BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

In the Matter of:

EUGENE S. MARINO
(Claimant-Appellant)

PRECEDENT
WIN DECISION
No. P-W-51
Case No. WIN-69-3028

The appellant, an enrollee under the Work Incentive Program (WIN), appealed from Referee's Decision No. BK-W-19944 which affirmed a Department of Employment determination under section 5301 of the California Unemployment Insurance Code that the enrollee without good cause failed to participate in a work incentive program pursuant to section 5200 of the Unemployment Insurance Code. The basis for the department's finding that good cause was lacking was the enrollee's "consistent pattern of de facto refusal to participate in an experience and training assignment."

STATEMENT OF FACTS

The appellant volunteered for enrollment in a WIN program of the "work-experience" type on September 26, 1968. He satisfactorily completed his program orientation on November 1, 1968 and on December 2, 1968 was assigned for work and training at the Vandenberg Air Force Base commissary.

Because the appellant's private automobile was not functioning, the WIN team assigned to him arranged for his transportation with another WIN enrollee and the assistant manager of the commissary. The appellant was notified on December 2 that he was to begin his training and "work-experience" on December 4, 1968, but, by December 9, 1968, the assistant manager of the commissary had informed the appellant's WIN team that the appellant had reported to his assignment on only two days.

From December 9, 1968 until January 2, 1969 the appellant was excused from reporting to the commissary due to illness. He last reported on January 3, and advanced numerous reasons for his unexcused absences thereafter:

(1) lack of transportation;
(2) the hours required to work on the assignment;
(3) absence from his family; and
(4) his illness.

A document prepared by his vocational counselor (Exhibit 1 to the record) discloses that the share-the-ride arrangements previously available to the appellant were still available to him after January 3, 1969. The document further reveals that his vocational counselor subsequently conducted a series of informal discussions with the appellant in an attempt to evaluate the genuineness of the appellant's reasons for failing to participate in the "work-experience" program. The following significant passage of the report is quoted verbatim:

> ". . . These informal discussions failed to motivate the enrollee to continue participation in the work assignment. These informal methods did not produce the desired results and the enrollee was informed by letter on 1-22-69 that his failure to participate could result in disenrollment. On 1-28-69 the enrollee requested a hearing stating that he wanted to continue participation in the WIN program. The offer was made by the WIN team to continue his participation on the same training assignment at the commissary store. This assignment was rejected citing lack of adequate transportation as the reason for refusal. At this point the WIN team decided to allow the assignment to go on a pending status and find out if the enrollee would volunteer to establish a contact with the team. A letter notifying the enrollee that a determination of his status in the WIN program was to be decided was mailed on 4-25-69. This letter required the enrollee to report 4-29-69. The enrollee did report for the determination interview. This was the enrollee's only contact with the WIN team in three months.

No showing has been made by the appellant why absence from his family or the hours he was required to work excused his absence from the "work-experience" program.

Neither the Department of Employment nor Department of Social Welfare was represented at the hearing held in this case. The appellant did appear and testified that "After the first of the year I got my car fixed." He was not asked for the precise date his automobile had been repaired in January 1969, although he was prepared to submit the repair bill to the referee.

The appellant then testified that following his illness, the assistant manager of the commissary neglected to provide him transportation to the work-training site. However, he also testified that the assistant manager's automobile was inoperative at that time and that other transportation was arranged for his fellow WIN enrollee, but not for the appellant. From the transcript of hearing it is apparent that the appellant made no effort to seek out the assistant manager or discuss with his fellow WIN enrollee, a neighbor, why he was being denied the same transportation privileges.

The appellant conceded during the hearing that the WIN vocational counselor assigned to him had not unconditionally foreclosed the appellant's continued participation in the WIN program –

> ". . .I was planning to go back to work on the 21st. He called me on the 20th. I was going to go back on the 20th. It was on Tuesday. I am supposed to start. I don't know if it was the 20th, if it was on Monday or what it was. On Tuesday I was supposed to start. He was going to go--I was going to go back because he called me in to take my card away from me, my identification card at Vandenberg, you know, so I had the card, but according to this here--letter here, I thought I was completely dropped on the 22nd. Otherwise, I'd of came in between the 22nd and the 25th of April to tell them I wanted to go back to work. When he asked me for my identification card I thought I was through. He did not want me to go back. <u>He told me I had three months' time to come in and ask him to go out there</u>. How would I go out there if I had no identification. You could not get on the base without it. . . ." (Emphasis added)

It is apparent from the entire record before us that, again, the appellant made no move to initiate a contact with any member of the WIN team during this three-month period.

The referee accepted into the record (Exhibit No. 2) a medical report received from the appellant's physician stating that the appellant had been unable to work on December 13 and December 20, 1968, as well as January 3, 1969, and the record was reopened following the hearing for admission of a supplementary statement from the physician (Exhibit No. 4) in which it is stated that the appellant was physically able to return to his "work-experience" assignment on January 10, 1969.

REASONS FOR DECISION

Amendments to the Social Security Act of 1967 (Public Law 90-248) established the WIN program nationwide for the express purpose of moving unemployed fathers of welfare recipients under the social welfare program known as Aid to Families with Dependent Children (AFDC) off welfare rolls and onto payrolls. Assembly Bill 210 (Chapter 1369) is the authorization for participation in the program by the State of California. This urgency legislation, effective August 15, 1968, repealed, amended and added various sections to the California Welfare and Institutions Code, and added complimentary sections to the California Unemployment Insurance Code.

Section 11300 of the Welfare and Institutions Code now provides in pertinent part for the prompt referral by the several county welfare departments to the Department of Employment for participation in a work incentive program selected individuals who are –

> ". . . appropriate for referral and for such participation in accordance with criteria and standards established by the Department of Social Welfare pursuant to subdivision (19) (A)of section 402(a) of the Social Security Act as amended by Public Law 90-248. In developing such criteria and standards, the Department of Social Welfare shall consult with the Department of Employment."

Section 11308 of the Welfare and Institutions Code provides:

> "11308. Nonparticipation without good cause; discontinuance of cash aid payments.
>
> "Upon notification of the Department of Employment that, pursuant to Chapter 4 (commencing with section 5300) of Division 2 of the Unemployment Insurance Code, there has been a final determination that a person referred to it under Section 11300 has refused without good cause to accept employment or to participate in a work incentive program, the county department shall discontinue cash aid payments, and shall continue aid under a controlled payment plan in accordance with federal law and the regulations of the department. The allowance for such person's needs shall not be included under a controlled payment plan, except for the first 60 days if during such time he accepts counseling or other

services provided by the county department aimed at persuading him to follow the prescribed program."

An attempt at a general standard for establishing "good cause" is provided in section 5007 of the Unemployment Insurance Code. Subdivision (a) thereof states in pertinent part:

"5007. (a) Good cause for refusal to participate in a work incentive program shall be deemed to exist, when:

* * *

"(2) Participation would be unreasonable because the assignment is not suited to the person's abilities or potential, or will not lead to realistic employment opportunities suited to the person's abilities or potential."

We are assisted in the construction of this provision by a reading of sections 5000 and 5001 of the Unemployment Insurance Code. Code section 5000 states that a principal objective of the WIN program in this state shall be the restoration of the families of WIN enrollees to independent and useful roles in their communities -

". . . It is expected that the individuals participating in the program . . . will acquire a sense of dignity, self-worth, and confidence which will flow from being recognized as a wage-earning member of society and that the example of a working adult in these families will have beneficial effects on the children in such families."

As for the benefits to be realized by the participants in the program, code section 5001 states:

"5001. It is the intent of the Legislature to concentrate maximum state efforts on providing increased employment opportunities and upgrading of employment skills in order to open the way to permanent self-support for persons who have been or otherwise might become dependent on public aid. . . ."

These declarations of public policy are no mere preamble to the operating sections of the code, but are an integral part of those sections. They tell us that a broad rather than narrow construction is preferred when

applying those sections. Regulations which seek to define "good cause" must, of course, be interpreted in conformity with such declarations. Specific guidelines for implementing the general objectives of the program must therefore be reasonably and liberally applied in each individual case so as to best effect the mandate of both the Congress and the Legislature of the State of California.

A Bureau of Work Training Program Manual, section 4, illustrates the type of guideline we have alluded to. In subsection 412, dealing with enrollees who refuse to participate in a program, subpart B sets forth typical actions constituting a refusal to participate. The list is obviously not intended to be all inclusive. According to B (1) of the guideline, a judgment may be made with respect to an enrollee's willingness to participate based upon his express oral or written refusal; B(2) speaks in terms of a so-called de facto refusal to participate. This subpart provides in pertinent part for a "de facto" judgment of a refusal to participate when -

> "a. The individual has 5 or more days of continuous unexcused absence which impedes his progress.
>
> "b. The individual has 10 or more days of unexcused absence in any 30-day period which impedes his progress."

The WIN team assigned to an enrollee is given discretion to determine whether an enrollee's actions actually constitute refusal to participate in his assigned program (subpart C).

Section 4, Program Standards, supplies additional tests for determining the bona fides of an enrollee’s refusal to participate. Temporary illness, for example, may constitute an excusable reason for absence from the program. Again, discretion is vested in the WIN team to finally decide on the administrative level whether the absence is or is not to be excused (subpart D).

Subpart E of section 4 is entitled "Policies Prevailing in the Determination of a Refusal to Participate" in a WIN program, with 15 additional standards for testing, administratively, the bona fides of an enrollee's refusal to participate in his assigned program. Subdivision (a) of subpart E states that an enrollee shall be considered to have good cause for refusing an assignment to employment or training if "He becomes ill to such an extent and for such a period of time that he would otherwise be classified as 'de facto' refusal. . . ."

Against this backdrop of legislative intent as expressed in the various statutory provisions and administrative guidelines above set forth, we are to measure this enrollee's good cause for refusing his "work-experience" assignment at Vandenberg Air Force Base commissary.

Black's Law Dictionary (Third Edition, 1933) characterizes a "de facto" condition or event as one by which we may judge an actual occurrence. Use of the term in the administrative guidelines appears to be no mere inadvertence. For only after a careful evaluation of all circumstances surrounding an enrollee's refusal to participate in a program can a proper determination be made by the administrators charged with assisting an enrollee find his place in the labor market.

In the present case the appellant was continuously absent from his "work-experience" assignment after January 3, 1969. On January 22, 1969 he was notified by his vocational counselor that he might be dropped from the program. During the interim, the appellant was physically unable to continue his assignment until January 10, 1969; yet his "de facto" refusal to participate for five or more continuous days did occur during the period January 10 to January 22, 1969, as well as his "de facto" refusal to participate for 12 days out of 30 during this same period, as contemplated by subsection 412 B (2) (a) and (b) of the Bureau of Work Training Program Standards.

From what we have already said, we believe that it was the legislature's intent to clothe each WIN enrollee with a presumption of good cause when he voluntarily leaves a program assignment. The above-described facts, however, would seem to establish a prima facie showing of a lack of good cause, or, put another way, would demonstrate a pattern of an intention not to pursue a meaningful program for personal noncompelling reasons.

A more accurate measure, perhaps, of whether the appellant's refusal to participate in his "work-experience" assignment was without good cause may be seen by his action or inaction during the period January 22 to April 29, 1969. By this time, he had recovered from his illness. Nothing had changed the condition of his capability to perform his "work-experience" assignment - unless it be the appellant's alleged lack of transportation. The weight of the evidence is clearly opposed to such a finding, however, and even if the appellant's share-the-ride accommodations were less than satisfactory, by this time his own automobile was available. What standard then may we apply to measure the appellant's good cause or lack thereof during this period?

Over many years and in innumerable judicial and administrative decisions the term "good cause" has been defined and redefined. This board has done so without slavish adherence to precedent or inflexible rules. Most recently, in Appeals Board Decision No. P-B-27, we offered a definition of good cause for voluntarily leaving work. We said that good cause exists when the facts disclose "a real, substantial and compelling reason of such a nature as would cause a reasonable person genuinely desirous of retaining employment to take similar action."

No more common sense classification of what type of reasons constitute good cause may be found than in Bliley Electric Company v. Unemployment Compensation Board of Review (1946), 158 Pa. Super. 548, 45 Atl. 2d 898, 903, wherein the Superior Court of the State of Pennsylvania offered:

> "When therefore the pressure of real not imaginary, substantial not trifling, reasonable not whimsical, circumstances compel the decision to leave employment, the decision is voluntary in the sense that the worker has willed it, but involuntary because outward pressures have compelled it. Or to state it differently, if a worker leaves his employment when he is compelled to do so by necessitous circumstances or because of legal or family obligations, his leaving is voluntary with good cause, and under the act he is entitled to benefits. The pressure of necessity, of legal duty, or family obligations, or other overpowering circumstances and his capitulation to them transform what is ostensibly voluntary unemployment into involuntary unemployment."

This statement is particularly appropriate when good cause must be inferred from circumstances; and, even though the cases above cited applied a definition or classifications of good cause to voluntary resignations, the principles they express are equally applicable to a refusal to participate in a WIN program.

The WIN team assigned to the appellant in the present case made every effort to encourage and stimulate the appellant's interest in his "work-experience" assignment. The team worked closely with the appellant over many months supplying him with full knowledge of his opportunities and, on the other hand, the consequences of his failure to participate in the assignment. The appellant for reasons best known to himself was unable to follow through with the program.

Success in any program of this nature depends to a certain degree upon a minimum amount of self-motivation. When, therefore, the appellant's vocational counselor found that offers of continuing the program met with resistance from the appellant, it was decided to allow the appellant additional time within which to make up his own mind whether he desired to continue. When, finally, on April 29, 1969, the appellant again expressed his unsubstantiated excuses for not participating, there was no alternative but to issue the determination from which the appellant has appealed to this board.

We conclude in accord with the principles above set forth, that there was no abuse of discretion by the administrators who were attempting to assist the appellant and that their decision that he was unwilling without good cause to participate was not capricious under these circumstances. The appellant, without good cause, failed to participate in a work incentive program within the meaning of section 5301 of the Unemployment Insurance Code.

DECISION

The decision of the referee is affirmed. The appellant, without good cause, failed to participate in a work incentive program established pursuant to law.

Sacramento, California, September 5, 1969.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

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