BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

THIS DECISION DESIGNATES FORMER BENEFIT DECISION NO. 5776 AS A PRECEDENT DECISION PURSUANT TO SECTION 409 OF THE UNEMPLOYMENT INSURANCE CODE.

In the Matter of:

PRISCILLA CLEWLEY

PRECEDENT BENEFIT DECISION No. P-B-306

FORMERLY BENEFIT DECISION No. 5776

The above-named claimant appealed from the decision of a Referee (LA-40728) which held that the claimant was disqualified for benefits under Section 58(a)(4) of the California Unemployment Insurance Act [now section 1257(b) of the Unemployment Insurance Code]. The matter was scheduled for oral argument in Los Angeles on June 4, 1951, before the California Unemployment Insurance Appeals Board and the interested parties were notified of the time and place for hearing of argument. No appearances were made by any of the interested parties.

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

STATEMENT OF FACT

The claimant, a member of Local 1421 of the United Electrical, Radio and Machine Workers of America, was employed as a record tester by a recording and radio manufacturing concern from 1946 to March 16, 1950. She began this employment at a wage of $1.15 per hour and was receiving $1.32½ per hour on March 16, 1950, when she took a leave of absence because of pregnancy. The claimant has had no other employment experience except typing letters many years ago. Following the termination of her pregnancy, the claimant on or about October 19, 1950, notified her employer of her desire to return to work. The employer was not in a position to re-employ the claimant because thirty-five employees were being laid off

at the end of the week and the claimant's seniority placed her among those to be laid off.

On October 19, 1950, the claimant registered for work and filed a claim for benefits in the Van Nuys office of the Department of Employment. On January 16, 1951, the Department issued a determination which held that the claimant was disqualified for benefits under the provisions of Section 58(a)(4) of the Act [now section 1257(b) of the code] for a five-week period commencing January 4, 1951, based upon a finding that she had refused an offer of suitable employment without good cause. The claimant appealed and the Referee affirmed the determination.

On January 5, 1951, the Department referred the claimant to employment with a church choir gown company as an inspector-trainee at a wage of seventy-five cents per hour. The work involved hand sewing of gowns using a machine to affix clasps to them and inspecting the finished gowns to determine if all of the steps leading to completion of the gowns were properly accomplished. The claimant contacted the prospective employer but did not accept the offer of employment. The employer reported to the Department that the claimant did not accept the work because the claimant did not know if transportation was available to her. The claimant admitted that the question of transportation was discussed with the prospective employer but denied that this was the reason for her refusal and stated that she rejected the offered work because the wage was not sufficient to justify the expense of care for her six months old child. She said that she had child care available at a cost of $12.50 per week. The claimant further testified that during the course of her interview she had asked if the employer could afford to pay more than seventy-five cents per hour and was advised that it was a small shop, two or three employees, and that the employer could not afford to pay a higher hourly wage rate. The claimant gained the impression from this conversation that there was no prospect for advancement and resulting increase in salary, nor was she advised whether any of the work was performed on a piece-work basis.

Considerable testimony was adduced at the Referee's hearing with respect to the prevailing wage rates paid in the area to workers in the garment industry. The Department representative testified that "It is a known fact that the garment industries are all paid on a piece-work basis. They start them out at sixty-five or seventy-five cents an hour, but it all goes up after they get experience on a piece-work basis. All the big factories pay on piece-work and an experienced sewer or sewing machine operator wouldn't take a job, wouldn't work in a factory unless she could average $1.50 an hour.

They wouldn't work on an hourly basis." Figures submitted by the claimant's union representative, based upon surveys conducted in the Los Angeles area by the United States Department of Labor in 1949, indicated that the average wage earned by hand sewers in women's coats and suits was $2.02 an hour. In the sportswear industry, where many nonunion establishments were involved, the lowest rate paid was ninety-one cents per hour and the average earnings of workers in union and nonunion establishments was $1.03 per hour. The union representative estimated that since 1949, there has been a ten cent an hour increase in the average wage.

The period from October to December, 1950, was a slack period in the record manufacturing industry for women workers and very few placements were made through the claimant's union. The recording industry is subject to considerable fluctuation in employment and many employees are temporarily laid off at one time, but are usually recalled within a comparatively short period of time. With respect to those employers in the industry who have entered into collective bargaining agreements with the claimant's union, the seniority of employees is limited to individual employers. At the time of the hearing before the Referee on February 20, 1951, the claimant was about eleventh on her former employer's seniority list. Her former employer had been reemploying a number of laid off employees and she was "getting hopeful" of being rehired. It was the opinion of the claimant's union representative that the claimant would be "returned to work soon."

REASON FOR DECISION

Section 58 of the California Unemployment Insurance Act [now section 1257(b) of the code] provides in part:

> "(a) An individual shall be disqualified for benefits if:
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> * * *
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> "(4) He, without good cause, has refused to accept suitable employment when offered to him, or failed to apply for suitable employment when notified by a public employment office."

Section 13 of the California Unemployment Insurance Act [now section 1258 of the code] reads in part as follows:

> "(a) '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.
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> "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, his physical fitness and prior training, his experience and prior earnings, his length of unemployment and prospects for securing local work in his customary occupation, and the distance of the available work from his residence. Any work offered under such conditions is suitable if it gives to the individual wages at least equal to his weekly benefit amount for total unemployment.
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> "In any particular case in which the commission finds it impracticable to apply one of the foregoing standards, the commission may apply any standard set by it which is reasonably calculated to determine what is suitable employment."

Application of the statutory factors enumerated in Section 13(a) of the Act [now section 1258 of the code] compels us to conclude that the work offered to the claimant on January 5, 1951, was not suitable employment.

During the past four years she has been employed at wages substantially in excess of seventy-five cents per hour. Her entire experience and prior training has been confined to an occupation which is unrelated to the garment industry. It appears that the claimant's prospects for obtaining local work in her customary occupation within a reasonable time were good for she had retained her seniority status with her employer and laid-off employees were being recalled to work following a temporary layoff due to seasonal fluctuations in business. Under all the facts and circumstances of this case, we hold that the offered work was unsuitable. Therefore, the claimant was not subject to disqualification under Section 58(a)(4) of the Act [now section 1257(b) of the code].

DECISION

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

Sacramento, California, July 31, 1951.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

MICHAEL B. KUNZ, Chairman

GLENN V. WALLS

EDWARD CAIN

Pursuant to section 409 of the Unemployment Insurance Code, the above Benefit Decision No. 5776 is hereby designated as Precedent Decision No. P-B-306.

Sacramento, California, May 4, 1976.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

DON BLEWETT, Chairperson

MARILYN H. GRACE

CARL A. BRITSCHGI

HARRY K. GRAFE

RICHARD H. MARRIOTT