

BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

In the Matter of:

JOAN C. DABAH
(Claimant)

THE PILLSBURY COMPANY
(Employer)

PRECEDENT
BENEFIT DECISION
No. P-B-382
Case No. 77-7583

Office of Appeals No. NH-13870

The employer appealed from a decision of an 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 was not relieved of charges under section 1032 of the code.

STATEMENT OF FACTS

The claimant worked for the above-named employer as an outside sales representative from June 1974 until June 24, 1977. At the time her employment terminated she was receiving a salary of \$1,075 per month. The claimant's separation from this employment occurred under the circumstances outlined below.

On or about June 8, 1977 the claimant verbally gave her immediate supervisor two weeks' notice of leaving; her last day of work was to be June 24. However, she changed her mind during the interim and decided not to leave. She spoke to her supervisor on June 22 about withdrawing her resignation. However, neither her supervisor nor a higher ranking company executive at the employer's main office in Minneapolis were receptive to the idea, and it was rejected. Her resignation was allowed to stand. Her employment terminated on June 24, the final day of the notice period.

The sequence of events leading to the claimant's separation from employment began about four months previously when her supervisor was appointed to that position. She did not feel at ease under his supervision and believed he was unduly critical of her. She has described the situation as essentially a personality conflict.

The disharmony was considerably aggravated by an incident that occurred in Milwaukee on or about June 1, 1977. The company was holding a national sales meeting at a hotel in that city. The claimant was among those scheduled to attend. Because of a missed flight, she arrived somewhat late. The record does not indicate why she missed the flight. There is no suggestion, however, that the employer blamed her for arriving late.

The airline delay caused the claimant to be late for a banquet at which the company president was to be the main speaker. The claimant's supervisor had left a note for her at the registration desk to the effect that it would be inadvisable for her to enter the banquet hall late. There is some question as to whether she received this message in time. The claimant did go into the banquet hall but was intercepted by the supervisor and asked to leave, which she did. He later telephoned her at her room to discuss the incident. The claimant states the call came in about 1:00 or 1:30 in the morning; the supervisor contends it was not later than 10:30 or 11 p.m. According to the claimant, she was awakened from her sleep and was extremely upset by the call. She testified he spoke "gruffly" and told her that she was "insubordinate," but she does not contend he used any offensive or improper language. She also testified that this incident was not what made her decide to resign.

The claimant had experienced a gain in weight of 20 pounds in the last two months of her employment. She alleges her supervisor made critical comments with respect to her weight gain and appearance. He unequivocally denied doing so.

The administrative law judge found the claimant's version the more credible with respect to these disputed factual matters.

The employer concedes that the claimant's overall performance was superior. She ranked second best in her specialty, which was frozen food sales, in the entire country. As a result of her high level performance she had received a bonus each year, the most recent one amounting to \$1,500.

The claimant explained the attempt to withdraw her resignation as resulting from a belated realization that her difficulties on the job were not due to any shortcomings on her part, but rather to the personality conflict with her supervisor. She concluded that the conflict probably could be resolved.

According to the supervisor, if the claimant had asked to withdraw the resignation within a day or two, her request would have been given favorable consideration. He felt she had waited too long, for during this period he had done extensive interviewing of applicants for her position who had been sent over by an employment agency. He testified that by the time she asked to withdraw her resignation he had narrowed the field to three persons and was preparing to select one of them. He also testified that he felt the claimant, if permitted to withdraw her resignation, might soon resign again.

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 has been discharged for misconduct connected with his most recent work.

In Appeals Board Decision No. P-B-37, we held that in determining whether there has been a voluntary leaving or a discharge under section 1256 of the code, it must first be determined who was the moving party in the termination. If the claimant left employment while continued work was available, then the claimant is the moving party. On the other hand, if the employer refuses to permit an individual to continue working, although the individual is ready, willing and able to do so, then the employer is the moving party.

In the vast majority of employment separations either the claimant or the employer will, under the particular facts involved, be the moving party. (There is a special type of situation in which the employment terminates on a specific date agreed to in advance under the terms of an employment contract, and thus there is no "moving party" (see Appeals Board Decisions Nos. P-B-275 and P-B-285), but that is not involved in this case.)

The moving party is the one who takes the action that effectively severs the employer-employee relationship. In many cases the severance is immediate, often accomplished by the classical "I quit" or "You're fired" language. When such a method is used, the separation takes place and the employment relationship is at an end.

However, in a considerable proportion of cases the moving party gives "notice" of termination of employment. Under this method, the moving party selects a date in advance on which the employment will end. Typically it is a relatively short period, such as two weeks. All other things being equal, the employment relationship continues unchanged throughout the notice period.

Practical experience, however, has shown that events can - and often do - occur during the "notice period" that may serve to alter the nature of the separation. For example, a worker is informed by his employer that he is to be discharged or laid off in two weeks, but he decides to leave at once. Or an employee who gives two weeks' notice of leaving may be told by the employer to depart immediately. Thus, while the action of one party initially laid the groundwork for a separation from employment, the subsequent action of the other party superseded it by changing the effective date of the separation. Such an action by the second party may alter the legal status of the separation itself. This Board in the past has decided a number of cases involving separations of this type.

In one such case the claimant gave her employer three weeks' notice. Because business was slow, the employer told the claimant she could work for only one more week. She was not paid for any portion of the remaining two weeks of the notice period. The Appeals Board found the separation to be a discharge for non-disqualifying reasons (Appeals Board Decision No. P-B-39).

In Appeals Board Decisions Nos. P-B-37 and P-B-101, it was held that a claimant who elects to quit prior to the effective termination date set by the employer has voluntarily left the employment without good cause. In Appeals Board Decision No. P-B-164, the Board considered a case in which a claimant was told by the employer at the start of his regular eight-hour shift that he was to be laid off at the end of that day's shift. He left three hours early.

The Board held that a leaving under such circumstances did not convert the separation from a discharge to a voluntary quit. The separation was found to be nondisqualifying. A contrary holding in Appeals Board Decision No. P-B-101 was therefore overruled. However, the Board made clear in Appeals Board Decision No. P-B-164 that this rationale applied only to situations where a claimant leaves on the final day of work that was previously chosen by the employer.

While the cases cited above illustrate how the legal effect of a separation can be altered for unemployment insurance purposes by actions taken during the notice period, they do not directly provide an answer to the questions posed by the case at hand. The question to be resolved in this case is: Does a claimant's unsuccessful attempt to withdraw a resignation during the notice period change the character of the separation from a voluntary leaving to a discharge?

The cases we have cited above all possess a common element, namely that two separate and independent actions occurred before a final result was produced. First one party acted and then the other. In one type of situation, the claimant gives notice of quitting and is discharged by the employer. In the reciprocal situation, the claimant is given notice of termination by the employer and elects to quit. The process might be called "action and reaction."

In the case at hand there were also two separate actions, but they were both by the same party, namely the claimant. She gave notice of leaving but subsequently attempted to withdraw her resignation prior to expiration of the notice period. Within this context, we would not characterize the employer's rejection of the offer to withdraw as an "action." It was more in the nature of a "nonaction." The employer simply spurned the attempted withdrawal and allowed the resignation to stand.

In the factual matrix of this case, should the claimant's separation be deemed a voluntary leaving or a discharge? The claimant contends that since she tried to rescind her resignation during the notice period, and was willing and able to remain employed, she was therefore discharged by the employer. The administrative law judge found that, notwithstanding the attempt to withdraw the resignation, the claimant's separation was still a voluntary leaving. We agree, for the reasons set forth below.

So far as we know, there have been no appellate court decisions on this specific question in California up to the moment, nor has this Board issued any precedent decision in point.

As we see it, to accept the claimant's theory would seriously undermine the "moving party" doctrine. It would impose upon employers an obligation that, in our judgment, is not intended by the Unemployment Insurance Code. A clear and unequivocal resignation causes the employee to become the moving party to the separation. The employer has the right to accept such resignation at face value and take the normal actions to replace the resigning worker. In this case, the employer did just that. A number of applicants were interviewed, and a replacement was about to be selected, when the claimant announced she had changed her mind and wanted to stay. The employer was under no obligation to accept the proffered withdrawal of the resignation. The unilateral action of the claimant in attempting to rescind her resignation does not make the employer the moving party to the separation and does not convert a voluntary leaving into a discharge. We therefore find, as did the administrative law judge, that the claimant voluntarily left her employment.

We wish to make clear that, in cases of this nature, the notice of leaving given by the claimant must be definite. There has to be an effective communication to the employer that the claimant is unilaterally severing the relationship, followed by the employer's acceptance. We recognize that there are often situations in which a worker who is under emotional strain may utter language that borders on a resignation but really is not intended to be one. Such declarations as "I ought to quit," "I can't stand it any longer," "I think I'll look for another job," and the like are not actually resignations.

We wish to make clear that the rationale of our decision herein does not extend to situations where a worker promptly rescinds a resignation tendered improvidently and as to which the employer has neither shown acquiescence nor in any way changed its position in reliance thereon. Nor would it apply, necessarily, to a situation where the employer expressly declines the resignation and requests the claimant to reconsider.

However, neither of the situations we have described above happened in this case. The claimant tendered an unequivocal resignation with a stated notice period. The employer accepted it and declined the claimant's subsequent request to withdraw the resignation. The separation from employment became an accomplished fact.

Having decided that the claimant voluntarily left her employment, we now turn to the question of whether her leaving was with good cause within the meaning of section 1256 of the code.

We held in Appeals Board Decision No. P-B-27 that there is good cause for the voluntary leaving of work where the facts disclose a real, substantial and compelling reason of such nature as would cause a reasonable person genuinely desirous of retaining employment to take similar action.

In this case, the claimant herself describes the problems leading to her departure from this employment as essentially a "personality conflict" between herself and her immediate supervisor. Aside from a generalized statement that he was unduly critical of her, the only two tangible events she cites are the incident in Milwaukee and the alleged remarks about her weight gain. We note the supervisor denied telephoning her at an unreasonably late hour and flatly denied commenting on her weight. The hearing judge accepted the claimant's version of both episodes. Although the record contains no suggestion as to why the employer's account of those events should be found less credible, we will not disturb the findings of the trier of fact since they do not appear to be arbitrary or contrary to the weight of the evidence (Appeals Board Decisions Nos. P-B-10 and P-B-13).

Yet, even accepting the claimant's version of these episodes, we fail to see that they amount to good cause for leaving. The claimant conceded in her testimony that the Milwaukee incident did not cause her to resign. The comment on her weight gain, while perhaps irritating, was not made in an offensive or insulting manner.

This Board has held that dissatisfaction with a supervisor or co-worker is generally not good cause for quitting a job (Appeals Board Decision No. P-B-297). However, physical or verbal abuse by a supervisor does constitute good cause (Appeals Board Decision No. P-B-139). So too will conditions of work that are so onerous as to jeopardize a worker's physical or mental well-being (Appeals Board Decision No. P-B-126).

On the other hand, mere resentment at a new supervisor and a feeling by the claimant that such supervisor was insensitive are not enough to spell out good cause (Appeals Board Decision No. P-B-138).

The claimant's own assessment of the situation as a "personality conflict" is quite correct. We do not purport to be able to make any judgment on where the fault lay, if indeed there was any. It is a fact of human experience that sometimes two sincere people who are able to get along with most other people cannot get along with each other. However, the situation was not so intolerable that the claimant had no alternative but to quit, as she herself belatedly recognized by attempting to rescind her resignation.

We find, therefore, that the claimant left her most recent employment without good cause.

DECISION

The decision of the administrative law judge is reversed. Benefits are denied and the employer's account is relieved of charges.

Sacramento, California, April 20, 1978.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

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