

BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

In the Matter of:

HAZEL GARLOCK
(Claimant-Appellant)

PRECEDENT
BENEFIT DECISION
No. P-B-44

PACIFIC TELEPHONE
(Employer-Respondent)

Case No. 68-5145

and

Department of Employment

Case No. 68-5146

The claimant and the Department of Employment both appealed from Referee's Decision Nos. S-21007 and S-21429 which held the claimant subject to disqualification for unemployment benefits under the provisions of section 1256 of the Unemployment Insurance Code and the employer's reserve account relieved of benefit charges under section 1032 of the code on the ground that the claimant voluntarily left her most recent work without good cause. The referee's decision considered the claimant's eligibility for benefits under section 1264 of the code to be moot. Written argument has been submitted by the parties.

STATEMENT OF FACTS

The claimant was last employed for somewhat in excess of three years by the Pacific Telephone and Telegraph Company as a long distance operator at a terminal wage of \$94.50 per week. She was working at the employer's branch in Sherman Oaks, California. She last worked on June 7, 1968 when she commenced a combined vacation and leave of absence.

The claimant's husband is a member of the National Guard. In April of 1968 he was called to active duty with the Armed Forces of the United States. On or about May 13, 1968 the claimant's husband was transferred to Fort Lewis, Washington for an indefinite tour of duty.

Prior to June 7, 1968 the claimant informed her supervisor that she intended to go to Washington to join her husband and indicated a desire to obtain work with the telephone company in Washington. According to the testimony of the employer's representative, a representative of the Pacific Telephone and Telegraph Company contacted the Pacific Northwest Bell Telephone Company in Tacoma, Washington for the purpose of ascertaining if a job opening which the claimant could fill existed there. According to the testimony of the employer's representative, he was assured that such a job opening existed and he discussed the possibility of working for the Pacific Northwest Bell Telephone Company with the claimant. When the claimant learned that she would possibly not be assigned to a regular daytime shift, she declined to accept the job with the Pacific Northwest Bell Telephone Company because she desired to work the same hours as her husband worked. She submitted a formal resignation to the employer on June 21, 1968 and filed her claim for unemployment benefits effective June 30, 1968.

According to the testimony of the employer's representative, the Pacific Telephone and Telegraph Company, the claimant's most recent employer, and the Pacific Northwest Bell Telephone Company are both members of the Bell System, but each is a separate corporation.

At the time the claimant filed her claim for benefits she and her husband were living on her husband's salary of approximately \$223 per month and the \$90 per month allotment the claimant received because her husband was in the Armed Forces.

It is the contention of the employer that the claimant voluntarily left its employ without good cause when she refused to accept the "transfer" to work with the Pacific Northwest Bell Telephone Company.

REASONS FOR DECISION

Section 1256 of the Unemployment Insurance Code provides for the disqualification of a claimant and sections 1030 and 1032 of the code provide that an employer's reserve account may be relieved of benefit charges if it is found that the claimant voluntarily left her most recent work without good cause.

Section 156 of the California Civil Code provides that "The husband is the head of the family. He may choose any reasonable place or mode of living, and the wife must conform thereto."

Section 103 of the Civil Code provides that "The husband may choose any reasonable place or mode of living, and if the wife does not conform thereto, it is desertion."

In this case the claimant voluntarily left her work to join her husband in Washington where he had chosen to live. Thus, the claimant was meeting her legal obligation to live in the place her husband chose and therefore had good cause for voluntarily leaving work unless it is concluded that this good cause is negated by the claimant's failure to accept the purported "transfer" from the Pacific Telephone and Telegraph Company to the Pacific Northwest Bell Telephone Company. This is true because it is a fundamental principle of unemployment insurance that an individual who, for noncompelling reasons, elects total unemployment rather than accept a transfer to other work with the same employer has voluntarily left his work without good cause.

The claimant's last employment was with the Pacific Telephone and Telegraph Company. She was not employed by the Pacific Northwest Bell Telephone Company, nor can it be construed that the Pacific Telephone and Telegraph Company is the same employer as the Pacific Northwest Bell Telephone Company. Had the claimant accepted the purported transfer, the employer-employee relationship with the Pacific Telephone and Telegraph Company would not have continued but would have terminated in exactly the same manner as it did when the claimant voluntarily left her work. We conclude therefore that the "transfer" to the Pacific Northwest Bell Telephone Company was not a transfer to other work with the same employer and the claimant's failure to accept the purported offer of work does not negate the good cause she had for leaving work with the Pacific Telephone and Telegraph Company.

Section 1264 of the Unemployment Insurance Code provides that if an individual leaves her work to join her husband at a place from which it is impractical to commute to her employment, she is ineligible for benefits for the ensuing period of unemployment unless she was, both at the time of leaving work and at the time of filing a claim for benefits, the sole or major support of the family.

The claimant left her work to join her husband in Tacoma, Washington, from where she could not commute to her work. She was not the sole or major support of the family both at the time of leaving work and at the time of filing the claim for benefits. Therefore, she is ineligible for benefits under section 1264 of the code.

The Department of Employment may desire to determine if the claimant is subject to disqualification under section 1257(b) of the code which provides for the disqualification of a claimant if he, without good cause, refused an offer of suitable work.

DECISION

The decision of the referee is modified. The claimant is not subject to disqualification under section 1256 of the code and the employer's reserve account is not relieved of benefit charges under section 1032 of the code. However, the claimant is ineligible for benefits under section 1264 of the code.

Sacramento, California, April 29, 1969.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

ROBERT W. SIGG, Chairman

LOWELL NELSON

CLAUDE MINARD

JOHN B. WEISS

DON BLEWETT