and had made reasonable efforts in his own behalf to obtain employment within the meaning of Section 57(f) of the Act [now section 1253(e) 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 truck driver for the appellant-employer herein for a period of approximately four months ending on November 19, 1947, when he terminated the employment under circumstances hereinafter set forth.

The claimant registered for work as a truck driver and reopened a claim for benefits in the San Mateo office of the Department on November 19, 1947. The appellant-employer protested and a determination was issued on December 2, 1947, that the claimant did not voluntarily leave his last employment without good cause. The employer appealed and a Referee affirmed the determination. In its appeal to the Referee, and in its further appeal to this Appeals Board, the appellant-employer has alleged that the claimant was subject to disqualification under Sections 58(a)(3) [now section 1257(a)] and 57(c) and (f) [now sections 1253(c) and (e), respectively] of the Act in addition to Section 58(a)(1) [now section 1256 of the code].

The uncontroverted testimony of the claimant was to the effect that for a period of approximately one month prior to the date on which he last worked, November 19, 1947, he had been having mechanical difficulties with the truck which had been assigned to him, and that he had made several complaints to his immediate superior without avail. According to the claimant, the emergency brake was entirely disconnected during the one month period, the foot brake was inadequate, and on the morning of November 19, 1947, the battery was so low that it was necessary for the claimant to crank the truck in order to start the motor. On that day he left the truck terminal at his usual starting time in the morning, and at his first stop, he placed a block under the rear wheel of the truck. When he had made a delivery and returned, and was in the act of cranking the motor, the truck slipped over the block and backed into a warehouse building. The amount of damage, if any, to the truck or the building is not disclosed from the evidence. When this occurred the claimant returned the truck to the terminal and waited from approximately ten in the morning until about noon, intending to inform his supervisor of the occurrence. When the supervisor failed to appear at noon the claimant left the premises, informing only his fellow truck drivers that he was leaving. He left his telephone number for his supervisor but made no further effort to contact the supervisor, nor did the latter contact him. The claimant explained his actions in so doing on the ground that he was excited and upset as a result of the accident.

Under cross-examination, the claimant admitted that he had authority to have minor repairs made to the truck at a designated service station, but insisted that in the event major repairs were required, it was necessary that he obtain prior permission therefor from the supervisor. The evidence was inconclusive as to whether or not repairs to the foot brake might have been considered to be of a minor nature and hence within the authority

of the claimant to order repaired, but his statement was uncontroverted that repairs to the emergency brake were of a major nature and required prior authorization from his supervisor.

The claimant stated to the public employment office as his reason for voluntarily leaving employment, that equipment which he was required to operate was defective.

Since leaving his last employment, the claimant has registered for work at his union headquarters and reported thereat periodically, and in addition, has contacted a number of prospective employers during the period involved in the appeal. He has placed no restrictions as to the type of employment he is willing to accept, but does restrict his rate of pay to a wage approximating the union scale for truck drivers. He has had no employment experience other than truck driving.

In his reason for decision, the Referee has concluded that since in the claimant's own mind it was not safe to drive the truck, and that his work was required to be performed in the reasonable belief that he was jeopardizing his physical well-being, he had good cause for voluntarily leaving the employment.

REASON FOR DECISION

Section 58(a)(1) of the Act [now section 1256 of the code] provides that:

"An individual shall be disqualified for benefits if:

"He has left his most recent work voluntarily without good cause, if so found by the commission."

Section 13(a) of the Act [now section 1258 of the code] provides in part:

" 'Suitable employment' means work in the individual's usual occupation or for which he is reasonably fitted, regardless of whether or not it is subject to this Act.

"In determining whether the work is work for which the individual is reasonably fitted, the commission shall consider the degree of risk involved to his health, safety and morals. . . ."

We have held in previous decisions that work which involves undue risk to the safety of an employee is not suitable work and that consequently, the employee is not subject to disqualification if he leaves it, after first affording the employer an opportunity of correcting, if possible, the unsafe conditions under which he is being required to work.

While we cannot agree with the Referee that the claimant in this case was justified in leaving solely because he had concluded in his own mind that it was not safe to drive the truck, we are of the opinion that the record before us is adequate to support a finding that the defective condition of the emergency brake was such that operation of the truck was in fact unsafe, and we so find. Since the testimony is uncontroverted that it was beyond the authority of the claimant to effect a repair to the emergency brake on his own initiative, and that he had on several occasions complained of the defect to his superior without result, we conclude that the claimant had taken all reasonable steps to remedy the situation prior to the time that he voluntarily left the employment. While it might be argued that the claimant might have exercised better judgement by awaiting his supervisor's return and informing the supervisor that he would be compelled to leave the employment unless the repairs to the truck were made forthwith, it would be conjecture for us to conclude that the employer would have effected the repairs rather than allow the claimant to resign. We therefore hold that in view of his past experience the claimant was warranted in assuming that nothing would be done were he to make further complaints as to the condition of the truck, and that consequently, he had good cause to terminate the employment and was not subject to disqualification under Section 58(a)(1) of the Act [now section 1256 of the code]. There is nothing in the record to support a disqualification or a finding of ineligibility under any of the other sections of the Act referred to in the appeal statement of counsel for the employer.

DECISION

The decision of the Referee is affirmed. Benefits are payable provided the claimant is otherwise eligible.

Sacramento, California, October 21, 1948.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

TOLAND C. McGETTIGAN, Chairman

MICHAEL B. KUNZ

GLENN V. WALLS

Pursuant to section 409 of the Unemployment Insurance Code, the above Benefit Decision No. 5113 is hereby designated as Precedent Decision No. P-B-298.

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