BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

In the Matter of:

RELIABLE WINDOW CLEANERS

Claimant: Natalie Bailey

Office of Appeals No. LB-R-11701

PRECEDENT
RULING DECISION
No. P-R-376
Case No. R-77-150

The employer appealed from the decision of the administrative law judge which affirmed a ruling of the Department that the employer's account was subject to charges for unemployment insurance benefits paid to the claimant.

STATEMENT OF FACTS

The claimant worked for this employer cleaning restrooms during the period April 23, 1976, through August 15, 1976. When she did not report for work on August 16, the employer telephoned her. The claimant responded that she "had some things to do," but would report for work the following day.

However, when the claimant failed to report for work the following day, August 17, the employer again telephoned her and was given substantially the same reason. The claimant then promised to report for work the following day.

When the claimant failed to report for work on August 18, the employer did not telephone her again. The employer concluded that the claimant had quit her job and that it would be an exercise in futility to call her for any further explanation.

The claimant did not respond to an information inquiry from the Department. The only evidence available is that submitted by the employer.

REASONS FOR DECISION

Section 1032 of the Unemployment Insurance Code provides that an employer's reserve account shall be relieved of benefit charges if it is ruled under code section 1030 that the claimant left the employer's employ voluntarily and without good cause.

As a general rule, the employer has the burden of proving that a claimant left work voluntarily without good cause (Appeals Board Decision No. P-R-279). If the employer establishes a prima facie case, it is entitled to a favorable ruling unless the Department offers controverting evidence (Appeals Board Decision No. P-R-15).

The issue in this case is whether the employer can establish a prima facie case by relying on the presumption provided in section 1030(c) of the code. The pertinent portion of this section reads as follows:

> "For purposes of this section only, if the claimant voluntarily leaves such employer's employ without notification to the employer of the reasons therefor, and if the employer submits all of the facts within its possession concerning such leaving within the applicable time period referred to in this section, such leaving shall be presumed to be without good cause."

In Ruling Decision No. 136, the claimant was a full-time bartender who gave two weeks notice of his intention to quit. He did not give reasons for this and the employer did not ask. The Department was not able to obtain further information from the claimant. The Appeals Board held that the employer could not be given the benefit of the section 1030(c) presumption because it had made no attempt to learn the reasons for the employee's leaving, although it had ample opportunity to do so.

In reaching its conclusion in Ruling Decision No. 136, the Board recognized that "manifest reason and obvious purpose of the law must not be sacrificed to a literal interpretation" of words used in a statute. The Board noted that prior to the amendment of code section 1030(c), employers could not sustain their burden of proof in those cases where the employee left work without notice. In Yellow Cab Company v. California Unemployment Insurance Appeals Board, 194 Cal. App. 343, 15 Cal. Rptr. 425,

the employer conceded that there was not sufficient evidence in the record to show that the claimant did not have good cause for quitting, since it was not known why the claimant failed to report for work for seven working days before the employer marked its record to show a discharge.

Therefore, in Ruling Decision No. 136, the Board inferred that it was the legislative intent to remedy that defect in the law when section 1030(c) of the Code was amended to give the employer the benefit of a presumption that such an employee left without good cause. However, the Board also inferred that the legislature intended to limit the application of the presumption to those situations in which the employee leaves work without notice and without affording the employer a reasonable opportunity to obtain from the employee the reasons for such leaving. The Board stated:

> "To hold otherwise would permit the employer, having knowledge that an employee was quitting and having an opportunity to obtain the reasons therefor, to remain silent; and, if the department was unable to contact the claimant, be relieved of charges to its account. We do not believe that the legislature intended that the amendment should be interpreted in such a manner as to permit such an undesirable result."

However, we recognize that there should be a limit to the employer's obligation to find out why an employee is leaving. To ask the reasons is one thing, to pry is another. An employee has a right to privacy in personal affairs. Thus, in Ruling Decision No. 152, where an employer attempted to learn the reasons for leaving but the claimant refused to give any reason other than "personal reasons," the Board held that the employer was entitled to the benefit of the section 1030(c) presumption.

In the present case, we feel that the employer has done all that could be expected. When the claimant failed to report to work for two consecutive working days, the employer telephoned each time to ascertain the reason. When the claimant responded that she "had some things to do," this was the equivalent of telling the employer that the reasons were personal. We do not feel that the employer was obligated to probe into what those personal reasons were, nor do we feel that the employer should have been required to make further inquiry when the claimant failed to report for work still a third time.

Therefore, we hold that this employer is entitled to the benefit of the section 1030(c) presumption. Since the Department was not able to obtain information from the claimant, there is no evidence to overcome the presumption and the employer's prima facie case entitled it to a favorable ruling.

DECISION

The decision of the administrative law judge is reversed. The employer's reserve account is relieved of charges.

Sacramento, California, February 7, 1978

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

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