BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

THIS DECISION DESIGNATES FORMER BENEFIT DECISION NO. 6475 AS A PRECEDENT DECISION PURSUANT TO SECTION 409 OF THE UNEMPLOYMENT INSURANCE CODE.

In the Matter of:

VIOLA PEMELTON

PRECEDENT
BENEFIT DECISION
No. P-B-249

FORMERLY
BENEFIT DECISION
No. 6475

Referee's Decision
No. SF-6814

STATEMENT OF FACTS

The claimant appealed on August 24, 1955 to a referee from a determination of the Department of Employment which held that she was ineligible for benefits under sections 1253(c), 1256, and 1309 [now section 1264] of the code. On December 2, 1955, the Appeals Board set aside the decision of the referee and removed the matter to itself under section 1336 of the code.

The claimant was last employed for three and three-fourths years as a tacking machine operator in a clothing factory in Napa, California, at a wage of $55 to $60 per week. On June 30, 1955, she left her work to accompany her husband, the major support of the family, to Fairfield, 19.7 miles distant, where they established their home. The claimant considered the distance too costly for commuting purposes, her husband having tried it before moving, and having found it so. The department considered the distance "quite a ride", although twenty miles was not considered an unreasonable commuting distance in the area. There was no evidence of any public transportation between the two cities; and, because of a lack of industry in Napa, it appeared that not many people commuted between the two cities. The labor market of Fairfield embraced several nearby communities and "possibly Napa".

The wages which the claimant could expect if she returned to her former employer in Napa was 85¢ per hour. Fairfield had a population. of approximately 12,000 and was primarily an agricultural community. The claimant had had prior experience as an orange packer but no experience in sales or clerical work. Except for one application in a craft factory, she had confined her search to sales work in a limited number of stores in Fairfield.

Effective July 24, 1955, the claimant registered for work in the Vallejo office of the Department of Employment and filed a claim for unemployment insurance benefits. On August 18, 1955, the department issued a determination which held that the claimant was ineligible for benefits indefinitely under section 1253(c) of the code because of an inadequate search for work and lack of a labor market in which she was experienced; under section 1309 of the code [now section 1264 of the code] on the ground that she had left her work because of marital or domestic duties; and under section 1256 of the code on the ground she had left her most recent work without good cause.

The issues are:

1. Did the claimant leave her work because of domestic or marital duties under section 1309 of the code [now section 1264 of the code]?

2. Did the claimant leave her work without good cause under section 1256 of the code?

3. Was the claimant unavailable for benefits because of section 1253(c) of the code?

REASONS FOR DECISION

The claimant left her work in Napa to accompany her husband to Fairfield where he had employment, from which community she considered it impractical to drive the family car, not because of the round trip of 39.4 miles but because of the excessive cost. Before moving, the claimant's husband, who was the major support of the family, had tried commuting and found it cost too much. There was no bus transportation or car pools available.

Even estimating the expense of driving her car at the low figure of 5¢ per mile, it would cost almost $2.00 per day for transportation. In our opinion, this would be excessive. Therefore, we hold that the claimant left her work with good cause under section 1256 of the code but that she comes within the ineligibility provisions of section 1309 of the code [now section 1264 of the code] since she left her work to accompany her husband to a locality from which it was impractical to commute and since her husband was the major support of the family (Benefit Decisions Nos. 6200 and 5087; Ruling Decision No. 86). This case is distinguishable from Benefit Decision No. 6261 where the claimant could reasonably have commuted to work in a car pool but preferred not to do so for domestic reasons.

Since the claimant was ineligible for benefits under section 1309 of the code [now section 1264 of the code], we need not consider her eligibility under section 1253(c) of the code (Benefit Decisions Nos. 6285 and. 6318).

DECISION

The determination of the department is modified. The claimant is ineligible for benefits under section 1309 of the code [now section 1264 of the code] but is not subject to disqualification for benefits under section 1256 of the code. The claimant's eligibility under section 1253(c) of the code is not considered. Benefits are denied accordingly.

Sacramento, California, March 30, 1956.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

MICHAEL B. KUNZ, Chairman

GLENN V. WALLS

ARNOLD L. MORSE

Pursuant to section 409 of the Unemployment Insurance Code the above Benefit Decision No. 6475 is hereby designated as Precedent Decision No. P-B-249.

Sacramento, California, February 24, 1976.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

DON BLEWETT, Chairperson

MARILYN H. GRACE

CARL A. BRITSCHGI

HARRY K. GRAFE - Concurring
(Written Opinion Attached)

RICHARD H. MARRIOTT

CONCURRING OPINION

I concur in the result reached in this case; however, I believe there is a need for some amplification and explanation. The lesson to be gleaned from this case is that when the cost of transportation to commute to work cuts too deeply into the claimant's wage, a voluntary quit will be for good cause within the meaning of section 1256 of the Unemployment Insurance Code.

I believe it is necessary to scratch the factual surface of this and analyze the underlying facts to obtain the true perspective. The claimant was paid a base wage of 85¢ per hour. Although the recital of facts notes that the claimant was earning $55 to $60 per week, to accumulate that much in gross wages the claimant would have had to work some 17 to 20 hours of overtime per week at time and one-half pay of $1.275 per hour. For a basic 40-hour week, the claimant would earn a gross wage of $34.

Absent some showing that the claimant was guaranteed 17 to 20 hours of overtime each week at premium pay, I believe the transportation cost should be compared to the 40-hour, straight-time wage: $34. The facts here tell us that the claimant would have had to commute 197 miles per week at a cost of five cents per mile (an admittedly low figure even in 1955). Claimant's per-week commute cost would have been $9.85. Thus, her transportation cost would have been 28.97 percent of her gross base wage per week. A commute cost of such percentage magnitude is plainly excessive and unreasonable, and the claimant's refusal to commute under these circumstances constitutes good cause for leaving her job within the meaning of section 1256.

This case establishes the rule but does not prescribe or delineate the limit as to what percentage must be shown for the commute cost to be excessive and unreasonable. The specific facts of each individual matter will have to be examined and the parameters will have to be developed on a case-by-case basis.

HARRY K. GRAFE