BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

In the Matter of:

DONNA D. BRUCE
(Claimant)

PRECEDENT
BENEFIT DECISION
No. P-B-332
Case No. 76-5281

Office of Appeals No. SF-18333

The claimant appealed from the decision of the Administrative Law Judge which held that the claimant was ineligible for unemployment insurance benefits under section 1264 of the Unemployment Insurance Code.

STATEMENT OF FACTS

The claimant and her husband were living in Bakersfield, California, where they both worked. He was earning over $1,400 per month and she was earning about $800 per month. The husband received a promotion and transfer to the San Francisco Bay area in August 1975. Thereafter, the claimant and her husband decided that she should quit her job and join him. Accordingly, she quit her job on September 12, 1975 and joined her husband in San Francisco. She has had no other employment since that time.

Effective February 22, 1976, the claimant established a claim for benefits. The Department determined that the claimant was ineligible for benefits under section 1264 of the code upon its finding that she had left her work to join her husband and that she was not the major support of the family. The claimant appealed from such determination, and after a hearing before an Administrative Law Judge, a decision was rendered affirming the determination of the Department. The claimant has appealed to this Board from that decision.

REASONS FOR DECISION

Section 1264 of the Unemployment Insurance Code provides:

> "Notwithstanding any other provision of this division, an employee who leaves his or her employment to be married or to accompany his or her spouse to or join her or him at a place from which it is impractical to commute to such employment or whose marital or domestic duties cause him or her to resign from his or her employment shall not be eligible for unemployment insurance benefits for the duration of the ensuing period of unemployment and until he or she has secured bona fide employment subsequent to the date of such voluntary leaving; provided that, notwithstanding any other provision of this division, this section shall apply only to claims for unemployment compensation benefits and shall not apply to claims for unemployment compensation disability benefits. The provisions of this section shall not be applicable if the individual at the time of such voluntary leaving was and at the time of filing a claim for benefits is the sole or major support of his or her family."

The facts in the instant case clearly fall within the provisions of section 1264 of the code since the claimant left her work to join her husband at a place from which it was impractical to commute to her employment. However, on June 17, 1976, a decision was handed down by the Court of Appeal, Third District, in Betty Ann Boren v. California Department of Employment Development, et al., 59 CA 3d 250; 130 Cal. Rptr. 683. The court there held that section 1264 of the code is a nullity. It stated that section 1264, notwithstanding its neutral language, unconstitutionally discriminated against female applicants for unemployment compensation. Its decision was based on the grounds that the statute violated the equal protection clause of the Fourteenth Amendment of the Federal Constitution which denies the States the power to erect arbitrary statutory classifications based upon sex.

The court having found section 1264 invalid it can no longer be used as a basis for denying unemployment insurance benefits. Accordingly, the decision of the administrative law judge holding the claimant ineligible under section 1264 must be reversed.

It should also be noted that the Legislature repealed section 1264 effective January 1, 1977 (Chapter 1169, Statutes of 1976).

On numerous occasions in the past, this Board has issued decisions interpreting section 1264. More specifically, section 1264 was discussed in the following precedent decisions:

In P-B-26, Kerekes, the claimant left her job in Los Angeles to move with her husband to Turlock, California. The claimant was held subject to disqualification under section 1256 because she made the decision to move, not her husband. Thus the decision noted that it was unnecessary to consider section 1264 although the decision does contain a lengthy discussion of section 1264. The discussion as to section 1264 is now moot; however, the holding under section 1256 is not affected by the present decision.

In P-B-44, Garlock, the claimant left her job in California to join her husband in the State of Washington where he had chosen to live. He was the major support of the family. The Board held that since the claimant was meeting her legal obligation to live in the place her husband chose, she had good cause for voluntarily leaving her job. The case also contains a discussion of the negating of good cause for failure to accept a transfer, then the decision finds no transfer was offered. Under the facts, the claimant was held ineligible under section 1264. That portion of the decision dealing with section 1264 is no longer applicable; however, that portion dealing with section 1256 is not affected by the present decision.

In P-B-58, Graham, the Board held that a woman who leaves work in order to marry a man who has an established home and employment in another distant community has good cause for such leaving under section 1256. However, the claimant was held ineligible under section 1264 because she was not the major support of the family at the time she left her work because a "single" person does not constitute a family. This latter portion of the decision was overruled by P-B-250, Tatman. That portion of the decision concerning section 1264 is no longer applicable. However, that portion dealing with section 1256 is not affected by the present decision.

In P-B-59, Snyder, the Board was concerned with the definition of bona fide employment under section 1260(a). In the course of defining that term it was compared with the same term (bona fide) in section 1264. While such reference would now be moot it would not affect the holding in the case.

In P-B-81, Peer, the Board held the claimant ineligible under section 1264 where she quit her job and moved with her husband to Paradise. He retired but was still the major support of the family because of his pension and social security. The decision also held that the wife had good cause under section 1256 to leave her employment to accompany her husband to a place of his choosing. That portion of the decision concerning section 1264 is no longer applicable but the section 1256 part remains unaffected.

In P-B-82, Dement, the Board held the claimant ineligible under section 1264 when she quit her job and moved with her husband from Southern California to Redding. He was ill and receiving disability insurance benefits, which made him the major support. The decision also held good cause under 1256 since she left her job to accompany her husband. That portion of the decision pertaining to section 1264 is no longer applicable but the section 1256 part remains unaffected.

In P-B-83, White, the Board held the claimant ineligible under section 1264 when she quit her job and moved with her husband from Fresno to Modesto. Her husband was held to be the major support because he had a new job although he had not as yet been paid. The decision made no findings with respect to section 1256 since there was no appeal therefrom. Accordingly this decision no longer has any applicability because of Boren.

In P-B-94, Horton, the Board held the claimant was ineligible under section 1264 since she left her job because of pregnancy. However, the Board found good cause for the leaving under section 1256. The decision further held that since the claimant was single she could not be the major support of a family. This case was overruled in part by P-B-250, Tatman, which held that a femme sole could be a family. The decision also holds that pregnancy is a "domestic duty" for unmarried as well as married individuals. That portion of the decision dealing with section 1264 is no longer applicable but the portion referring to section 1256 is unaffected.

In P-B-96, Gatlin, the Board held the claimant was ineligible under section 1264 where she left her work to care for her 80-year-old widower father. In so doing, the Board noted that the claimant did not leave work immediately but commuted 3 months. However, the Board did not believe

that this changed the real reason for the claimant's resignation, which was her domestic duties. The decision also holds the leaving was with good cause under section 1256 since it was to provide care for her father. That portion of the decision dealing with section 1264 is no longer applicable but the section 1256 part remains unaffected, as well as the language about the efficient cause of leaving.

In P-B-131, Pratt, the Board held section 1264 is applicable and the claimant ineligible even where there is no termination of the employer-employee relationship as when an individual is on a leave of absence. The Board also held the claimant ineligible under section 1253(c) because she was unable to work at her regular occupation due to her physical condition and she did not have any experience in any other occupation. That portion of the decision dealing with section 1264 is no longer applicable but the portion referring to section 1253(c) is unaffected.

In P-B-145, Castiglione, the Board held that there was good cause to leave work under section 1256 where the wife left work to accompany her husband, at his insistence, to Europe for one year in connection with his job. The Board held that there was not a bona fide leave of absence involved. It then noted that the claimant should have been held ineligible under section 1264 but could not be because of the double affirmation section of the code (1335). That portion of the decision dealing with section 1264 is no longer applicable but the portion dealing with section 1256 is unaffected.

In P-B-150, Campbell, the Board defined "bona fide" employment in section 1264 of the code and held that the claimant had terminated the period of ineligibility by earning more than her weekly benefit amount during a consecutive seven-day period. This decision no longer has any applicability since it deals entirely with section 1264.

In P-B-211, Clem, the Board held that where an individual goes on a leave of absence (to take care of a sick father in Wyoming) and returns at the end of the leave and is told there is no work, this amounts to a layoff for lack of work. Thus the termination was held not disqualifying under section 1256, and section 1264 was held not to be applicable. The section 1264 portion of this decision no longer has any applicability but the part dealing with section 1256 is unaffected.

In P-B-236, Trammel, the Board held that where an individual quits the job because of a move to another residence still within commuting distance, section 1264 is not involved although such leaving is disqualifying under section 1256. The decision further held the claimant not to be available for work nor seeking work under subdivisions (c) and (e) of section 1253. That portion of the decision dealing with section 1264 is no longer applicable but that part dealing with sections 1256 and 1253(c) and (e) are unaffected.

In P-B-238, Martin, the Board held that a waitress was ineligible for benefits under section 1264 where she was not the major support of the family and she left her job to be with her mother who was dying in Texas. It was further held that because of the emergency nature of her mother's illness the claimant was not subject to disqualification under section 1256. That portion of the decision dealing with section 1264 is no longer applicable but the part dealing with section 1256 is unaffected.

In P-B-239, Campbell, the Board held that the claimant had good cause for leaving her work under section 1256 where she did so to take care of her ill husband. They had been hired as a team to manage and maintain an apartment house. The claimant was further held not ineligible under section 1264 because she was the major support of the family. Although hired as a team, the claimant did most of the work because of her husband's illness. That portion of the decision dealing with section 1264 is no longer applicable but the part dealing with section 1256 is unaffected.

In P-B-243, Gray, the Board held that an unemancipated minor who quit her job to move to Arkansas with her unemployed parents was not ineligible for benefits under section 1264 of the code since she was the major support of the family. This was based on the reasoning that she was the only one in the family working before the move and there was no change in the family status thereafter. Since this decision deals only with section 1264, it no longer has any applicability.

In P-B-244, Craven, the Board held that a discharge under section 1256 was involved and that there was no voluntary leaving which would bring the case under section 1264 where the employer terminated the claimant and then unilaterally decided it had errored and placed her on a leave of absence. The claimant was also held available for work under section 1253(c) since she did not impose a material restriction on acceptable employment where her wage demand was within the prevailing rate. That portion of the decision dealing with section 1264 is no longer applicable but the parts dealing with sections 1256 and 1253(c) are unaffected.

In P-B-249, Pemelton, the Board held that a claimant who moved with her husband from Napa to Vallejo left her work with good cause under section 1256 because the cost of the commute would be excessive. However, she was held ineligible for benefits under section 1264 of the code. The issue under section 1253(c) was not considered. That portion of the decision dealing with section 1264 is no longer applicable but the part dealing with section 1256 is unaffected.

In P-B-250, Tatman, the Board overruled P-B-58 and P-B-94 and held that a single individual could be a family and thus by being self-supporting could be the major support and escaped the ineligibility of section 1264. This decision is no longer applicable since it dealt only with section 1264.

In P-B-252, White, the Board held that section 1264 was inapplicable where the claimant resigned in accordance with the employer's rule when she got married since the leaving was not voluntary. The Board also held the claimant not disqualified under section 1256 since this amounted to a discharge for reasons other than misconduct. That portion of the decision dealing with section 1264 is no longer applicable but the part dealing with section 1256 is unaffected.

In P-B-254, Evans, the Board held the claimant ineligible for benefits under section 1264 on the grounds she left her work because of pregnancy and she was not the major support of the family. It was further held that the claimant was subject to disqualification under section 1256 since she left in the second month and there was no showing that her health required her to leave. The Board also found the claimant ineligible under section 1253(c) since her employment field was entirely subject to union control and she made no effort to establish herself with her union. That portion of the decision pertaining to section 1264 is no longer applicable. Those portions dealing with sections 1256 and 1253(c) are unaffected.

In P-B-255, Huttenhower, the Board held that section 1264 was inapplicable since the employer was the moving party where it required the claimant to leave her job at the end of her sixth month of pregnancy and the claimant was in good physical condition and capable of performing the duties of her job. It was further held that the claimant was not subject to disqualification under section 1256 since she was terminated by the employer for reasons other than misconduct. The claimant's ineligibility

under section 1253(c) was not appealed by claimant so the Board merely stated that it appeared the referee had correctly decided the issue. That portion of the decision dealing with section 1264 is no longer applicable. However, that portion pertaining to section 1256 is unaffected.

In P-B-259, Morales, the Board held that section 1264 was inapplicable since she was terminated under employer rule that employees could not work beyond the seventh month of pregnancy. The fact that she did not take a leave of absence does not come into play until after the birth of the child. The Board also held that the same reasoning applied under section 1256 and claimant was not disqualified under that section. Since the claimant's physician certified she was able to work and she was seeking work, she was not ineligible under section 1253(c) of the code. That portion of the decision dealing with section 1264 is no longer applicable. However, those portions dealing with sections 1256 and 1253(c) are unaffected.

In P-B-265, Kurtz, the Board held that section 1264 was not applicable when the claimant did not file her claim until after her baby was born and her pregnancy leave expired. At that time she resigned to seek other employment and this was held to be without good cause under section 1256. The claimant was also held not ineligible under section 1253 (c) since the evidence showed that there was a lack of job openings and not a lack of a labor market for the claimant's services. That portion of the decision dealing with section 1264 is no longer applicable. However, those portions pertaining to sections 1256 and 1253(c) are unaffected.

In P-B-266, Marix, the Board held that section 1264 was applicable where the claimant refused a pregnancy leave, did not file a claim for benefits until after the birth of her child, and at that time did not return to work because she wanted to stay home and care for her child. Thus claimant subjected herself to the disqualification and ineligibility provisions of sections 1256 and 1264. That portion of the decision interpreting section 1264 is no longer applicable. However, that portion pertaining to section 1256 is not affected.

In P-B-299, Storoniak, the Board held that section 1264 was not applicable where the leaving of employment was to seek work in another area. However, it did hold such leaving was without good cause under section 1256. That portion of the decision dealing with section 1264 is no longer applicable. However, that portion pertaining to section 1256 is not affected.

DECISION

The Administrative Law Judge's decision relating to section 1264 is reversed. Benefits may not be denied thereunder and are payable from the date the claim was filed, provided the claimant is otherwise eligible.

Sacramento, California, November 24, 1976

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