

BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

In the Matter of:

MILDRED P. PEER
(Claimant)

PRECEDENT
BENEFIT DECISION
No. P-B-81
Case No. 69-4255

THE BILTMORE HOTEL
(Employer)

The employer appealed from Referee's Decision No. S-29788 which held that the claimant was not disqualified for benefits under section 1256 of the Unemployment Insurance Code; that the claimant was not ineligible for benefits under section 1264 or under subdivision (c) of section 1253 of the code; and, that the employer's account is not relieved of benefit charges under section 1032 of the code. The employer has submitted written argument to this board. Such argument has not been received from the other parties.

STATEMENT OF FACTS

The claimant was last employed by the above named employer from 1967 until she voluntarily left that most recent work on June 21, 1969 under the following circumstances.

The claimant is a married woman and had her home in Trona, California. Her husband had been retired since 1965 and was living in the family home in Trona, California. The husband receives social security benefits from the federal government and a pension from his former employer. The claimant was working part time for the above named employer as a switchboard operator and living in Los Angeles, California. The claimant's husband visited the claimant in Los Angeles on weekends. In addition to the money which she earned with the above employer, the claimant also was receiving social security benefits. At the time the claimant left work, the money which she earned from her part-time employment, combined with her

social security benefits, was less than the total amount of money her husband was receiving by way of his pension and social security benefits.

The claimant's husband wished to live up north in the Paradise area which is a matter of hundreds of miles from Los Angeles. The claimant then decided to leave work to go to the new residence chosen by the husband in Paradise. Neither the claimant nor the husband has had any work since leaving Los Angeles and moving to Paradise.

The claimant testified that she is willing to work in Paradise or Chico and that she is willing to drive to work to Chico or transportation will be provided by her husband to a job in Paradise or Chico. The claimant sought work, where her services might be used, at two places in Paradise. Up until "just the other day" prior to the hearing before the referee, the claimant's efforts in seeking work in Chico were limited to calls from Paradise.

The claimant and her husband had no source of income other than what has already been mentioned.

REASONS FOR DECISION

Section 1256 of the code provides that an individual shall be disqualified for benefits, and sections 1030 and 1032 of the code provide that an employer's account may be relieved of benefit charges if the individual left his most recent work voluntarily and without good cause.

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. (Appeals Board Decision No. P-B-27)

Where a wife leaves her employment to join her husband at, or to accompany him to, a place of his choosing, from which it is impractical to commute to her employment, the leaving of work in general is with good cause. (Appeals Board Decision No. P-B-44)

The facts of the instant case fall within our holding in Appeals Board Decision No. P-B-44. Accordingly, the claimant left her work with good cause.

Section 1264 of the code provides that if an individual leaves her work to join her husband at, or to accompany him to, a place from which it is impractical to commute to her employment, she is ineligible for benefits for the ensuing period of unemployment and until after subsequent bona fide employment, 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 facts of the instant case clearly fall within the provisions of section 1264 of the code since the claimant left her work to accompany her husband to a place from which it was impractical to commute to her employment.

The question before us next is therefore whether the claimant was the sole or major support of the family at the two times mentioned in section 1264 of the code.

Subdivision (d) of section 1264-1, Title 22, California Administrative Code, provides:

"1264-1. Marital or Domestic Duties, Family and Major Support of Family Defined.

* * *

"(d) 'Major support' of a family shall be presumed to be the family members, in the order provided below:

- (1) The husband or father
- (2) The wife or mother in any family in which there is no husband or father.

"Notwithstanding the above provisions, in any case in which a member of a family as defined above can show that he or she is providing the major means of support (more than

one-half) then that individual shall be deemed the major support of the family. No more than one person may be the major support of the family."

A "spouse" is a "member of a family" under subdivision (c) of the last cited section.

In Webster's Third New International Dictionary, the following meaning is given to the word "support":

". . . to pay the costs of: MAINTAIN . . . to supply with the means of maintenance (as lodging, food or clothing) or to earn or furnish funds for maintaining . . . to provide a basis for the existence or subsistence of: serve as the source of material or immaterial supply, nourishment, provender, fuel, raw material, or sustenance of"

Nothing is said in subdivision (d) of section 1264-1, above, that a family member must currently earn as wages the "means of support" in order to be the "major support of the family." All that need be shown is that some family member is "providing" the "major support of the family." When such proof is established, that family member is the "major support of the family."

In the instant case, the claimant's husband was the "major support of the family" at the two critical points of time established under section 1264 of the code. At those times, the sum of his pension and social security benefits amounted to more than one-half of the means of support of the family. The claimant is therefore ineligible for benefits under section 1264 of the code.

Since the claimant is ineligible for benefits under section 1264 of the code for the period involved, we need not consider the question of her eligibility for benefits for that period under subdivision (c) of section 1253 of the code.

DECISION

The decision of the referee is modified. The claimant is not disqualified for benefits under section 1256 of the code. The claimant is ineligible for benefits under section 1264 of the code. The employer's reserve account is not relieved of benefit charges under section 1032 of the code. The question of the claimant's entitlement to benefits under subdivision (c) of section 1253 of the code is not decided.

Sacramento, California, July 28, 1970

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

ROBERT W. SIGG, Chairman

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