BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

THIS DECISION DESIGNATES FORMER RULING
DECISION NO. 104 AS A PRECEDENT
DECISION PURSUANT TO SECTION
409 OF THE UNEMPLOYMENT
INSURANCE CODE.

In the Matter of:

VAN DE KAMP BAKERS
(Employer-Appellant)

WALTER B. CALLAHAN
(Claimant)

PRECEDENT
RULING DECISION
No. P-R-278

FORMERLY
RULING DECISION
No. 104

Referee's Decision
No. LA-R-4493

STATEMENT OF FACTS

The employer appealed from the decision of a referee which affirmed a ruling of the Department of Employment that the employer's account was chargeable under Section 1032 of the Unemployment Insurance Code with respect to benefits paid to the claimant.

The claimant had played baseball while in high school. In June 1953, he completed high school and signed a contract with the Brooklyn Baseball Team. On June 27, 1953, the claimant went to work for the employer as a baker's helper at a wage of $1.30 an hour. He worked less than full time, the number of hours per week varying but averaging approximately thirty hours. On August 7, 1953, the claimant voluntarily left his work since he was called by the Brooklyn Baseball Team to play ball with a "farm" club, the Santa Barbara Dodgers. The claimant, under his contract, played with this team to the end of the season, which was for three weeks, at a wage of $60 a week. Thereafter, the claimant played baseball with another professional team for six months ending June 1954 at a wage of $50 a week and had other employment before filing his claim.

Effective January 16, 1955, the claimant filed his claim for benefits. As a base period employer, the employer herein submitted information regarding the leaving of work and requested a ruling. The department issued its ruling on April 27, 1955, which was unfavorable to the employer on the basis that the claimant had good cause for leaving his work since he left to fulfill a legal contract made in June 1953, with an increase in pay in excess of ten percent. The employer appealed to a referee who affirmed the ruling issued by the department and held the employer's account chargeable.

The question presented is whether the claimant voluntarily left his employment with the appellant without good cause.

REASONS FOR DECISION

Section 1032 of the code provided as follows:

> "1032. If it is ruled under Section 1030 or 1328 that the claimant left the employer's employ voluntarily and without good cause or was discharged by reason of misconduct connected with his work, benefits paid to the claimant subsequent to the termination of employment due to such voluntary leaving or discharge which are based upon wages earned from such employer prior to the date of such termination of employment, shall not be charged to the account of such employer unless he failed to furnish the information specified in Section 1030 within the time limit prescribed in that section."

We have previously held that good cause does not exist for leaving permanent full-time work for temporary work (Benefit Decisions Nos. 5524 and 5590). We reviewed our position on this matter in Ruling Decision No. 91 wherein we considered the situation of a worker who left work as an assembler averaging approximately $77 a week to accept work as a script writer, in which he had had prior experience, for a period of twenty-six weeks at $300 per week with the possibility of his contract being renewed. We said the following in that case:

"In Benefit Decision No. 5686 we reviewed a number of our previous decisions pertaining to the issue of good cause for leaving employment. We then concluded:

" 'If the facts disclose a real, substantial, and compelling reason for leaving employment of such nature as would cause a reasonable person genuinely desirous of retaining employment to take similar action, then there is good cause for such leaving within the meaning of Section 58(a) of the Act.'

"In Ruling Decision No. R-5, we stated as follows:

" 'In determining the issue of good cause in cases involving a leaving of work to accept other employment no definite standards or criteria can be established which may be uniformly applied in each and every case. Consideration must be given, among other things, to the relative remuneration, permanence and working conditions of the respective employments as well as the inducements or assurances, if any, made to the claimant by the prospective employer. All of the facts and circumstances of each particular case must be examined and weighed in determining whether good cause exists for leaving employment.'

"In Benefit Decision No. 5524, we considered a situation wherein the claimant left permanent employment paying a wage of $45 per week for an offer to manage a parking lot for a period of approximately four months at a salary of between $55 and $65 a week, plus 50% of the net profits of the lot. We concluded in that decision that the leaving of permanent work in order to accept temporary work was, under the circumstances, without good cause. We also arrived at the same conclusion in Benefit Decision No. 5590 where a claimant left permanent work as a helper in a macaroni factory at a wage of $1 per hour for promised work to assist in the construction of four houses as a carpenter's helper at 95¢ per hour, with the prospect that such experience would lead to union membership within a short time, at which time his pay would be increased to $1.25 per hour. We likewise reached the same conclusion where a claimant left permanent full-time work for other permanent full-time work which offered only insignificant increases in pay or other advantages (Ruling Decisions Nos. 17, 36 and 39).

"We have in other decisions, however, held that a worker who voluntarily left permanent employment for other employment which at the time appeared to be permanent and which paid a substantially higher wage or offered other substantial advantages, did so with good cause. Thus, we held in Benefit Decision No. 5572, where the worker left permanent work paying a salary of $225 per month for a promise of other permanent work paying a salary of $275 per month, and in Ruling Decision No 2, where the worker left permanent work paying $1.62 per hour for similar work at a wage of $1.90 per hour after being advised that the prospects of permanency were good, that the respective workers voluntarily left their employment with good cause.

"In Ruling Decision No. R-85, we considered a further situation wherein a claimant who had been employed as a laborer for approximately seven years by the appellant at a terminating wage of $1.55 per hour, had, during such period, completed a four-year course under the servicemens' readjustment educational program which qualified him for apprenticeship as an automobile mechanic. Upon completion of the course, the claimant left the appellant to accept work as an apprentice at a starting wage of $1.51 per hour, with periodic increases to $1.80 per hour at the expiration of approximately ten months, and to a journeyman's card in approximately fourteen months. We concluded in that case, after giving consideration to all of the circumstances involved, that the claimant had voluntarily left his work with good cause.

"In the present case, the appellant argues that the new work which caused the claimant to leave the appellant's employ was temporary and that, in accordance with the principles established by this Appeals Board in Benefit Decisions Nos. 5524 and 5590, it follows that the claimant voluntarily left the appellant's employ without good cause. However, as we pointed out in Ruling Decision No. 5 quoted above, all of the facts and circumstances of each particular case must be examined and weighed in determining whether good cause exists for leaving employment, including among other things, the relative remuneration, the permanence and working conditions of the respective employments, as well as the inducements or assurances, if any, made to the claimant by the prospective employer.

> "In the present case, the claimant was assured of six months of employment with the possibility that the period thereof would be extended indefinitely at a salary four times as great as the wage which he received from the appellant. Under these facts, it is our opinion that the claimant had a real, substantial, and compelling reason for leaving his employment with the appellant. Therefore, we hold that the claimant had good cause for leaving his work with the appellant within the meaning of Section 1030 of the code."

In the instant case, the employer has not shown otherwise and the facts will support the inference that the claimant had signed his contract with the baseball team prior to the time when he accepted employment with this employer. Baseball was the chosen profession of the claimant; but he had to abide his time until he was called by the baseball team. The work which the claimant performed for the employer herein not only was part time but it was "stop-gap" employment which he accepted until such time as he was required by the baseball team to fulfill his contractual obligation to report to play baseball. Under such facts, we find that this case is distinguishable from the facts we considered in Benefit Decisions Nos. 5524 and 5590. Pursuant to our reasoning in Ruling Decision No. 91, we find that the claimant had a real, substantial, and compelling reason for leaving his employment with the employer herein. Therefore, the leaving was with good cause under Section 1032 of the code.

DECISION

The decision of the referee is affirmed. Any benefits paid to the claimant which are based on wages earned from the employer prior to August 7, 1953, are chargeable under Section 1032 of the code to Employer Account No. XXX-XXXX.

Sacramento, California, January 6, 1956.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

MICHAEL B. KUNZ, Chairman

GLENN V. WALL

ARNOLD L. MORSE

Pursuant to section 409 of the Unemployment Insurance Code, the above Ruling Decision No. 104 is hereby designated as Precedent Decision No. P-R-278.

Sacramento, California, March 23, 1976.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

DON BLEWETT, Chairperson

MARILYN H. GRACE

CARL A. BRITSCHGI

HARRY K. GRAFE

RICHARD H. MARRIOTT