BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

In the Matter of:

LINDA A. JOHNSON
(Claimant)

BEULAH HOME
(Employer)

PRECEDENT
BENEFIT DECISION
No. P-B-373
Case No. 77-5385

Office of Appeals No. OAK-06599A

The employer appealed from the decision of the administrative law judge, which held that the claimant was not disqualified for benefits under section 1256 of the Unemployment Insurance Code and that the employer's reserve account is subject to benefit charges.

STATEMENT OF FACTS

At the time the claimant applied for benefits on February 24, 1977, indicating that she had been laid off for lack of work, she had been last employed by the employer above named as an on-call nurse's aide earning $2.50 per hour. She was hired on February 13, 1977 and had worked a total of five days, not consecutively, when she filed her claim. The effective date of her claim was February 21, 1977, and she had last worked on that date. When she was laid off she had no assurance when (if at all) she would be called to work again. Her services were again utilized by the employer on February 27, 1977 and she was called in to work on an intermittent basis thereafter.

When she was hired the claimant thought that she was being engaged for full-time employment, but learned shortly thereafter that she was to work on an "on call" basis to fill in for full-time employees who were absent. She enjoyed her work, performed no work for other employers, and did not seek other employment until June 4, 1977.

REASONS FOR DECISION

Section 1256 of the Unemployment Insurance Code provides that an individual is disqualified for benefits and sections 1030 and 1032 of the code provide that the employer's reserve account may be relieved of benefit charges if the claimant left his most recent work voluntarily without good cause or he had been discharged for misconduct connected with his most recent work.

In Appeals Board Decision No. P-B-275 this Board stated:

> "A claimant's basic entitlement to benefits must be determined in light of the circumstances under which he leaves work. Accordingly, it is frequently necessary to resolve the question as to whether such leaving was a result of one or the other of the two alternatives set forth (Section 1256, Unemployment Insurance Code; Appeals Board Decisions Nos. P-B-27, P-B-37 and P-B-39). On the other hand, section 1256 is not invoked where a claimant leaves work because of the inability of an employer to extend further work to the claimant due to a reduction in production requirements or lack of business. . . ."

In Appeals Board Decision No. P-R-29 the Board held that an indefinite layoff constituted a termination of employment and that a recall constituted a new offer of employment. In Appeals Board Decision No. P-B-161 the Board held that there was no termination of employment where the layoff was for a definite period of 28 days.

In Appeals Board Decision No. P-R-29 the employer was a manufacturing firm and the claimant's layoff was occasioned by reduced production. In the present case the claimant was laid off when full-time employees returned to work. In both situations the claimants were laid off for indefinite periods because of lack of work to be performed. It is evident that in the instant case, as in P-R-29, the employer terminated the employer-employee relationship.

The employer contends, however, that the claimant, having accepted employment with full knowledge of its intermittent character and having made no effort to secure full-time employment from other employers while still employed, should not be entitled to benefits during the periods when her services were not required. In support of this assertion the employer argues that Appeals Board Decision No. P-B-155 is applicable. In that case the Board held that intermittent employees of the State of California were disqualified from the receipt of unemployment insurance benefits. It is appropriate to note that the decision in Appeals Board Decision No. P-B-155 involved an interpretation of section 1453(a) of the Unemployment Insurance Code which addresses itself exclusively to the matter of entitlement of state employees to unemployment benefits. Its holding is not applicable to the matter now before us, nor is its rationale germane to the disposition of this case.

We view the issue of the claimant's qualification for benefits as one falling within the ambit of Appeals Board Decisions Nos. P-B-275 and P-R-29. Here the employer gave notice to the claimant that she was being laid off with no definite date as to when she would be recalled to work. The action of the employer clearly terminated the employer-employee relationship because of the inability of the employer to extend further work to the claimant. The claimant neither voluntarily quit nor was she discharged for misconduct. Accordingly, the termination was under nondisqualifying circumstances.

In sum, then, we hold that an "on call" or "extra" employee, who is laid off for an indefinite period, is not disqualified from unemployment insurance benefits.

The only issue before us is the claimant's qualification to receive benefits under section 1256 of the Unemployment Insurance Code. We express no opinion on the claimant's eligibility under other sections of the code.

DECISION

The decision of the administrative law judge is affirmed. The claimant is not disqualified for benefits under code section 1256. The employer's reserve account is subject to benefit charges.

Sacramento, California, December 15, 1977.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

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