BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

THIS DECISION DESIGNATES FORMER BENEFIT
DECISION NO. 5556 AS A PRECEDENT
DECISION PURSUANT TO SECTION
409 OF THE UNEMPLOYMENT
INSURANCE CODE.

In the Matter of:

IMO L. McBEE (DRAKE)

PRECEDENT
BENEFIT DECISION
No. P-B-300

FORMERLY
BENEFIT DECISION
No. 5556

The above-named claimant on October 24, 1949, appealed from the decision of a Referee (LA-25286) which held that the claimant was 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 employed as a bookkeeper for a small insurance firm from October 14, 1946, until August 30, 1947, when she terminated this employment under the circumstances hereinafter set forth.

On September 18, 1947, the claimant registered for work and filed a claim for benefits in the Riverside office of the Department, giving her reason for leaving work as the need to care for her children because of her mother's illness. On September 22, 1947, the employer submitted information to the Department concerning the claimant's eligibility for benefits. Upon the receipt of this information the Department re-interviewed the claimant, and determined that the claimant was eligible for benefits, but no written determination was issued and the employer was not notified.

Upon receipt of the statement of charges to his reserve account, the employer protested the charge of the claimant's benefits. Thereafter on August 3, 1949, the Department issued a written determination that the claimant was available for work within the meaning of Section 57(c) of the Act [now section 1253(c) of the code] commencing September 18, 1947. The employer appealed to a Referee who modified the Department's determination, and found that the claimant was subject to disqualification under Section 58(a)(1) of the Act [now section 1256 of the code].

The claimant through her own testimony and that of three witnesses established that her employer repeatedly criticized her in a sarcastic manner in front of customers. Some of this criticism related to errors made by the claimant in regard to her work, some related to errors which were not attributable to the claimant and some concerned matters wholly unrelated to the claimant's work. On occasion this criticism was so severe that the claimant left her employer's office in tears.

Although the claimant did take care of her children immediately after she left work because her mother was ill, she could have made other arrangements for their care if she had continued in her former employment or been offered new employment.

REASON FOR DECISION

In the instant case the employer submitted information to the Department concerning the claimant's eligibility for benefits and under Section 67(d) of the Act [now section 1328 of the code], he was entitled to a determination. Although the Department neglected to issue a determination promptly upon receipt of the protest, nevertheless it acted properly in issuing the determination when the oversight was discovered (Benefit Decision No. 5530-13495).

It is undisputed that the claimant voluntarily left her employment, and in considering whether she was subject to disqualification under Section 58(a)(1) of the Act [now section 1256 of the code] we need only consider whether she had good cause for this leaving. We have held in prior decisions that a leaving of work impelled by mere dislike for a supervisor, where the facts fail to indicate a course of conduct on the part of the supervisor amounting to abuse, hostility or unreasonable discrimination, does not constitute good cause (Benefit Decisions Nos. 5275-10987 and 4880-9296). However, the record establishes that the conduct of the claimant's employer in the instant

case was abusive and hostile. Moreover, this conduct was repeated on numerous occasions. Under the circumstances this constituted a compelling reason for the claimant to leave her employment (See B.S., 12571 Conn. R, Vol. 11, No. 7; B.S., 12122 Mo. A, Vol., No. 1, Appeal denied, Ind. Com.). Therefore, we conclude that the claimant left her last employment voluntarily with good cause, and is not subject to disqualification under Section 58(a)(1) of the Act [now section 1256 of the code].

The claimant had obtained adequate care for her children prior to the date upon which she filed a claim for benefits. Inasmuch as no other factors appear which would affect her availability for work, we conclude that she was not ineligible under Section 57(c) of the Act [now section 1253(c) of the code].

DECISION

The decision of the Referee is modified. The claimant is not subject to disqualification under Section 58(a)(1) of the Act [now section 1256 of the code], and is not ineligible under Section 57(c) of the Act [now section 1253(c) of the code]. Benefits are payable if the claimant is otherwise eligible.

Sacramento, California, April 21, 1950.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

MICHAEL B. KUNZ, Chairman

GLENN V. WALLS

PETER E. MITCHELL

P-B-300

Pursuant to section 409 of the Unemployment Insurance Code, the above Benefit Decision No. 5556 is hereby designated as Precedent Decision No. P-B-300.

Sacramento, California, April 20, 1976.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

DON BLEWETT, Chairperson

MARILYN H. GRACE

CARL A. BRITSCHGI

RICHARD H. MARRIOTT

DISSENTING - Written Opinion Attached

HARRY K. GRAFE

DISSENTING OPINION

I dissent.

In this Precedent Decision my colleagues have established a rule of law whereunder an employee leaves work for good cause within the meaning of section 1256 of the Unemployment Insurance Code if the conduct of the employer is "abusive and hostile." Thus stated, I have no serious quarrel with such a rule.

But I am constrained to raise my voice in objection where, as here, my colleagues do not set forth with any degree of precision or certainty the factual circumstances to which said rule is applicable. In the instant decision there is, I submit, an utter absence of any factual setting evidencing abuse and hostility. The sparse recital of facts tells us only that the claimant was "repeatedly criticized . . . in a sarcastic manner in front of customers." However, "[s]ome of this criticism related to errors made by the claimant in regard to her work." I do not agree that criticism of an employee for errors such employee has made in her work should provide good cause for leaving employment, and as a matter of law, this Board has not so ruled. Hence, we may eliminate this element as a test of what is "abusive and hostile" employer conduct.

Some of the criticism "related to errors which were not attributable to the claimant and some concerned matters wholly unrelated to the claimant's work." Such is the totality of the factual scenario. From this meager set of facts, the Department and the Administrative Law Judges are bound by law (section 409 of the Unemployment Insurance Code) to apply the rule today being elevated to precedent status. I maintain that it is the responsibility of this Board to limit the issuance of Precedent Decisions to those situations which facilitate the application by the Department and the Administrative Law Judges of a rule of law to <u>like</u> or <u>similar</u> facts.

Thus, it is incumbent upon the Board, in the first instance, to set forth with some specificity the factual horizons, dimensions and perspective to which the legal proposition applies. Where, as here, the case fails to bring forth ample and adequate facts to meet such a standard, we should stay our hand and wait until a case containing sufficient facts is presented to us.

Only by practicing this kind of quasi-judicial self-restraint do we truly assist and guide those who must, by law, be bound by our pronouncements.

HARRY K. GRAFE