

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD  
P O Box 944275  
SACRAMENTO CA 94244-2750

BRENDA SMITH  
Claimant-Appellant

Precedent Benefit  
Decision No. P-B-514

SMART & FINAL STORES, LLC  
c/o CORPORATE COST CONTROL, INC.  
Employer

DECISION

Attached is the Appeals Board decision in the above-captioned case issued by Board Panel members:

MARTY BLOCK

ROBERT DRESSER

ELLEN CORBETT

MICHAEL ALLEN

Pursuant to section 409 of the California Unemployment Insurance Code, AO-410086 is hereby designated as Precedent Decision No. P-B-514.

Adopted as Precedent: April 18, 2018

**Case No.:** AO-410086  
**Claimant:** BRENDA J SMITH

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## REV

The claimant appealed from the decision of the administrative law judge that held the claimant disqualified for benefits under section 1256 of the Unemployment Insurance Code<sup>1</sup> and ruled the employer's reserve account was relieved of benefit charges.

### ISSUE STATEMENT

The issue presented in this case is whether the claimant voluntarily left her most recent employment for good cause.

### FINDINGS OF FACT

Prior to filing her claim for benefits, the claimant was last employed by the employer as a key holder at a retail establishment. The claimant earned \$12.15 per hour in that position and had been employed for approximately thirteen months when she voluntarily left that employment on March 2, 2017. The claimant was 56 years of age at the time she submitted her resignation.

The claimant resigned because she was being harassed by a male assistant manager. That assistant manager would routinely confront the claimant in the workplace and, in a rude manner that demeaned and humiliated the claimant, ask her "What are you still doing here?" or make a similar inquiry to her using words to the same effect. On other occasions, that assistant manager would rudely ask the claimant: "When are you leaving?" Those inquiries were not put forward as legitimate questions concerning the claimant's work schedule, but rather as disrespectful challenges to the claimant's worth as an employee. On one day, the assistant manager directed such inquiries to the claimant three times. The inquiries were without justification or excuse. The assistant manager had access to the work schedules of the employees in the store and did not need to constantly question the claimant about her presence in the workplace. Other than making such insulting inquiries, the assistant manager seldom spoke to the claimant.

At times, that assistant manager would also stare at the claimant in a way that made the claimant uncomfortable. The assistant manager would on other

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<sup>1</sup> Unless otherwise indicated, all code references are to the California Unemployment Insurance Code.

occasions unfairly fail to furnish the claimant with the assistance that she was entitled to receive from him. It was not shown that the assistant manager treated any other workers in the same abusive and unfair manner that he treated the claimant.

Beginning in approximately December, 2016, the claimant repeatedly complained to the store manager about the denigrating treatment she was receiving from the assistant manager because that ill treatment was detrimentally affecting the claimant's health and well-being. The store manager initially told the claimant that the store manager spoke to the assistant manager about the claimant's concerns. No joint meetings involving the store manager, the claimant, and the assistant manager were ever convened despite the claimant's requests that such a discussion take place.

The claimant continued to be harassed and personally insulted by the assistant manager following the claimant's complaints to the store manager. The assistant manager's actions toward her left the claimant feeling bullied and belittled. That harassment continued to negatively affect the claimant's health. The claimant's interactions with the assistant manager caused the claimant to suffer headaches that required the claimant to take analgesic medication and "go to sleep" when she returned home from work.

Feeling that she could not remain on the job if she continued to receive harassment from the assistant manager, the claimant on January 20, 2017 left a voicemail complaint with the employer's human resources department concerning the claimant's ongoing problems with the assistant manager. The claimant did not receive a response from the human resources department regarding that complaint.

On February 5, 2017, the store manager was not on duty. That afternoon, the claimant appropriately informed the assistant manager of the claimant's need to soon take a lunch break because she had been on duty for nearly five hours without a break . Under the employer's rules, the claimant could be disciplined for not taking a lunch break before five work hours had elapsed. Angered by the claimant's notification, the assistant manager directed the claimant to clock out and go home without completing her work shift. The claimant complied with that directive.

The claimant resented the fact that she had been punished by the assistant manager for attempting to adhere to the employer's break rules. The claimant, therefore, on that day again complained to the employer's human resources department about the unfair treatment she had received that day from the assistant manager. The claimant on that same day also informed her store

manager that the claimant had complained to the human resources department about the mistreatment she had received that day from the assistant manager.

The claimant never received a response from the human resources department concerning the claimant's January 20, 2017 or February 5, 2017 complaints. The claimant's store manager admits that on or about February 10, 2017 the store manager was in contact with the human resources department concerning the claimant's February 5, 2017 complaint to the human resources department. The claimant's store manager thereafter informed the claimant that the store manager would "handle" the claimant's February 5, 2017 complaint. Subsequent to that advisement from the store manager and prior to the claimant's March 2, 2017 resignation, the claimant was not informed by the store manager or the human resources department that any steps had been taken by the employer to address the claimant's February 5, 2017 complaint. The store manager testified at the hearing that he "did not have the chance" between the time he assumed the handling of the claimant's February 5, 2017 complaint and March 2, 2017 to schedule a meeting involving himself, the claimant, and the assistant manager.

Upon the claimant's arrival at work on March 2, 2017, the assistant manager again rudely challenged the claimant's right to be in the workplace by questioning what she was doing there. The claimant again felt bullied and disrespected by the assistant manager's behavior. The claimant was "fed up" with being humiliated and treated unfairly by the assistant manager and the claimant knew that she would have to work under that assistant manager's supervision for the next three days. The claimant also concluded from the employer's failure to take effective action in response to the claimant's previous complaints that no purpose would be served by again complaining about the assistant manager. The claimant, therefore, on that day decided to immediately resign due to the demeaning treatment she continued to receive from the assistant manager. When the claimant presented her resignation note to the assistant manager on that day, the assistant manager laughed in the claimant's face.

The claimant's resignation note, dated March 2, 2017, provides as follows: "To whom it may concern. I am giving notice that I will be leaving Smart and Final immediately due to my feeling uncomfortable working with Mgr. Allan. I have been waiting on a call back from human resource since January 20, 2017. If I am not comfortable working with someone and I have told this to my manager why haven't (sic) anything been done to help this situation." Notwithstanding the fact that the claimant's resignation note named the assistant manager as the reason for the claimant's resignation, the employer did not present the assistant manager as a witness at the hearing.

When the claimant was interviewed by a representative of the Employment Development Department (EDD) concerning her reason for resigning from the employer, the claimant told that representative that the claimant had been encountering a “lot of disrespect” from an assistant manager. The claimant informed the representative that when the claimant arrived at work on March 2, 2017 she was yet again greeted with a “snide remark” from that assistant manager who looked at the claimant and once more inquired: “What are you doing here?” In that interview, the claimant also told EDD that the assistant manager was “constantly rude” to the claimant and would “talk down to her.”

The claimant was familiar with the employer’s transfer process inasmuch as the claimant had transferred to the store in which she last worked. The claimant transferred to that store because it was one of only two employer stores that accommodated the claimant’s significant transportation limitations. The claimant believed that the only other store to which she could take public transportation was already fully staffed and not accepting new transfers. The claimant admits that she was not thinking about the possibility of a transfer during her last, upsetting encounter with the assistant manager on March 2, 2017.

The employer’s disappointing lack of an effective response to the claimant’s prior attempts to resolve the claimant’s workplace problems was also a factor in the claimant’s decision not to pursue a transfer or other alternatives to quitting before she resigned. During the three months preceding her resignation, neither the employer’s human resources department nor the store manager offered the claimant a transfer or proposed any other solution to the harassment about which the claimant had complained. The claimant admits that she was by March 2, 2017 not inclined to further “bend over backwards” by any additional effort on her part to pursue a resolution to the problem since the employer was apparently unwilling to address the matter. The claimant during the hearing defended her decision to resign on March 2, 2017 as follows: “If I’m asking for help and nobody gives it to me, what else am I supposed to do?”

### REASONS FOR DECISION

An individual is disqualified for benefits if he or she left his or her most recent work voluntarily without good cause. (Unemployment Insurance Code, section 1256.)

An employer's reserve account may be relieved of charges if the claimant left his or her most recent work voluntarily without good cause. (Unemployment Insurance Code, sections 1030 and 1032.)

The administrative law judge held the claimant disqualified for benefits under code section 1256 on the grounds that (1) the treatment that she received from the assistant manager was not so harsh as to constitute good cause for resigning, and (2) the claimant negated whatever good cause she might conceivably have had for leaving the job because she failed to satisfactorily pursue all reasonable solutions to those concerns before resigning, her prior unsuccessful complaints notwithstanding, because she had not taken the further step of requesting a transfer. Having carefully considered the record in this matter, we reach a different result on each issue.

### GOOD CAUSE

The first issue to be discussed is whether the claimant had good cause to leave the job. In this regard, we think the principles recognized in the following legal authorities are pertinent.

There is good cause for voluntarily leaving 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. (Precedent Decision P-B-27.)

There is good cause for leaving work where the conditions of employment are so onerous as to constitute a threat to the physical or mental well-being of an employee, or where the actions of a supervisor are particularly harsh and oppressive. (Precedent Decision P-B-126.)

In Precedent Decision P-B-139, the claimant was subjected to verbal abuse and offensive touching by her supervisor. The appeals board found that the claimant's working conditions were intolerable and held she had good cause to quit.

Every person has, subject to the qualifications and restrictions provided by law, the right of protection from bodily restraint or harm, from personal insult, from defamation, and from injury to his personal relations. (Civil Code, section 43.)

In Precedent Decision P-B-225, the claimant left his employment because the only work available was beyond his physical and emotional capacity to perform. The appeals board held that the claimant left with good cause.

A reasonable, good faith and honest fear of harm to one's health or safety from the work environment and conditions of employment constitutes good cause for quitting. (*Rabago v. California Unemployment Insurance Appeals Board* (1978) 84 Cal.App.3d 200, 210-211.)

The claimant in this case contends that she resigned because she suffered workplace harassment consisting of verbal abuse and unreasonably harsh treatment. Having carefully considered all of the circumstances involved and the principles announced in the above-cited authorities, we have concluded for the following reasons that an unreasonably harsh and onerous work environment was created that provided the claimant with good cause under code section 1256 for leaving the subject employment.

First, the verbal abuse to which the claimant was subjected by the assistant manager was insulting, denigrating, and intended to humiliate the claimant. While it did not entail vulgar or profane language, it belittled the 56-year-old claimant without justification. The above-cited authorities confirm that every worker is entitled to a reasonable level of respect in the workplace. It is one thing for a supervisor to legitimately inquire about a subordinate employee's work schedule, but it is quite another thing for a supervisor to routinely and rudely question a subordinate employee about the employee's work schedule in a manner that clearly implies that the employee has no value to the employer's business operation. By impugning the worth of the claimant as an employee, the assistant manager intentionally deprecated the claimant's dignity for the purpose of ridiculing her. We believe that a reasonable person receiving the same ill treatment would find it to be unacceptably harsh and abusive. We also think that any question as to the tone and tenor of the assistant manager's inquiries to the claimant concerning her presence in the workplace is resolved by the fact that the assistant manager laughed in her face as she submitted her resignation. We thus find that the assistant manager's inquiries to the claimant were purposefully and needlessly disrespectful, demeaning, and insulting to the extent of representing verbal abuse that pursuant to Precedent Decision P-B-27, Precedent Decision P-B-126, Precedent Decision P-B-139, and Civil Code section 43 provided the claimant with good cause for resigning.

Second, the verbal abuse of the claimant was essentially constant in that it occurred on virtually every occasion that the claimant worked with the assistant manager. Indeed, on at least one day it happened three times. Moreover, the denigrating effect of that verbal abuse was effectively amplified by the fact that the assistant manager seldom otherwise spoke to the claimant. The constancy of the harassment gradually eroded the claimant's patience and her ability to withstand such abuse.

Third, the harassment that the claimant received from the assistant manager deleteriously affected her physical and mental well-being. We believe it would have so affected a reasonably prudent individual who was required to deal with the same harsh treatment. After leaving work, the claimant would take analgesic medication and attempt to "go to sleep" because she was upset by her

encounters with the assistant manager. The negative effect of that harassment on her health thus, in itself, furnished the claimant with good cause for leaving the job pursuant to Precedent Decision P-B-27, Precedent Decision 126, and *Rabago v. California Unemployment Insurance Appeals Board* (1978) 84 Cal.App.3d 200.

Fourth, the demoralizing effect of the harassment on the claimant reached the point where she was so “fed up” with such humiliation that she no longer had the emotional capacity needed to perform her job duties. That factor, in itself, also supplied the claimant with good cause for leaving the job pursuant to Precedent Decision P-B-225.

Fifth, the unfair treatment that the claimant received from the assistant manager on February 5, 2017 and other occasions further exhibited the animus that the assistant manager inexplicably harbored toward the claimant and displayed in his interactions with her. That unwarranted and detrimental differential treatment constituted, in itself, an unreasonably harsh work environment that also afforded the claimant good cause for resigning pursuant to Precedent Decision P-B-27 and Precedent Decision P-B-126.

For the reasons described above, we have concluded that the claimant voluntarily left the subject employment for reasons that comprise good cause within the meaning of code section 1256.

### NEGATION

The second issue to be discussed is whether the claimant negated the good cause she had for leaving the job by failing to pursue a transfer or additional remedial measures before she quit, notwithstanding the employer’s lack of response to the claimant’s prior complaints. In this regard, we think the principles recognized in the following legal authorities are pertinent.

Good cause for leaving employment may be negated if the claimant failed to give the employer an opportunity to resolve the claimant’s dissatisfactions by complaining about them. (Precedent Decision P-B-8.)

Where a claimant has quit employment with good cause, the burden is on the employer or the Employment Development Department to show that the claimant negated his or her good cause for leaving. (Evidence Code, sections 500 and 521.)<sup>2</sup>

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<sup>2</sup> Evidence Code section 500 provides: “Except as otherwise provided by law, a party has the burden of proof as to each fact the existence or nonexistence of which is essential to the claim for relief or defense that he is asserting.” Evidence Code section 521 provides: “The party claiming that a person did not exercise a requisite degree of care has the burden of proof on that issue.”

An individual who quits without attempting to resolve the work-related dissatisfactions that prompted the leaving is disqualified for benefits. This rule does not require that all possible remedies be exhausted. It is sufficient that the claimant made a reasonable effort to resolve his or her dissatisfactions. (Precedent Decision P-B-457.) In Precedent Decision P-B-457, the claimant voluntarily left his employment after the employer continued unauthorized deductions from his pay despite the claimant's repeated complaints to the owner and payroll authority. The appeals board held the claimant had made sufficient efforts to resolve the problem and was entitled to quit without engaging in further remedial efforts.

The failure of a claimant to request a leave of absence negates good cause for leaving work if the claimant was offered a leave, or knew, or should have known, of an established leave policy, and an effort to preserve the employment appeared reasonable in the circumstances. (Precedent Decision P-B-256.) In Precedent Decision P-B-256, the employer had an established leave of absence policy, of which the claimant was aware. The claimant did not formally request a leave of absence, but fully advised the employer of the reasons for leaving. Despite that advisement from the claimant, the employer did not offer the claimant a leave of absence. The Appeals Board held the claimant did not negate her good cause for leaving by failing to request a leave of absence.

Although good cause for leaving work may be negated by a claimant's failure to request a leave of absence, if a claimant is unaware that a leave of absence is available and the employer fails to offer such a leave after learning of the claimant's problems, the failure of the claimant to request a leave is excused. (Precedent Decisions P-B-94 and P-B-246.)

An individual who, without good cause, refuses to accept or fails to request a transfer to a different job with the employer negates what good cause exists for leaving employment. (Precedent Decisions P-B-232 and P-B-287.)

The above-cited authorities confirm that the unemployment insurance law generally requires a claimant to inform the employer of the claimant's concerns and permit the employer a reasonable opportunity to remedy those concerns before the claimant voluntarily leaves the job due to such concerns. The question often arises, however, as to how far a claimant must go in pursuing alternatives to quitting before the claimant can be adjudged to have done enough to justify quitting.

In addition to an employer having the general burden under the Evidence Code to show that a claimant in some way negated the claimant's good cause for leaving the employment, Precedent Decision P-B-457, Precedent Decision

P-B-94, Precedent Decision P-B-246, and Precedent Decision P-B-256 recognize that an employer has an obligation to address properly raised employee complaints and concerns. Once an employee initiates a reasonable effort to resolve a work-related problem by requesting assistance from appropriate employer authorities or notifying those authorities of the problem that exists, it is clear that the employer has a responsibility to promptly and diligently address the matter. A failure by the employer to take such action relieves the employee of the obligation to make further inquiries or requests before leaving the job insofar as the unemployment insurance law is concerned.

Both the claimant and the employer, therefore, have responsibilities regarding the resolution of a hostile work environment problem. The claimant is obligated to give the employer an opportunity to address the problem and the employer is then obligated to promptly respond to the problem in a reasonable manner. The adjudicatory challenge is to determine when the burden for addressing the problem shifts from the claimant to the employer. Meeting that challenge obviously depends upon the facts involved in each individual case, but we think this case indicates that further guidance on this topic is warranted. Indeed, although the facts of this case appear to bring it within the purview of Precedent Decision P-B-457, the appealed decision neither referred to that precedent nor followed its holding. We accordingly consider it appropriate to more specifically address this issue in the context of the facts presented by this case.

In this case, the claimant over the course of approximately three months repeatedly complained to her store manager and the employer's human resources department about the harassment she was receiving from the assistant manager. Those complaints, however, proved to be utterly unavailing. The employer's human resources department failed to ever provide the claimant with any direct response to the claimant's January 20, 2017 and February 5, 2017 complaints. Instead, that human resources department apparently turned the "handling" of the claimant's February 5, 2017 complaint over to the very same individual, the claimant's store manager, to whom the claimant had already been unsuccessfully complaining about the harassment for at least two months. That store manager thereafter took no meaningful action concerning the complaint before the claimant resigned nearly a month later. The store manager's contention that he "did not get the chance" to act on the claimant's February 5, 2017 complaint before the claimant resigned on March 2, 2017 is manifestly unpersuasive.

It is recognized that an employer's efforts to resolve an employee complaint or concern may often require significant time while the matter is investigated and an exploration of potential solutions proceeds. If informed of those efforts, the employee involved may properly be expected to be reasonably patient and

cooperative while those efforts were underway. An employee who was aware of such corrective efforts by the employer and who precipitately quit without allowing those efforts by the employer a fair opportunity to resolve the employee's concerns might appropriately be held to have negated whatever good cause that employee might otherwise have had for leaving the job by failing to give the employer's remedial efforts a chance to succeed.

That is not, however, what happened in this case. Despite the claimant's multiple complaints over several months, this employer did essentially nothing to address the problem. The claimant's manager never convened a meeting involving the claimant and the assistant manager, the human resources department neither responded directly to the claimant concerning the claimant's January 20, 2017 and February 5, 2017 complaints nor undertook effective steps to address those complaints, and the claimant's manager did not take any meaningful steps to deal with the claimant's February 5, 2017 complaint after he accepted responsibility for "handling" it. The employer did not respond to the claimant's complaints in a prompt or reasonable manner and the employer cannot fairly contend that the claimant was lax or irresponsible in her efforts to solve the harassment problem. The employer thus failed to sustain its burden of showing that the claimant negated the good cause that the claimant possessed for leaving the employment.

The claimant's multiple harassment complaints to multiple employer authorities over the course of multiple months clearly represented a reasonable effort by the claimant to resolve her workplace problem. The burden for resolving that problem had thus shifted to the employer by the time of the claimant's resignation. The employer clearly failed to satisfy that burden by neglecting to punctually and diligently address those complaints. The employer's failure to promptly and reasonably address the claimant's complaints in a meaningful way relieved the claimant of the responsibility to pursue further remedies through the employer for resolving those complaints before the claimant resigned. Accordingly, the claimant's failure to request a transfer or additional assistance from the employer before she quit did not negate the good cause that the claimant had for leaving the job.

Inasmuch as the claimant had good cause for leaving the subject employment under code section 1256 and that good cause was not negated by a failure on the part of the claimant to pursue a reasonable solution to her job-related concerns before she resigned, the claimant is not subject to benefit disqualification under that provision. It follows that the employer's reserve account is not entitled to relief from benefit charges.

## DECISION

The decision of the administrative law judge is reversed. The claimant is not disqualified for benefits under code section 1256. Benefits are payable provided the claimant is otherwise eligible. The employer's reserve account is subject to benefit charges.