

BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

THIS DECISION DESIGNATES FORMER BENEFIT
DECISION NO. 4800 AS A PRECEDENT
DECISION PURSUANT TO SECTION
409 OF THE UNEMPLOYMENT
INSURANCE CODE.

In the Matter of:

GEORGE D. HARRIS

PRECEDENT
BENEFIT DECISION
No. P-B-305

FORMERLY BENEFIT DECISION No. 4800
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The above-named claimant, on October 23, 1947, appealed from the decision of a Referee (LA-8764) which held that the claimant was not available for work as required by Section 57(c) of the Unemployment Insurance Act [now section 1253(c) of the Unemployment Insurance Code]. In order to obtain additional evidence, the California Unemployment Insurance Appeals Board on December 9, 1947, remanded this case to a Referee. Such hearing was held on January 7, 1948, at Santa Monica, California, and a transcript of the evidence obtained by the Referee at the hearing has been referred to this Appeals Board for consideration.

Based on the record before us, our statement of fact, reason for decision, and decision are as follows:

STATEMENT OF FACT

Prior to filing his claim for benefits, the claimant had been employed for a period of one month as a riveter for an aircraft manufacturer in Santa Monica, ending on January 31, 1947, when a hand injury prevented the claimant from further work as a riveter. Subsequently, the claimant has had approximately six weeks' work as a shoe salesman for a department store in Santa Monica during April and May, 1947, at a wage of \$50.00 per week. His experience in this latter type of work extends over fifteen years, and he has customarily earned approximately \$60.00 per week.

On February 1, 1947, the claimant registered for work as a shoe salesman and filed a claim for benefits in the Santa Monica office of the Department. On May 14, 1947, the claimant filed an additional claim, and on August 12, 1947, the Department issued a determination disqualifying the claimant from receipt of benefits for a period of five weeks commencing August 6, 1947, and ending September 9, 1947, on the ground that he refused a referral to suitable employment within the meaning of Section 58(a)(4) of the Act [now section 1257(b) of the code]. The claimant appealed, and a Referee modified the determination, holding the claimant ineligible for benefits for an indefinite period, commencing August 5, 1947, on the ground that he was not available for work, within the meaning of Section 57(c) of the Act [now section 1253(c) of the code].

The record before us discloses that the claimant had some prospects of reinstatement in his work as a riveter at the aircraft plant, but that his hand injury prevented his performing that work until August, 1947, during which month he removed his residence from Santa Monica to the home of his father-in-law in Encino, rendering his return to the riveting work impracticable because of transportation difficulties arising from the change in residence. On August 11, 1947, the claimant was referred to prospective work as an electrical appliance salesman in a large department store in Westwood Village. The opening was verified on the day on which it was offered, and the work paid a commencing wage of \$34 to \$36 per week, together with a commission of one percent of sales. Since the articles to be sold were expensive, such as refrigerators, the commissions might have amounted to considerable sums per week. Transportation was adequate and the work otherwise suitable, but the claimant refused the referral on the ground that his sole experience in selling had been as a salesman of high-class, ladies' footwear. Consequently he doubted his ability as an electrical appliance salesman. He also indicated that he desired work only as a shoe salesman at a salary between \$50 and \$60 per week. This is the wage currently being paid shoe salesmen in the area and there are several firms in the area which employ such salesmen. The claimant has applied for such work at various establishments in Santa Monica, Hollywood and Van Nuys during the period of his unemployment, and succeeded in obtaining temporary work in Van Nuys during the Christmas rush period. The claimant attributes his long period of unemployment to slack business conditions in the trade.

REASON FOR DECISION

Although the claimant in this case has a self-imposed restriction as to the minimum wage he is willing to accept as a shoe salesman, it does not appear that such minimum is above that prevailing in the trade, nor that he has been handicapped in his search for employment by the imposition of such wage restriction. Rather, it appears that his unemployment is due to slack conditions in the trade in which he is skilled. He appears to be genuinely in the labor market, actively in search of work, and reasonably free of any restrictions which might prevent his obtaining it. We therefore hold that the claimant is available for work within the meaning of Section 57(c) of the Act [now section 1253(c) of the code], as defined in prior decisions.

As to the refusal of the referral which the claimant was offered to work as an electrical appliance salesman, we have previously held that a claimant who is in doubt as to the suitability of work to which he is offered a referral, must apply in person for the position and ascertain at first hand whether or not it is suitable in fact; and that a refusal of a referral under such circumstances is tantamount to a refusal of suitable work (See Board Decision No. 3803). We therefore hold in this case that the action of the claimant brings him within the disqualifying provisions of Section 58(a)(4) of the Act [now section 1257(b) of the code].

DECISION

The decision of the Referee is modified. The determination of the Department is affirmed. Benefits are denied for the week in which August 11, 1947, occurred, and for the four weeks immediately following that week. Benefits are allowed thereafter, provided the claimant is otherwise eligible.

Sacramento, California, March 11, 1948.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

TOLAND C. McGETTIGAN, Chairman

MICHAEL B. KUNZ

Pursuant to section 409 of the Unemployment Insurance Code, the above Benefit Decision No. 4800 is hereby designated as Precedent Decision No. P-B-305.

Sacramento, California, May 4, 1976.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

DON BLEWETT, Chairperson

MARILYN H. GRACE

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HARRY K. GRAFE

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