

BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

THIS DECISION DESIGNATES FORMER BENEFIT
DECISION NO. 4764 AS A PRECEDENT
DECISION PURSUANT TO SECTION
409 OF THE UNEMPLOYMENT
INSURANCE CODE.

In the Matter of:

MADONNA I. HUTCHINSON
(Claimant)

MONTGOMERY WARD
(Appellant-Employer)

PRECEDENT
BENEFIT DECISION
No. P-B-326

FORMERLY BENEFIT DECISION No. 4764

The above-named employer on November 26, 1947, appealed from the decision of a Referee (SF-6905) which held that the claimant had not refused an offer of suitable employment without good cause within the meaning of Section 58(a)(4) of the Act [now section 1257(b) 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 last employed by the appellant-employer for nine months as a mail opener at a wage of ninety-eight cents per hour. She voluntarily left on June 13, 1947, for reasons hereinafter set forth. Prior to this the claimant was employed as a depot quartermaster for a government agency for three and one-half years at a base pay of \$2,400 per annum.

On August 19, 1947, the claimant registered as a general office clerk and filed a claim for benefits in the Hayward office of the Department of Employment. Upon receiving notice that a claim for benefits had been filed the employer herein protested and on September 2, 1947, the Department issued a determination which disqualified the claimant from benefits for five weeks commencing August 19, 1947, on the ground that she had refused an offer of suitable employment without good cause within the meaning of Section 58(a)(4) of the Unemployment Insurance Act [now section 1257(b) of the code]. The claimant appealed and a Referee reversed the determination.

In her employment with the employer herein, the claimant stated that her position as a mail clerk required her to wear good clothes; however, she normally completed her day's work as a mail clerk early and was assigned to duties as an inventory and packing clerk, which work caused considerable damage to her clothes. Claimant testified that she complained to her immediate supervisor on several occasions concerning this situation and invariably was promised that steps would be taken to remedy the situation. However, conditions did not improve and in April, 1947, the claimant informed her supervisor that she intended to leave. She was advised by the supervisor to take a thirty-day leave of absence, to which she agreed. Upon her return to employment the claimant found the same objectionable working conditions as had previously existed, and after three weeks' employment she voluntarily terminated her services on June 13, 1947. According to the claimant, numerous other employees had left this work for the same reason. Claimant stated that she also experienced difficulty in reporting for work at 5:00 a.m. because of inadequate transportation facilities from her home to the employer's place of business.

On August 13, 1947, the employer mailed a card to the claimant asking her to return to work, which card she returned by mail indicating that her reason for not returning to work was "dissatisfactory working conditions." She made no further attempt to contact the employer, either by phone or in person, to ascertain the nature of the offered employment; however, she explained that she did not return to this employment because of her prior unsuccessful attempts to obtain more satisfactory working conditions. In an appeal to this Appeals Board the appellant-employer stated that they were not represented at the Referee's hearing on October 24, 1947, for the reason that they did not receive a Notice of Hearing. However, the records of the Department show that a Notice of Hearing was mailed to the employer at the address furnished the Department and that the notice was not returned by the Post Office as unclaimed. As grounds for appeal the employer has alleged that if the claimant had notified them of her reasons for refusing the offered employment, other arrangements would have been made to satisfy her objections to the suitability of the employment.

REASON FOR DECISION

Generally speaking, an offer of reemployment by claimant's former employer is subject to the same tests as are applied in a case of an offer of work by any employer, i.e., whether the work is suitable for the claimant and, if so, did the claimant have good cause for its refusal. Inconsequential reasons for refusing former work, such as mere dissatisfaction with the working conditions, without any substantial basis, will not suffice to constitute good cause for its refusal when an offer of reemployment is made (See Benefit Decision No. 4666-8686).

In the instant case the evidence discloses that the claimant had on numerous occasions objected to the assignment of duties which caused damage to her clothing and which did not afford her an opportunity to make appropriate changes in attire. Her request to have this situation remedied had not resulted in a satisfactory solution of the problem, even after she had once voluntarily left the employment because of the unsatisfactory working conditions. Although the employer has alleged that adjustments could have been made in the conditions of employment if the claimant had responded to the offer and voiced her objections, the evidence shows that the claimant's supervisor was cognizant of the claimant's reasons for leaving the work and the claimant stated that when she refused the employer's offer of work by mail she indicated her reasons for refusal as unsatisfactory working conditions. Under these facts it is our opinion that the claimant was justified in assuming, when not notified to the contrary, that the offer of reemployment was for the same position and under the same working conditions as she had previously found to be objectionable, and she therefore was under no obligation to investigate the proffered work.

Although the employer has alleged that they did not receive a Notice of Hearing before the Referee, the evidence indicates that a notice was duly mailed to the employer at the only address on the record with the Department, and in our opinion the evidence is insufficient to overcome the presumption that the letter duly directed and mailed was received in the regular course of the mail (CCP Sec. 1963 (24) [Repealed - See Evidence Code, section 641]). Under all the facts and circumstances of this case, it is our opinion that the claimant refused an offer of unsuitable employment with good cause on August 13, 1947, and therefore was not subject to the disqualification provided in Section 58(b) of the Unemployment Insurance Act [now section 1260 of the code].

DECISION

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

Sacramento, California, February 18, 1948.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

TOLAND C. McGETTIGAN, Chairman

MICHAEL B. KUNZ

HIRAM W. JOHNSON, 3rd

Pursuant to section 409 of the Unemployment Insurance Code, the above Benefit Decision No. 4764 is hereby designated as Precedent Decision No. P-B-326.

Sacramento, California, May 18, 1976.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

DON BLEWETT, Chairperson

MARILYN H. GRACE

CARL A. BRITSCHGI

HARRY K. GRAFE

RICHARD H. MARRIOTT