

BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

In the Matter of the
Reserve Account of:

SUSQUEHANNA WESTERN, INC.
(Employer)

PRECEDENT
RULING DECISION
No. P-R-91
Case No. R-69-78

Claimant: Michael J. Zepeda

The employer appealed from Referee's Decision No. SD-R-5490 which held the employer's reserve account not relieved of benefit charges under section 1032 of the Unemployment Insurance Code on the ground that the claimant voluntarily left the employer's employ with good cause.

STATEMENT OF FACTS

The claimant filed a claim for unemployment benefits effective January 12, 1969. The employer herein was not the claimant's most recent employer but rather was a base period employer and as such was notified of the filing of the claim by means of a Notice of Claim Filed and Computation of Benefit Amounts. Within the time limit provided by law the employer responded to the notice indicating that the claimant left its employ to accept other work.

The evidence showed that the claimant had worked for the above identified employer for a period of approximately five years as an operating engineer at a terminal wage of \$4.14 per hour. The location of the claimant's work was approximately 25 miles from his home. He was not assigned a regular shift by the employer but worked varying shifts any day of the week. According to the employer's records, he last performed services approximately November 1, 1968.

On October 16, 1968 the claimant applied for work with another employer and commenced work for the other employer on October 28, 1968. The new work which the claimant obtained was permanent and non seasonal

in nature, paid a wage of \$4.32 per hour, was on the regular eight hour day shift and required the claimant to work five days a week. The location of the new job was only four miles from the claimant's home. When the claimant filed his claim he had been temporarily laid off due to inclement weather.

In its appeal to this board the employer contends that the claimant did not have good cause for leaving its employ because the "Claimant obtained work which offered an increase in pay of only five percent."

REASONS FOR DECISION

Section 1030(b) of the Unemployment Insurance Code provides in pertinent part as follows:

"(b) Any base period employer who is . . . entitled under Section 1329 to receive notice of computation may, within 15 days after mailing of such notice of computation, submit to the department any facts within its possession disclosing whether the claimant left such employer's employ voluntarily and without good cause or was discharged from such employment for misconduct connected with his work"

Section 1030(c) of the code provides in part as follows:

"(c) The department shall consider such facts together with any information in its possession and promptly notify the employer of its ruling as to the cause of the termination of the claimant's employment. . . ."

Section 1032 of the code provides in part as follows:

"1032. If it is ruled under Section 1030 . . . 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"

In the instant case we must decide whether the claimant had good cause for leaving his work with the employer herein.

The term "good cause" is not defined in the code or regulations but we believe the phrase "voluntarily and without good cause," as it appears in sections 1030 and 1032 of the code, must be given the same scope and meaning as its counterpart appearing in section 1256 of the code.

In Appeals Board Decision No. P-B-27 we defined good cause for the voluntary leaving of work as follows:

". . . there is good cause for the voluntary leaving of work when 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."

In cases such as the instant one the burden of establishing that the claimant did not have good cause is upon the employer who is in effect requesting tax relief (20 Ops. Cal. Atty. Gen. 23).

In establishing good cause for leaving one employment to accept another, no definite standards or criteria can be established which may be uniformly applied in each and every case. All of the factors which influenced the claimant's decision to leave one job to accept other work must be considered together as a whole in order to decide if good cause existed. For example, consideration should be given, among other things, to the pay, location, opportunities for advancement, skills required, seniority rights, permanency; and, working conditions of the two jobs.

In the instant matter the claimant did not choose total unemployment but rather chose one job in preference to another. The work to which the claimant went paid him more than the work which he left. The new work was permanent in nature, on a regular shift and located closer to his home. Additional factors which might have influenced the claimant's decision to leave work in order to accept the other job are absent from the record. However, we believe that the factors above enumerated are sufficient to establish good cause for leaving work with the employer herein.

DECISION

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

Sacramento, California, December 9, 1970.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

ROBERT W. SIGG, Chairman

LOWELL NELSON

CLAUDE MINARD

DON BLEWETT

CONCURRING - Written Opinion Attached

JOHN B. WEISS

CONCURRING OPINION

I concur:

I concur with my associates in this decision - but with the understanding that by this decision we do not abandon the so-called 10% rule applicable to ruling cases wherein the reasons for leaving are limited to wage differences in the respective employments (Precedent Ruling Decision No. 15). Here we have merely reasserted our long-standing position that no definite standards or criteria can be established which may be uniformly applied in each and every case.

Ruling cases involve circumstances substantially different from benefit cases. In ruling cases the claimant's benefits are not involved. Consequently we have little or no participation by the claimant in the case but must rely almost entirely upon the Department and the employer for the factual matrix. Where factors other than wages alone are at issue, as here, we hold that all the factors including the wages must be weighed to determine if that degree of compulsion exists which would compel a reasonable man interested in retaining his job to leave. If it does, there is "good cause" under section 1256 of the code; if it is lacking, there is not "good cause".

Certainly we are aware that in any decision to leave one employment for another, many and diverse factors may play a role, singly or in combination. Approximately 42% of this Board's case load involve voluntary quits. As we are well aware, many of the factors given as the reason to quit - particularly those centering upon personal preference and dissatisfactions - fail to provide that degree of compulsion necessary to give "good cause". Small differences in wages alone have never been held to constitute "good cause". When combined with non-compelling preferences or dissatisfactions they do not constitute "good cause". However, at some point money alone does provide "good cause".

Across the years a rule of thumb has evolved in ruling cases - which we reaffirmed in Ruling Precedent Decision No. 15 - that, absent other factors, if the wage difference was 10% or more, there existed "good cause" for the leaving; if the wage difference was less than 10% there was not good cause. As I view it, nothing in this case changes that rule of thumb applicable to ruling cases.

JOHN B. WEISS