BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

In the Matter of:

WENDY KING
(Claimant)

EMPLOYMENT DEVELOPMENT DEPARTMENT

PRECEDENT
BENEFIT DECISION
No. P-B-459
Case No. 87-05916

Office of Appeals No. SJ-11570

The Department appealed from the decision of the administrative law judge which held the claimant was not ineligible for benefits under section 1253(c) of the Unemployment Insurance Code for the week ending March 21, 1987.

STATEMENT OF FACTS

The claimant filed a claim for benefits and established a benefit year beginning August 17, 1986. At that time she had most recently worked as a loan processor. She also had work experience as a cashier, a secretary, and in computer assembly.

The claimant is divorced and has a child who was five years old in May 1987. A custody agreement provided the claimant and her ex-husband had joint custody and the child would reside with each parent on an alternating three-month basis. As the claimant and her husband resided in different areas, this agreement would have required the child to transfer back and forth between different schools every three months when he started school in September 1987.

In order to secure a modification of the custody agreement it was necessary on March 16, 1987 for the claimant to travel from her home in Santa Cruz to Fresno where her husband lives. The claimant was absent from her home area from approximately 4:00 a.m. until 6:30 p.m. on that day.

On March 12, 1987 the Department referred the claimant to a job opening and gave the claimant the name and telephone number of a person to contact for an interview appointment. The claimant tried to reach this person on March 12 and 13 without success. The claimant left a message for the person to call her. The claimant did not have time to call the person on March 16, but did so on March 17. When she could not reach the person she again left a message to call her. The claimant has an answering machine on the telephone, but no return call from the potential employer was recorded. The claimant was available for suitable work all of the week ending March 21, 1987, other than on March 16. Because the claimant was absent from her labor market for most of March 16, 1987 and did not contact a potential employer on that day, the Department held the claimant ineligible for benefits for the week ending March 21, 1987.

REASONS FOR DECISION

Section 1253(c) of the California Unemployment Insurance Code provides that a claimant is eligible to receive benefits with respect to any week only if the claimant "was able to work and available for work for that week."

On appeal to this Board the Department, relying upon Appeals Board Decisions Nos. P-B-17 and P-B-18, argues the claimant's absence from her labor market on one regular workday of a week renders her ineligible for benefits for that week under section 1253(c) of the code without regard to the reasons for her absence.

The Appeals Board held in Appeals Board Decision No. P-B-17 that to be considered available for work a claimant must be ready, willing, and able to accept suitable employment in a labor market where there is a demand for his services. However, he is not available for work if through personal preference or force of circumstances he imposes unreasonable restrictions on suitable work, such as limitations on hours, days, shifts or wages, which materially reduce the possibilities of obtaining employment.

In Appeals Board Decision No. P-B-18, the Appeals Board held a claimant must be able to work and available for work for each normal workday of that week in order to be eligible for benefits. As authority for its holding the Appeals Board cited Attorney General Opinions Nos. 47/221 (10 Ops.Cal.Atty Gen. 208) and 54/107 (24 Ops.Cal.Atty Gen. 81).

The Appeals Board decisions relied upon by the Department do support the Department's position. However, because of California court cases decided subsequent to the decisions, this support is no longer viable.

In Sanchez v. Unemployment Insurance Appeals Board (1977), 20 Cal. 3d 55, a claimant with experience as a restaurant waitress or manager and factory worker was not available for work on Saturdays and Sundays because she was unable to obtain a babysitter for her four-year-old son on those days. The Appeals Board held the claimant was not available for work and was ineligible for benefits under section 1253(c) of the code because she was not available for work on two days during the week which were normal workdays in the restaurant industry. The California Supreme Court specifically rejected the concept expressed in Appeals Board Decision No. P-B-18 and the Attorney General Opinions relied upon by the Appeals Board. The Court held instead:

> " 'Availability for work' within the meaning of section 1253, subdivision (c), requires no more than (1) that an individual claimant be willing to accept suitable work which he has no good cause for refusing and (2) that the claimant thereby make himself available to a substantial field of employment."

If the claimant satisfies the first requirement the burden shifts to the Department as to the second.

The Sanchez standard for determination of availability was reaffirmed in Glick v. Unemployment Insurance Appeals Board (1979), 23 Cal. 3d 493.

In Rios v. Employment Development Department (1986), 187 Cal. App. 3d 489, the Court of Appeals held Appeals Board Decision No. P-B-17, as well as Appeals Board Decisions Nos. P-B-61, P-B-141, P-B-170, and P-B-206, invalid "insofar as the decisions are inconsistent with Sanchez and Glick." The Court stated:

> "The challenged precedent benefit decisions predate Sanchez and Glick and are inconsistent with the standard set forth in those cases. Each precedent benefit decision stated that to be considered available for work, a claimant must be ready, willing, and able to accept suitable employment in a labor market

> where there is a demand for his or her services. This standard does not embrace the two-step test of availability set forth in Sanchez and Glick. It improperly focuses on likelihood of employment rather than availability to a substantial field, and is inconsistent with the statement in Glick that 'the requirement of availability does not preclude claimants from placing some restrictions on their availability to accept employment, as long as they remain available for employment by more than a minimal number of employers in the community.' "

In view of the above court decisions we cannot agree with the Department's position on appeal, and overrule Appeals Board Decisions Nos. P-B-17, P-B-18, P-B-53, P-B-61, P-B-135, P-B-141, P-B-170, P-B-178, P-B-198, P-B-202, P-B-203, P-B-206, P-B-282, and P-B-284, insofar as they are inconsistent with the two-step test of availability set forth in Sanchez and Glick.

In applying that test to the facts of this case we note that in Sanchez the court said:

> "We conclude that a claimant who is parent or guardian of a minor has 'good cause' for refusing employment which conflicts with parental activities reasonably necessary for the care or education of the minor if there exist no reasonable alternative means of discharging those responsibilities."

Here we find the claimant was available for suitable work on all normal workdays during the week ending March 21, 1987 with the exception of Monday, March 16. She was not available that day because she was out of her labor market to perform a parental activity necessary for the care and education of her minor child and no reasonable alternative means of discharging that responsibility existed. The claimant could not seek modification of the order on a weekend or holiday; she could only accomplish her mission on a weekday. Thus, she could not avoid the trip, and therefore she had good cause for her nonavailability on one day of the week and has satisfied the first step of the Sanchez test. This is so despite the fact the claimant was unable to contact a potential employer on March 16, 1987, which conceivably could have resulted in a job offer.

As explained above, the burden of proof rests with the Department to establish that there does not remain a substantial field of employment available to the claimant. The Department has presented no evidence that the claimant was not available to a substantial field of employment for the week ending March 21, 1986. We are unable to say that a substantial number of employers in fields in which the claimant had experience would not have considered hiring her equally with other applicants simply because she could not have worked on Monday.

In accordance with the Sanchez two-step test of availability we hold the claimant was not unavailable for work within the meaning of section 1253(c) of the code and not ineligible for benefits for the week ending March 21, 1987.

DECISION

The decision of the administrative law judge is affirmed. The claimant is not ineligible for benefits under section 1253(c) of the code for the week ending March 21, 1987.

Sacramento, California, November 3, 1987.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

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