BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

THIS DECISION DESIGNATES FORMER BENEFIT DECISION NO. 6636 AS A PRECEDENT DECISION PURSUANT TO SECTION 409 OF THE UNEMPLOYMENT INSURANCE CODE.

In the Matter of:

LILLIAN KURTZ
(Claimant-Respondent)

MACY'S SAN FRANCISCO
(Employer-Appellant)

PRECEDENT
BENEFIT DECISION
No. P-B-265

FORMERLY
BENEFIT DECISION
NO. 6636

The employer appealed from Referee's Decision No. SF-8715 which held that the claimant was eligible for benefits under sections 1264 and 1253(c) of the Unemployment Insurance Code; that she was not disqualified for benefits under section 1256 of the code, and that the employer's account is not relieved of charges under section 1032 of the code. Written argument was submitted by the employer, the claimant, the Department of Employment, and the California Retailers Association as Amicus Curiae.

STATEMENT OF FACTS

The claimant had been employed by the appellant in various capacities over a period of approximately six years and was classified as an assistant buyer. On the advice of her physician she left her work on February 26, 1960, and obtained a pregnancy leave of absence extending to December 19, 1960. After the birth of her child and prior to the expiration of her leave of absence, she resigned from her employment on September 21, 1960, informing the employer that she intended to stay home to care for her infant child.

Effective September 25, 1960, she registered for work with the Department of Employment and filed a claim for benefits. She informed the department that she had been dissatisfied with her last job because of her inability to advance and had resigned in order to look for other work which would provide a greater opportunity for advancement.

Upon receipt of the notice of the filing of a claim, the employer submitted timely information with regard to the claimant's leaving of work and requested a ruling under section 1030 of the code. On October 17, 1960, the department issued an adverse ruling to the employer holding that the claimant left its employment voluntarily with good cause and a determination which held that the claimant was not subject to disqualification for benefits under section 1256 of the code, on the ground that she left her work in February 1960 with good cause. The department concluded that the issue under section 1256 of the code could not be raised again by her failure to return to work. It further determined that the claimant was not ineligible for benefits under sections 1253(c) and 1264 of the code.

The claimant testified that although she informed the employer that she was resigning from her employment to remain at home to care for her child, she had, in fact, left her work to seek other employment. She had had no advancement in position for four years and attributed this to her immediate supervisor. In view of this situation, she was unwilling to accept any offer of employment from her last employer and had sought work with a number of other competitive employers in the San Francisco area, in her classification of assistant buyer. The employer's witness testified that there were virtually no job openings in her classification during November and the holiday season, because employers were too busy to hire and train a new person. There was no evidence that the claimant placed any other restrictions on suitable work. She sought work daily and had adequate care for her baby.

The issues are:

(1) Is it necessary under the case of Douglas Aircraft Company v. California Unemployment Insurance Appeals Board (1960, 180 Cal. App. (2d) 636, 4 Cal. Rptr. 723, to consider the leaving of work both at the time of the pregnancy leave in February and at the time of the resignation in September; and

(2) Was the claimant in a labor market for her services and, therefore, available for work within the meaning of section 1253(c) of the code?

REASONS FOR DECISION

Section 1256 of the code provides that an individual shall be disqualified for benefits if he leaves his most recent work voluntarily without good cause. Section 1032 of the code provides that an employer's reserve account shall not be charged if it is ruled under section 1030 of the code that the claimant left the employer's employ voluntarily and without good cause.

In the case of Douglas, cited above, the claimant was compelled to leave her work under the provisions of the collective bargaining agreement between her employer and her union when she was at the end of her fourth month of pregnancy. Under this collective bargaining agreement, she was granted a leave of absence and, since she was able and ready to continue working, she promptly sought other employment and filed a claim for benefits with the department. Upon receipt of notice of the claim, the employer submitted information with respect to the leaving of work and requested a ruling under section 1030 of the code. The ruling was denied on the ground that the employer-employee relationship had not been severed by the leave of absence and the department held that the claimant was not subject to disqualification for benefits under section 1256 of the code. This ruling and the determination were affirmed by the referee and this Appeals Board. The majority of the court held that a leaving of work under sections 1256 and 1033 of the code could and did occur when the claimant left her work on a pregnancy leave and that it was not necessary that there be a technical severance of the employment relationship. The court concluded under the facts that the leaving of work by the claimant was involuntary and she was not subject to disqualification for benefits under section 1256 of the code and that, although the employer was entitled to ruling, it would necessarily be adverse.

In our opinion, the Douglas case must be considered in the light of the facts which confronted the court. Since the claimant was asserting a right to unemployment insurance benefits, the employer's reserve account would be subject to charges for such benefits. The claimant was entitled to file the claim since she was unemployed under section 1252 of the code, even though the employer-employee relationship continued by virtue of the leave of absence. In determining the cause of her unemployment, the court was faced with the fact that at the time she filed her claim, there was only one leaving of work to be considered and, of necessity, that leaving had to be judged by the facts as they existed at that time.

In contrast to the factual situation in the Douglas case, the claimant herein did not assert any right to unemployment insurance benefits during the period of her leave of absence, but filed a claim for benefits only after she had terminated that leave by resigning from her employment. Accordingly, at the time she filed her claim, her unemployment was not due to a leaving of work on a pregnancy leave of absence, but was due directly and immediately to her voluntary act of resigning. Confronted with this factual situation, we do not believe we are compelled by the Douglas case to consider the application of sections 1256 and 1030 to the leaving of work in February 1960, or to both the leaving of work in February 1960 and September 1960. Rather, we believe we would be consistent with and in line with the Douglas case if, in considering the total factual situation, we applied the above sections and section 1264 to the leaving of work in September 1960, which precipitated and was the immediate cause of the claimant's unemployment (Benefit Decision No. 5643).

Viewed from this standpoint, we find from the evidence that the claimant's unemployment was due to her resignation and voluntary leaving of work in September 1960, brought about, or prompted by her desire to seek employment offering her a greater opportunity for advancement. Since this reason does not constitute good cause for leaving work, she is disqualified for benefits under section 1256 of the code for five weeks as provided in section 1260 of the code and the employer is entitled to a favorable ruling under section 1030 of the code (Benefit Decision No. 3413 and Ruling Decision No. 1). Section 1264 of the code is not applicable, since the leaving of work was for a personal rather than a domestic or marital reason (Benefit Decisions Nos. 6233 and 6246).

In view of these conclusions, Benefit Decision No. 6610 must be modified. In that case, the claimant was pregnant and, on the advice of her physician, left her work on August 16, 1959. She obtained a leave of absence from her employer. When she was ready to return to work after the birth of her child, she notified the employer but no work was then available. Thereafter, she filed a claim for benefits effective April 24, 1960. Viewed in the light of our present reasoning, we would concern ourselves in Benefit Decision No. 6610 only with the immediate cause of that claimant's unemployment at the time she filed her claim for benefits and not with her leaving of work on August 16, 1959. Since her unemployment at the time she filed her clam stemmed from a lack of work, section 1264 of the code would not have been applicable and the claimant would not have been subject to disqualification under section 1256 of the code.

The final issue in this case is whether the claimant was eligible for benefits under section 1253(c) of the code, inasmuch as the employer's witness submitted evidence that practically no placements in the claimant's classification were being made in November and during the holiday period. This evidence merely established a lack of job openings and not a lack of a labor market for the claimant's services as an assistant buyer in the San Francisco area. In Benefit Decision No. 5079, we stated:

> ". . . that the test to be applied in determining whether there is a labor market for a claimant in a particular locality is whether there is a reasonable potential employment field. The fact that there are no job openings is immaterial in determining availability for work. . . ."

In line with the decision and considering that the claimant was offering her services in San Francisco, we find that there was a reasonable potential employment field for her and that she was available for work under section 1253(c) of the code, even though she was unwilling to accept work with her last employer (Benefit Decision No. 6386).

DECISION

The decision of the referee is modified. The claimant is disqualified for benefits under section 1256 of the code for five weeks as provided in section 1260 of the code. Section 1264 of the code is not applicable. The claimant is available for work under section 1253(c) of the code. The employer's account is relieved of charges under section 1032 of the code.

Sacramento, California, April 21,1961.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

ERNEST B. WEBB, Chairman

ARNOLD L. MORSE

GERALD F. MAHER

Pursuant to section 409 of the Unemployment Insurance Code, the above Benefit Decision No. 6636 is hereby designated as Precedent Decision No. P-B-265.

Sacramento, California, March 16, 1976.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

DON BLEWETT, Chairperson

MARILYN H. GRACE

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HARRY K. GRAFE

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