BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

In the Matter of the
Reserve Account of:

DILECTRON
(Employer-Appellant)

PRECEDENT
RULING DECISION
No. P-R-29
Case No. R-68-31

Claimant: Ethelyn A. Fliss

The employer appealed from Referee's Decision No. S-R-16072 which held that the employer's account was subject to charges equal to four times the claimant's weekly benefit amount, a total of $124, under section 1030.5 of the Unemployment Insurance Code. Written argument was submitted by the employer's counsel. No brief was submitted by the Department of Employment.

STATEMENT OF FACTS

The claimant was employed by the above mentioned employer on December 6, 1966. On April 7, 1967 the employer experienced a reduction in work which necessitated the temporary layoff of a large percentage of its personnel. This was the first layoff that the employer had had in four years and all of the employees including the claimant were told that they would be recalled before long although no definite date for the recall was stated at the time of the layoff.

The employer did not consider the employment relationship severed during the temporary layoff. While on layoff status the employer continued the employees on its company rolls and such employees accumulated seniority for the purposes of recall and vacation time for a period not exceeding six months. Upon recall, employees who had been on temporary layoff received immediate company financed insurance, whereas newly hired employees were required to wait a period of six months for such coverage.

On April 27, 1967 the employer sent the following letter to the claimant:

> "Would you please fill out the enclosed form with your present address and telephone number, or message number, so that when we recall you, we will be able to get in touch with you immediately.
>
> "Thank you."

The claimant returned the same letter to the employer with the following statements written on the bottom thereof:

> "Dear Helen:
>
> "We have an emergency in the family, and we are going back east. However we plan to be back later on, and I will get in touch with you at that time, it has been pleasant working for Dilectron, and I feel I have done a good job. As I did give it my best. The best to you & thank you for writing.
>
> "Sincerely - Ethelyn
>
> "P.S. My address will be R #2, Aitken, Minn. 56431."

The letter which was returned to the employer was marked as received by the employer on May 1, 1967. On the same day or day prior thereto the personnel supervisor of the employer attempted to telephone the claimant. The claimant's home number was called on several occasions but there was no answer.

The employer's president testified at the hearing that at the time the letter was sent "We had been recalling people for the two weeks previous to this and we recalled all of our people within one week after the date of this letter [April 27, 1967]."

On May 2, 1967 the employer prepared a payroll change notice indicating that the claimant had "quit-family reasons" as of May 1, 1967.

The claimant filed an interstate claim for unemployment insurance benefits on September 10, 1967 against the liable State of California through the Minnesota Department of Employment Security. On her initial interstate

claim the claimant indicated that the employer herein was her last employer and that she was laid off on April 7, 1967. On September 21, 1967 a Notice of New Claim Filed was mailed to the employer. The face of this form indicated that the claimant stated she was laid off work through no fault of her own. The last date worked was not noted on the face of the form. In response to this notice the employer indicated on the reverse of the form that the last day worked by the claimant was April 7, 1967. In the explanation section of the form, however, the employer stated as follows:

> "(5-1-67 - Quit) - Said she had to go back east because of an emergency in the family. She did not say in the letter how long she would be gone or what the emergency was. I called her home number several times but there was no answer. Under these circumstances we request that our reserve account not be charged."

Thereafter the employer received a notice of claim filed and computation of benefit amounts on which the employer indicated that the claimant was separated from its payroll on May 1, 1967, and repeated the factual statements above quoted.

By letter dated October 31, 1967 the department requested further information from the employer. In response to the department's inquiry the employer, in a letter dated November 11, 1967, related the factual events which occurred between April 7, 1967 and the date of the claimant's termination of employment on May 1, 1967. As a result of the communications between the employer and the department, the department issued a determination and ruling dated November 21, 1967, which held that the claimant was not subject to disqualification for benefits under section 1256 of the code and that the employer's reserve account was not relieved of charges under section 1032 of the code on the ground that the claimant's unemployment was the result of a layoff and not a voluntary leaving without good cause. Although the claimant certified for benefits each week beginning with September 10, 1967, the department withheld payment of any benefits to the claimant until November 20, 1967.

Subsequently on December 8, 1967, the department determined on the basis of the correspondence between the department and the employer that the employer's account was subject to charges equal to four times the claimant's weekly benefit amount under section 1030.5 of the code on the ground that the employer had made a false statement or representation or wilfully failed to report a material fact concerning the termination of the claimant's employment.

The employer appealed to a referee from both determinations and rulings of the department. Case No. S-16071 (1256 and 1032 issues) and Case No. S-R-16072 (1030.5 issue) were consolidated for a hearing held before a referee in California on February 23, 1968, at which hearing only representatives of the employer appeared. In Case No. S-16071 the referee issued a decision on March 1, 1968 affirming the department's determination and ruling that the claimant was not disqualified for unemployment benefits under section 1256 of the code and that the employer's reserve account was not relieved of benefit charges under section 1032 of the code. No appeal was taken from this decision.

On March 5, 1968 the referee issued a separate decision in Case No. S-R-16072 which held that the employer's account was subject to charges equal to four times the claimant's weekly benefit amount under section 1030.5 of the code. The employer appealed from this latter decision.

In its written argument to us the employer's counsel contends:

1. That the claimant left her work voluntarily without good cause because the temporary layoff of April 7, 1967 did not constitute a severance of the employer-employee relationship. In support of this position counsel cited numerous cases; and

2. That the claimant severed the employment relationship by her letter to the employer on or about May 1, 1967 by way of a voluntary leaving, and therefore the information submitted to the department by the employer relating to the termination of the relationship was not false nor was there a material omission in the information submitted to the department.

REASONS FOR DECISION

Section 1030.5 of the Unemployment Insurance Code provides:

"1030.5. If the director finds that any employer or any employee, officer, or agent of any employer, in submitting facts pursuant to section 1030 or 3701, willfully makes a false statement or representation or willfully fails to report a material fact concerning the termination of a claimant's employment, the director shall make a determination thereon charging the employer's reserve account not less than 2 nor more than 10

> times the weekly benefit amount of such claimant. The director shall give notice to the employer of a determination under this section. Appeals may be taken from said determinations in the same manner as appeals from determinations on benefit claims."

In the instant case the employer's appeal is predicated in part upon the impropriety of Referee's Decision No. S-16071 which held that the claimant was not disqualified for benefits under section 1256 of the code. However, the issue under section 1256 of the code is not before us as the referee's decision in that case has become final. Nevertheless, in order to determine whether the employer wilfully made a false statement or wilfully failed to report a material fact concerning the termination of the claimant's employment, we must necessarily consider whether the claimant did in fact voluntarily leave her most recent work.

On prior occasions we have considered factual situations similar to the one before us and held that an indefinite layoff constituted a termination of employment and that a recall constituted a new offer of employment.

In Benefit Decision No. 6396 the claimant was "furloughed" effective February 18, 1955 at the close of the day. He was placed on the "furloughed" list which was effective for four years, and seniority rights and other benefits accrued to him for that period. The claimant received one day's vacation pay for February 19, 1955. On February 19 an unexpected opening occurred in the claimant's classification and the employer notified the claimant that he was being recalled to work. The claimant did not respond to the recall. In that case, it was the employer's contention that the employment relationship continued throughout the layoff period during which the seniority rights of the worker remained in effect. We did not agree with this contention. We held that the "furloughing" of the claimant constituted no more than a layoff due to a reduction in force. The employer no longer required the claimant's services and, as the moving party, formally gave notice to the claimant of this fact. The preservation of certain reinstatement rights and continuation of benefits did not alter the fact that the contract of employment was terminated. The subsequent action of the employer in seeking to reinstate the claimant therefore constituted a new offer of employment, and the acceptance of this offer would have resulted in a new contract of hire. We further held it was immaterial that the offer was made before the term of the prior employment had expired due to the one-day vacation. Accordingly, we found there was no voluntary leaving of work by the claimant and the employer was not entitled to a favorable ruling.

Similarly in Benefit Decision No. 6501, the claimant was laid off and moved to a distant locality. Later he failed to accept an offer of reemployment. In that case we held that the termination of employment occurred when the claimant was laid off and the claimant was not subject to disqualification under code section 1256.

In the instant case the employer found it necessary to reduce personnel for an indefinite period. To accomplish this the employer gave notice to the claimant that she was being laid off with no definite date as to when the claimant would be recalled to work. The action of the employer was definitely one to terminate the employment relationship, and the reasoning in Benefit Decisions Nos. 6396 and 6501 is applicable and controlling in this case.

The cases cited by counsel in his argument relate to trade dispute situations. We have previously held that a trade dispute suspends but does not terminate the employment relationship. Since the present case does not involve a trade dispute, the cases cited by counsel are not applicable. However we recognize that the legal issue of whether a layoff terminates or suspends an employment relationship is not always easy to resolve. On first impression it would appear to be unfair to penalize an employer for a false statement because such employer reached an erroneous conclusion on this technical issue.

When the legislature added section 1030.5 to the code in 1963, it did so to remedy some defects in the then existing law. The public policy of this state as set forth in section 100 of the code provides in part for the payment of benefits to unemployed persons to reduce the suffering caused by involuntary unemployment to a minimum.

Section 1326 of the code provides in pertinent part:

> " . . . benefits shall be promptly paid if the claimant is found eligible or promptly denied if the claimant is found ineligible. "

One objective of the legislature in enacting section 1030.5 was to insure the prompt payment of benefits to eligible claimants. Experience had shown that payment of benefits was often delayed because inaccurate or erroneous information was furnished to the department by some employers or their agents. Although this legislation was primarily directed toward the

unscrupulous employer, it also intended to place a greater responsibility upon all employers to accurately report all material facts relating to a termination of a claimant's employment.

With this objective in mind, we have carefully analyzed the language used in section 1030.5 of the code. The key words in this section are " . . . willfully makes a false statement or representation or willfully fails to report a material fact . . . ."

We may properly assume that when the legislature added section 1030.5 of the code it was aware of the language used in code section 1257(a). Section 1257(a) of the code provides:

> "1257. An individual is also disqualified for unemployment compensation benefits if:
>
> "(a) He wilfully made a false statement or representation or wilfully failed to report a material fact to obtain any unemployment compensation benefits under this division."

It is a well known principle of law that "... where words and phrases employed in a new statute have been construed by courts as having been used in a particular sense in a former statute on the same subject or one analogous to it, they are presumed, in the absence of a clearly expressed intention to the contrary, to have been used in the same sense in the new statute." (Dalton v. Leland 22 Cal. App. 481, 135 P. 54; 45 Cal. Jur. 2d 616.

It must be assumed that the legislature was also aware of the court decisions interpreting the word "wilful" and our numerous decisions interpreting the language in section 1257(a) which had been in effect for many years prior to 1963. If the legislature had desired a different interpretation of section 1030.5, it could readily have accomplished this by using other language to express its intentions.

In Benefit Decision No. 5730 we held that the term "wilful" refers to an action taken consciously and knowingly. In Benefit Decision No. 5945 we held that a false statement is wilful if the claimant knew or should have known that such information would affect his eligibility for benefits. In Benefit Decision No. 5904 we held that simple neglect or an innocent mistake will not support a finding of a wilful misstatement or omission on the part of a

claimant. In Benefit Decision No. 5730 we held also that the materiality of the information which the claimant withheld is not dependent upon whether such information necessarily would have resulted in ineligibility or disqualification for Benefits; it is sufficient if the facts withheld would raise a question as to the claimant's entitlement to benefits. In Benefit Decision No. 5743 we held that the circumstances surrounding termination of a claimant's most recent work are material facts that must be disclosed to the department.

In the instant case there is no conflict in the evidence that the claimant was laid off because of a lack of work on April 7, 1967. Approximately three weeks later, in response to the employer's letter for the claimant's current address preparatory to calling her back to work, the claimant informed the employer that it was necessary for her to leave the state temporarily because of a family emergency. In response to the notice of claim, the employer's personnel supervisor stated that the claimant last worked on April 7, 1967 and quit on May 1, 1967. No mention was made of the fact that the claimant had first been laid off due to lack of work and no explanation was made as to the gap between April 7, 1967 and May 1, 1967. The department could reasonably "have" assumed that the claimant during this period was on a leave of absence, on a vacation, was ill or absent for any other number of circumstances. There was no indication to the department that the claimant had in fact been laid off due to the lack of work at any time during the period involved. As a result of this omission, the department withheld payment of benefits to the claimant until November 20, 1967.

The statement of the employer "we request that our reserve account not be charged" is clear in meaning. The import of this statement is that it was the position of the employer that based on its records the claimant voluntarily quit her job without good cause and was in effect requesting the Department of Employment to hold that the claimant was disqualified for benefits under section 1256 of the code.

We are not convinced by the record in this case that the employer’s failure to submit complete and correct information to the department was the result of simple mistake or negligence. The employer knew that the claimant had left work on April 7 because of a layoff but did not reveal this to the department in its initial statement, nor was this information elicited from the employer until the department had conducted an extensive investigation.

All the circumstances surrounding the termination of the claimant's employment were material to a determination of the claimant's eligibility for benefits and to a ruling under code sections 1030 and 1032, and the employer

was obligated to inform the department of them. It was the department's duty to determine the claimant's eligibility for benefits and to issue a ruling after consideration of all the facts, and it was not within the province of the employer to decide which facts were controlling.

It is significant that in submitting the information to the department the employer's personnel supervisor stated that the claimant last worked on April 7, 1967. This indicates that after deliberation the employer's agent interpreted the information in her possession and submitted to the department a statement which was certainly incomplete. Therefore, it must be found that this was done consciously and knowingly, and therefore wilfully within our definition as enunciated in Benefit Decision No. 5730.

Whether the employer or the personnel supervisor intended to defraud the claimant by inducing the department to disqualify her for benefits, or defraud the benefit fund by persuading the department to issue a favorable ruling under code section 1032, is not material. Section 1030.5 of the code does not speak of "intent," and any charges imposed under such section may not rest upon the intent of the employer to defraud or seek a position to its advantage.

Although the following may be redundant, we believe it may be justified to make our position clear. It is not expected, nor is it desirable, that the employer speculate about what may be material facts. The employer is required simply to state the facts in its possession which may affect the claimant's eligibility for benefits.

We conclude, as did the referee, that the employer wilfully withheld material facts within the meaning of section 1030.5 of the code. However, because the employer did make some effort to correct the discrepancy, after the department called the matter to its attention, it was appropriate that the department and the referee did not assess the maximum penalty of 10 times the claimant's weekly benefit amount (Ruling Decision No. 149).

DECISION

The decision of the referee is affirmed. The employer's account is subject to charges of 4 times the claimant's weekly benefit amount under section 1030.5 of the code.

Sacramento, California, October 29, 1968.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

ROBERT W. SIGG, Chairman

LOWELL NELSON

CLAUDE MINARD

JOHN B. WEISS

DONALD D. BLEWETT