

BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

THIS DECISION DESIGNATES FORMER BENEFIT
DECISION NO. 6243 AS A PRECEDENT
DECISION PURSUANT TO SECTION
409 OF THE UNEMPLOYMENT
INSURANCE CODE.

In the Matter of:

RUBY E. STOCKTON
(Claimant)

PRECEDENT
BENEFIT DECISION
No. P-B-311

FORMERLY BENEFIT DECISION No. 6243
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STATEMENT OF FACTS

The claimant appealed from the decision of a referee which held that the claimant was subject to disqualification under section 1257(b) of the Unemployment Insurance Code. The claimant has filed a brief in this matter.

The claimant was last employed as an electrical bench assembler in an aircraft company in Burbank for a period of about ten months until March 30, 1954, when she was laid off due to a reduction in force. At the time she was laid off, she was receiving a salary of \$1.84 an hour and had certain accrued vacation and seniority rights in the event that she was rehired.

Effective April 4, 1954, the claimant registered for work and filed a claim for benefits. On June 23, 1954, the claimant was advised by the department of the existence of an opening as an assembler with a plastic company at a starting wage of 90¢ per hour coupled with an opportunity to share in a bonus plan. The position was permanent and the claimant was required to pass an aptitude test as a condition of hire. The claimant said that she was willing to take the aptitude test and if hired would go to work, but that in the event her former employer recalled her to work she would quit and return to her former employer. Because of her last statement, the department withdrew its offer to extend the referral. The claimant testified that at all times she was willing to accept the position if offered to her. She contended, however, that she wanted to be perfectly honest with the department, and therefore informed it of

her intention to return to her former employer in case she was recalled if the job offered was better than the job with the plastic company. The claimant had been unemployed for about ten weeks as of June 23, 1954, and she had no definite prospects for reemployment.

The issue is whether the claimant failed to apply for suitable employment when notified by a public employment office so as to be subject to disqualification under section 1257(b) of the code.

REASONS FOR DECISION

Section 1257 of the Unemployment Insurance Code provides in part as follows:

"An individual is also disqualified for unemployment compensation benefits if:

* * *

"(b) He, without good cause, refused to accept suitable employment when offered to him, or failed to apply for suitable employment when notified by a public employment office."

In Benefit Decision No. 1527, the department advised the claimant of a work opportunity which she refused to consider because she wished to obtain a higher wage due to the cost of obtaining child care. The claimant later contended on appeal that she was not offered a referral to work and therefore could not be subjected to disqualification. In ruling adversely to the claimant, we stated in part as follows:

"Admittedly, the claimant knew that the position was open and that she could be referred to the work immediately. . . . While a referral card was not given to the claimant by the Employment Service, to have done so under the circumstances would have been an idle act, in view of the claimant's lack of interest in the particular position. The absence of a formal referral where the claimant by her actions indicates that she will not consider the work offered is immaterial in determining whether or not there has been a refusal of a referral to suitable employment."

We reaffirmed this view in Benefit Decision No. 6104.

However, it is our opinion that the principles enunciated in the foregoing decisions are not applicable in the instant case. Here, the claimant clearly indicated a willingness to apply for the position in question and a willingness to accept the work if offered. The only reservation expressed by the claimant was to the effect that, if her former employer should recall her to work at some indefinite time in the future, she would return to that employment. Her position in this respect is certainly understandable in view of the very substantial wage differential existing between the two employments. In our opinion, her statement in this respect cannot be construed as indicating an unwillingness on the part of the claimant to accept the referral or to make a bona fide application for the employment in question. In any event, we believe that the decision should have been left to the prospective employer and should not have been made by the department because, had the claimant been referred by the department, the potential employer and the claimant might have settled upon a mutually agreeable employment arrangement. Under the circumstances, since the department in effect withdrew its offer to refer the claimant to employment, the claimant may not be subjected to disqualification under 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, February 18, 1955.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

MICHAEL B. KUNZ, Chairman

GLENN V. WALLS (Absent)

EDWARD CAIN

Pursuant to section 409 of the Unemployment Insurance Code, the above Benefit Decision No. 6243 is hereby designated as Precedent Decision No. P-B-311.

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