

BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

THIS DECISION DESIGNATES FORMER BENEFIT
DECISION NO. 6448 AS A PRECEDENT
DECISION PURSUANT TO SECTION
409 OF THE UNEMPLOYMENT
INSURANCE CODE.

In the Matter of:

MARGARET M. WRIGHT
(Claimant-Appellant)

PRECEDENT
BENEFIT DECISION
No. P-B-312

FORMERLY BENEFIT DECISION No. 6448
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STATEMENT OF FACTS

The claimant previously resided in the Auburn area and worked in various restaurants in that city as a waitress for approximately five years. Her last employment was of one month's duration ending June 14, 1955, when she was laid off by her employer who had ceased business.

Effective May 8, 1955, the claimant filed a claim for unemployment insurance benefits in the Auburn office of the Department of Employment.

On August 24, 1955, the claimant arrived at the Auburn office of the department at approximately 11:00 a.m. Shortly thereafter, the claimant was given a referral by that office to an employer situated two miles from the city of Auburn, the referral having been to a job as a waitress at \$8 per shift. It was permanent work on a 48-hour per week schedule with union membership required. The claimant was a member of the union; and the prevailing union scale for such work in that area was \$7.25 per shift. On the day of the referral, the claimant's husband had utilized the family car in his work; and the claimant had no means of transportation to the prospective employer except by taxicab. At approximately 1:00 or 1:30 in the afternoon, the claimant called the employer's restaurant on the telephone for the purpose of making an appointment. During the telephone conversation, one of the waitresses

of the prospective employer informed the claimant that the individual who did the hiring would not be there until the following morning. On the following morning, the claimant reported to the employer by using the family car and was told by the employer that the position had been filled.

On September 6, 1955, the department issued a determination holding the claimant subject to disqualification for a period of five weeks under section 1257(b) of the Unemployment Insurance Code on the ground that the claimant had failed to apply for suitable employment when notified by a public employment office. The period of disqualification commenced August 21, 1955.

The claimant appealed to a referee from such determination; and the referee affirmed it. The claimant, on November 6, 1955, appealed to the Appeals Board from the decision of the referee.

The question presented to us for consideration is whether or not the claimant exercised due diligence in reporting to the prospective employer.

REASONS FOR DECISION

Section 1257(b) of the Unemployment Insurance Code provided in pertinent part as follows:

"1257. 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."

The question of ordinary diligence must be decided from the circumstances of each particular case. If it appears from the facts that an individual is chargeable with negligence in not promptly applying for work and thereby loses an opportunity to secure employment, such individual would be subject to disqualification under section 1257(b) of the code. On the other hand, if the facts are such as to demonstrate that the individual did everything

in his or her power that an ordinary and reasonably prudent individual would have done, then no disqualification under section 1257(b) of the code is proper.

In the instant proceeding, the claimant was given a referral to the prospective employment shortly before noon on August 24, 1955. Not having the family car at her disposal and faced with a transportation problem to the employer's place of business, the claimant called the employer by telephone for the purpose of making an appointment and learned in that telephone conversation that the individual authorized to do the hiring would not be available until the following morning. She promptly reported to the employer on the following morning and was informed that the employer had already made his selection. It is significant to note that the purpose of the claimant's telephone contact with the employer on August 24, 1955, was not for the purpose of presenting her qualifications or a discussion of the job but merely for the purpose of making an appointment.

Under these circumstances, we are of the opinion that the claimant, as a reasonably prudent person, actively pursued the referral which she was given by the local office. Therefore, we conclude that the claimant did not lose an employment opportunity through any fault attributable to her and is not subject to disqualification under the code (Benefit Decision No. 4517).

DECISION

The decision of the referee is reversed. Benefits are payable provided the claimant is otherwise eligible.

Sacramento, California, February 23, 1956.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

MICHAEL B. KUNZ, Chairman

GLENN V. WALLS

ARNOLD L. MORSE

Pursuant to section 409 of the Unemployment Insurance Code, the above Benefit Decision No. 6448 is hereby designated as Precedent Decision No. P-B-312.

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