BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

In the Matter of:

ELMER L. GRECIAN
(Claimant)

HOWARD PALMER, INC.
(Employer)

PRECEDENT
BENEFIT DECISION
No. P-B-76
Case No. 70-369

The employer appealed from Referee's Decision No. SD-6748 holding the claimant to have voluntarily left his most recent work with good cause under section 1256 of the Unemployment Insurance Code and the employer's reserve account potentially liable for any benefits which might be paid to the claimant.

STATEMENT OF FACTS

The claimant worked seven months as a shipping and receiving clerk for the employer. He left this employment on August 8, 1969 under the following circumstances.

The claimant was a chronic alcoholic. On August 8 he began drinking and during that day telephoned the employer from a bar informing him that he was unable to work and requesting his paycheck. The employer suggested the claimant take one week off to sober up. The claimant stated he would prefer to have his check and about an hour later went to the employer's establishment to get it. After picking up his check the claimant requested the proffered week off to sober up, but the employer refused, stating that the claimant had already chosen to terminate his employment.

The claimant remained in an inebriated condition for three to four days, finally being admitted to a state facility for treatment. After three months he entered the Alcoholics Anonymous Program and has apparently refrained from drinking.

The claimant testified that on one previous occasion while employed by the employer he had been absent a day, partially due to his drinking problem. The employer's position is that the claimant demanded his paycheck so that he could buy more liquor and that when he accepted the check on August 8, the claimant was already highly intoxicated.

REASONS FOR DECISION

Section 1256 of the Unemployment Insurance Code provides for the disqualification of a claimant when he has left his most recent work voluntarily and without good cause, and, in this event, the employer's reserve account may be relieved of benefit charges under sections 1030 and 1032 of the code.

As a general rule, we have held that a voluntary leaving of work is with good cause only when a claimant has a real, substantial and compelling reason of such nature as would cause a reasonable person genuinely desirous of retaining employment to take similar action. (Appeals Board Decision No. P-B-27)

The intent manifested by a claimant in his voluntary leaving of employment is as critical a factor in the type of termination now before us as is the intent of a claimant in choosing to act in a manner leading to his discharge, that latter act being sometimes characterized by us as "misconduct" under the code. Particularly is this so when dealing with the personal accountability of a claimant for his own actions in drinking on the job or arriving at work drunk. For when confronted with a case of voluntary leaving, as with a case of discharge, we must examine the interaction and interrelationship between the parties to the employment contract.

The present case may thus be distinguished from Benefit Decisions Nos. 5783, 5965 and 6188, all cases of misconduct discharges for drinking on or before the job; but the underlying rationale of these decisions is without distinction. Just as in the case of a discharge, we must examine the feasible precautions the present claimant could have taken prior to the termination of his employment; for in this case of voluntary leaving, the reasonableness and prudence he exercised is in issue.

In either case, in order to avoid confusion and uncertainty in the law, we must arbitrarily draw a line at the farthest reaches of permissible behavior and then measure the claimant's conduct toward his employer or his reaction to

his employer and to his job environment which leads to either his voluntary termination of employment by leaving, as here, or his discharge, as in the aforementioned decisions.

This similarity in approaches may be seen in the doctrine of constructive voluntary leaving which simply stated means that while the appearance of discharge is present, in fact, a claimant's volitional act in setting in motion a chain of circumstances through his exercise of will actually results in the ultimate termination of his employment. The additional fact of chronic alcoholism should not affect our application of this doctrine. It simply complicates the decision-making process, since at the present state of legal-medical knowledge it is uncertain whether a compulsive drinker is irresistibly drawn to imbibe through a physiological addiction, a psychologically habituating urge, or because of socio-cultural factors.

This confusion and uncertainty may be seen in the recent majority, concurring and dissenting opinions of the United States Supreme Court in Powell v. State of Texas (1968), 392 U.S. 651, 88 S. Ct. 2145, a decision notable for the candid admissions of ignorance by the several justices and their inability to arrive at a unanimous decision on the question of intent.

The case involved an individual arrested for public drunkenness under a Texas statute which penalized chronic alcoholics for their affliction when displayed in public. The transcript presented to the Supreme Court contained 12 pages of expert psychiatric testimony on the defendant's chronic alcoholism. The psychiatrist, however had been reluctant to formulate a concept for measuring the defendant's wilfulness in committing the crime.

The majority opinion reflects a similar reluctance to formulate a rule both because the record before the court was inadequate (despite psychiatric testimony missing in the present case) and because the majority felt that their knowledge of "chronic alcoholism" was inadequate. The majority did note as being of particular interest, however, testimony that the defendant had on the day of his trial refrained from taking more than one drink (as the claimant in the present case was absent only one day on a previous occasion due to drinking).

On the extent of present legal-medical knowledge of chronic alcoholism, the court stated:

> "Furthermore, the inescapable fact is that there is no agreement among members of the medical profession about what it means to say that 'alcoholism' is a 'disease.' One of the principal works in this field states that the major difficulty in articulating a 'disease concept of alcoholism' is that 'alcoholism has too many definitions and disease has practically none.' This same author concludes that 'a disease is what the medical profession recognizes as such.' In other words, there is widespread agreement today that 'alcoholism' is a 'disease,' for the simple reason that the medical profession has concluded that it should attempt to treat those who have drinking problems. There the agreement stops. Debate rages within the medical profession as to whether 'alcoholism' is a separate 'disease' in any meaningful biochemical, physiological or psychological sense, or whether it represents one peculiar manifestation in some individuals of underlying psychiatric disorders." (88 S. Ct. at 2149)

From a number of authorities on the question, the majority concluded that both loss of control and inability to abstain from drinking in the first instance were essential factors to a finding that an individual was afflicted with the disease of chronic alcoholism sufficient to destroy his will to resist the constant and excessive consumption of alcohol. But unable to find on the state of the record sufficient evidence to make such a finding, and not being persuaded that the constitutional question should be decided under these circumstances, the majority held that it was unable to conclude "on the state of this record or on the current state of medical knowledge, that chronic alcoholics in general, and Leroy Powell in particular, suffer from such an irresistible compulsion to drink and to get drunk in public that they are utterly unable to control their performance of either or both of these acts and thus cannot be deterred at all from public intoxication." (88 S. Ct. at 2155)

The present case is likewise one which provides us with an inadequate record from which to make any findings of "loss of control" or "inability to abstain" from drinking although, as in the Powell case, there is some evidence that on at least one occasion the claimant was able to refrain from drinking beyond his capacity. Because of the lack of any psychiatric testimony in this record, and particularly in view of this board's present state of medical knowledge of what constitutes "chronic alcoholism," it is unwilling to set itself up as sufficiently expertise as to be able to discern the subtleties of what all might agree is a disease and to determine whether this claimant's affliction had gone beyond the point where he was unable to control his own actions. In the present case, the claimant at least had the option available to him of taking an entire week to recuperate or to make his own summary decision to

leave employment. The choice was his and we are unprepared to say that his will had been so destroyed that his choice was involuntary. Since in analogous cases we have held that drunkenness is incompatible with the employment relationship, we must hold, as in those earlier cases, that the claimant is disqualified from receiving benefits under section 1256 of the code.

DECISION

The referee's decision is reversed. The claimant is disqualified from receiving benefits under section 1256 of the code. The employer's reserve account is relieved of benefit charges under sections 1030 and 1032 of the code.

Sacramento, California, May 26, 1970

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

ROBERT W. SIGG, Chairman

CLAUDE MINARD

JOHN B. WEISS

CONCURRING - Written Opinion Attached

LOWELL NELSON

DON BLEWETT

CONCURRING OPINION

We concur in the conclusion that this claimant voluntarily left his most recent work without good cause. However, we want to emphasize that in our opinion this conclusion applies only to this case and other cases where the facts are the same or similar. We also want to emphasize that this case, in our opinion, in no way changes our past precedent decisions in regard to the application of the voluntary quit and misconduct provisions of section 1256 of the code or our decisions involving the receipt of disability benefits.

This case and the Powell case cited in this decision go no further than to say at the present time we cannot definitely conclude that alcoholism is a disease. In the Powell case the court was faced with a situation involving an individual who was arrested for public drunkenness. In this case we are involved with a situation of an individual who was unable to report to work because of intoxication and we agree with the Supreme Court that we also cannot decide definitely whether alcoholism is a disease of such nature as to make the one so afflicted incapable of controlling his actions.

Finally, we wish to express an opinion of the doctrine of "constructive voluntary leaving." We think this doctrine should be abandoned by this board because it seems to us that in applying this doctrine we are in effect legislating and arriving at a fore-drawn conclusion through "interpreting" the law rather than by applying the law.

With these considerations in mind, we concur and based on all the facts of this case conclude that the claimant voluntarily left his most recent work without good cause. He had the choice of accepting the employer's offer of time off so that he could sober up and return to work; he refused this offer and in effect chose unemployment.

LOWELL NELSON

DON BLEWETT