BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

In the Matter of the
Reserve Account of:

THRIFTY DRUG STORES COMPANY, INC.
(Employer)

PRECEDENT
RULING DECISION
No. P-R-85
Case No. R-69-53

Claimant: James Hargrove

The employer appealed from Referee's Decision No. BK-R-16440 which held that the employer's reserve account was not relieved of benefit charges under section 1032 of the Unemployment Insurance Code.

STATEMENT OF FACTS

The claimant was employed by the above employer as a management trainee from June 30, 1967 until August 3, 1967. The claimant's terminating rate of pay was $2.53½ an hour which, with guaranteed overtime, amounted to $537 a month. The claimant voluntarily left this work for the orally stated reason that he had received an offer of work from an engineering firm. The claimant did not give the name of the engineering firm to the appellant.

For the first time since leaving employment with the appellant, the claimant filed a claim for unemployment insurance benefits with the Department of Employment (now the Department of Human Resources Development) effective June 30, 1968. The appellant received notice of the claim filed as a base period employer. It submitted timely information to the Department that the claimant had voluntarily terminated his employment indicating he was going to work for an engineering company.

Upon request of the appellant, the Department furnished the names and addresses of the two other employers who had reported wages subject to the Unemployment Insurance Code for the quarters ending September 30, 1967 and December 31, 1967. The employment with one of the reporting employers ended June 27, 1967, before the claimant was employed by the appellant. The appellant obtained information from the other reporting

employer that the claimant had applied for work on October 2, 1967 and had begun work on October 9, 1967 as a drafting trainee at $2.25 an hour for a 40-hour week on a permanent basis, with fringe benefits of company-paid holidays, medical and life insurance. The work ended by layoff on June 28, 1968. The Department had no further information from the claimant as he discontinued certifying for benefits and did not respond to the Department's request for separation information.

The appellant contends that the facts of the present case are identical to those in Appeals Board Decision No. P-R-15 and that the information submitted was sufficient to establish a prima facie case that the claimant did not have good cause to leave the appellant's employ because the wages paid by the claimant's subsequent employer of record were substantially less than the wages paid to the claimant by the appellant.

The question before us for consideration is whether evidence of the conditions of new employment applied for and accepted in October 1967 may establish that the claimant did not have good cause to voluntarily leave his employ with the appellant some two months earlier on August 3, 1967.

REASONS FOR DECISION

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

In Appeals Board Decision No. P-R-15, the claimant was employed by the employer therein as an assembler from April 26, 1966 to June 22, 1966 at the terminating wage of $2.15 an hour. The claimant left this work for the stated reason that he was leaving to accept work with a construction company for more money. The employer presented evidence that the claimant worked between June 22, 1966 and July 11, 1966 for a company which supplied temporary workers for a wage of about $1.50 an hour. The claimant then worked for a public utility from July 11, 1966 to December 7, 1966 for a wage at termination of approximately $2.35 an hour. The Department had no further information to present.

In Appeals Board Decision No. P-R-15, we reaffirmed our faith in the soundness of Attorney General's Opinion No. 52/99 dated July 9, 1952 (20 Ops. Cal. Atty. Gen. 23) and readopted its several principles which had been

used for guidance in many of our cases over the years since its issuance. First, we recognized that good cause, or lack of it, is difficult of definition and depends upon factual circumstances. Second, we recognized that the burden of proof that the claimant left his work without good cause or was discharged for misconduct connected with his work rests with the employer. Further, however, we recognized that the reasoning must be tempered by the third and related principle that, if the employer produces evidence which establishes a prima facie case, the burden of going forward with the evidence shifts to the Department and, if it produces no evidence or if the evidence it produces or has previously produced is so weak as not to refute the prima facie case, then the ruling should be in favor of the employer. We held on the facts that the employer established a prima facie case that the claimant left its employ without good cause. Even though the claimant may have had a firm offer for a better paying construction job when he left work with the employer, in fact he immediately commenced work paying substantially less for a company furnishing temporary workers. We considered it a reasonable assumption that the employment first obtained upon leaving was the employment which caused the leaving, or that the leaving was for the purpose of seeking other work.

In the present case the claimant left the appellant's employ on August 3, 1967 and neither it nor the Department has presented any evidence to show whether the claimant did or did not have any employment with any other employers before October 9, 1967. The circumstances of the present case, therefore, are clearly distinguishable from those in Appeals Board Decision No. P-R-15 where there was evidence that the claimant immediately went to work for another employer.

As stated by the California District Court of Appeals in California-Portland Cement Company v. California Unemployment Insurance Appeals Board, et al. (1960),178 Cal. App. 2d 263, 3 Cal. Rptr. 37:

> "A prima facie showing requires proof of facts from which a legal conclusion can be drawn. The determination whether an employee left his employment 'without good cause' is, in effect, the drawing of a legal conclusion from a set of facts. 'Good cause' cannot be determined in the abstract any more than can any other legal conclusion. It can be determined only in relation to a set of facts. . . ."

In Ruling Decision No. 30, the claimant was employed as a messenger for about seven months for the employer therein and last worked on Thursday,

January 17, 1952. The claimant informed the Department that he resigned for a better position "in the offing" which he commenced on Monday, January 21, 1952. We held that evidence of work "in the offing" would not support a conclusion that the claimant had assured himself of new and continuous employment at the time of resignation and therefore the claimant left the employ of the employer therein voluntarily and without good cause. There was no evidence as to the claimant's activities between the day upon which he left that employer's employ and the day upon which he began new employment several days later.

We reached a similar conclusion in Ruling Decision No. 81 where the employer therein presented evidence the claimant did not commence his new employment until ten days after he last worked for the employer. The record did not show when the claimant secured his new employment nor was the ten-day intervening period explained. Also, in Ruling Decision No. 63 we held the evidence established the claimant left the base period employer's employ voluntarily and without good cause where the claimant left his work on August 15, 1951 in order to take a vacation before beginning new employment several months later.

On the other hand, in Ruling Decision No. 80 the claimant was employed by the employer therein from March 26, 1952 to April 24, 1952 as a washroom helper earning $1.10½ at termination. The Department obtained information that the claimant worked as a wringer man for an apron and towel company from June 3, 1952 until September 9, 1952 at a wage of $1.31½ an hour. The employer presented information that the claimant voluntarily quit "for another job" and he told somebody he was going to work for the "Biltmore Laundry"; inquiry of a "Biltmore Laundry" and the laundry in the Biltmore Hotel, both of the latter in Los Angeles, revealed no record of the claimant's having worked for either establishment. We held that the employer did not sustain "the burden of producing convincing evidence to establish the affirmative of the issue" of whether the claimant voluntarily quit without good cause. In so holding, we reasoned in part as follows:

> ". . . Although the Department had no information covering the period from April 24, 1952, to June 3, 1952, the information in its possession which had been submitted by the appellant indicated that the claimant had left its employ 'for another job'. Under the circumstances it would not have been proper for the Department to infer that the other job was necessarily the job which the claimant later obtained with the towel company, and we cannot agree with the employer's contention that 'the record is clear that the claimant had no work between 4-24-52 and 6-3-52'. Therefore, we hold that the

> employer did not reasonably show that the claimant voluntarily left his employment without good cause, and the Department properly so ruled after considering the information in its possession."

We reached similar conclusions in Ruling Decisions Nos. 35 and 112, where the claimants left work to leave the area in order to work elsewhere.

In the present case the claimant left work with the appellant because he had "received an offer of work from an engineering firm." Although the evidence showed the claimant did apply for and accept work as a drafting trainee about two months later, in accordance with the views expressed in Ruling Decision No. 80, it would not be proper to infer that this job was necessarily the job to which the claimant referred when he resigned or to infer that the claimant had no work between August 3, 1967 and October 9, 1967. Unlike the claimants in Ruling Decisions Nos. 30 and 81, the claimant herein definitely indicated that he was leaving work with the appellant to accept an offer of new work with some other employer. Also, unlike Ruling Decision No. 63, where the claimant had an offer of new work but planned to vacation first, the claimant herein did not apply for work with the subsequently recorded employer until October 2, 1967, so that work could hardly have been the work the claimant allegedly had been offered at the time he resigned from work with the appellant on August 3, 1967.

It might be argued, inasmuch as no other employment is ascertainable from the Department's records for this period, that claimant did not have employment during the period. However, the Department's records covered only California covered employment and do not include federal, infra-state noncovered (schools, etc.), and out-of-state state employment. Thus, the claimant might have been employed in one of these nonreportable areas. We are aware that the claimant allegedly left work to take an offer from "an engineering firm" but this term might be embraced within the above classifications. It is not even known whether the claimant remained in California during the blank period of employment shown by the Department's records.

When this claimant was initially employed by the appellant as a management trainee, doubtless his employment experience, training and potential were given careful consideration. When the claimant announced that he was leaving because of an offer of other work, diligent inquiry at an exit interview may have disclosed information of value not only for the appellant's management training program but also of value in protecting its reserve

account from future potential charges. However, from the information in the record before us, we must conclude that the appellant has not presented convincing evidence that the claimant voluntarily left its employ without good cause when it presented evidence that the claimant some two months later applied for and accepted work paying substantially less. The employer-appellant has not established any relationship between the leaving of its employ and the subsequently recorded work and has not established the claimant had no intervening work, or was unemployed during the interval. Therefore, the appellant is not entitled to relief from charges to its reserve account under section 1032 of the code.

DECISION

The decision of the referee is affirmed. The employer-appellant's reserve account is not relieved of benefit charges under section 1032 of the code.

Sacramento, California, September 8, 1970

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

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