BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

In the Matter of:

EMERSON L. HOLLIS
(Claimant)

PRECEDENT
BENEFIT DECISION
No. P-B-97
Case No. 70-4784

S.S.A. No.

NAVAL SUPPLY CENTER
(Employer)

The claimant appealed from Referee's Decision No. OAK-UCFE-1970 which held that the claimant was disqualified for benefits under section 1256 of the Unemployment Insurance Code. Permission was granted to submit written argument. Such argument has not been received.

STATEMENT OF FACTS

The claimant was last employed for 25 years as a warehouseman at a military installation in Oakland. His wage rate was $3.86 an hour. He normally worked eight hours a day and 40 hours a week. Together with his military service, he has total federal credit of 26½ years towards retirement.

The claimant, whose birth date is , , was not eligible for regular retirement benefits available to an individual whose age is 55. A federal employee must retire at the age of 70.

The military installation at which the claimant worked faced a reduction in force. This would not have affected the claimant herein, but younger employees with shorter terms of service would have faced layoff. In

order to be able to retain the services of these younger employees, the commanding officer on April 2, 1970 polled the staff to inform them of the reduction and to urge those who were eligible for a discontinued service annuity to apply. Discontinued service annuity is payable to individuals who meet certain minimum age and service requirements, even though these requirements may be less than those for regular retirees. The individuals were informed that any acceptance would be considered in the nature of an involuntary separation and thereby make the individuals eligible for a discontinued service annuity.

The claimant immediately responded, stating that he was prepared to accept the offer and to make this effective June 27, 1970. The claimant selected this particular date because it would give him the maximum amount of discontinued service annuity of around $200 per month.

Subsequent to the acceptance of the offer, the claimant learned that retirees on a discontinued service annuity could seek state unemployment insurance benefits. An article to this effect appeared in the official publication of the Naval Supply Center, the "Oak Leaf," in its May 4, 1970 issue. The article stressed that the individuals may be eligible. The article gave the reader to understand that while many factors contribute to determining whether a leaving is voluntary or involuntary, an essential point is the encouragement given by management to retire.

After the claimant received the determination from the Department holding him disqualified for benefits, he communicated with a number of individuals connected with the Navy, the United States Civil Service Commission, the Department of Human Resources Development, and the United States Office of Manpower. They gave him encouragement in his belief that his retirement would not bring about disqualification for unemployment benefits. The claimant stresses that the office in which he applied for benefits issued a disqualification to him and to other retired federal employees, whereas other offices of the Department have not issued similar disqualifications.

The initial findings of the agency, as submitted to the Department, stated:

> "Resignation Rif. Situation. Reason: Involuntary separation - Resigned after official's request. No other job offered."

The Department then sought clarifying information from the federal agency. The agency responded with additional findings as follows:

> "Mr. Hollis was advised of his retention rights and had the right to remain in his position. He would have been able to continue working indefinitely. He retired to lessen the impact of the RIF. He was not given the option of accepting another job since his job was not affected. Mr. Hollis meets the age and service requirements for discontinued service retirement. He was asked by the Naval Supply Center to resign in order to lighten the impact of a planned RIF. The Dept. of the Navy and the Civil Service Commission consider such a resignation to be an involuntary separation, and direct that it be recorded as 'Resignation - Reduction - in - Force Situation, Involuntary Separation.'"

REASONS FOR DECISION

Chapter 85 of Title 5 of the United States Code and supplementing regulations provide for unemployment benefits to federal employees. Entitlement to benefit payments shall be determined under the provisions of the unemployment insurance law of the state to which wage credits have been assigned, which in this case is California.

The federal act further provides that the reasons for the termination of a claimant's employment, as found and reported by the federal agency, are binding on the state agency. Thus, in determining whether a claimant

is entitled to benefits under the California Unemployment Insurance Code, we must accept the federal findings concerning the reasons for termination of the employment with the federal agency.

Section 100 of the code sets forth the legislative declaration of public policy in establishing a system of unemployment insurance providing benefits for persons "unemployed through no fault of their own" in order to reduce "involuntary unemployment and the suffering caused thereby to a minimum."

Section 1256 of the code provides that an individual is disqualified for benefits if he left his most recent work voluntarily without good cause.

The record is clear in showing that the claimant had the option to continue working indefinitely. Some employees were facing layoff. The federal agency in an effort to retain its younger employees, encouraged the claimant, and others, to accept the retirement annuity available to them in situations such as this. The claimant elected the retirement option. He therefore voluntarily left his work.

There is good cause for the voluntary leaving of work where 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. (Appeals Board Decision No. P-B-27)

The claimant chose to accept a retirement annuity of around $200 rather than retain a job paying in excess of $650 a month. This is not the action of a reasonable person genuinely desirous of retaining employment. This is the action of a person who has a more paramount desire. Accordingly, while we recognize that such action is understandable, it is not done for a real, substantial and compelling reason, and we hold that a voluntary retirement to receive an annuity or a pension does not constitute good cause for leaving work under section 1256 of the code.

The claimant points out a possible inconsistency between actions of local offices of the Department. If true, this brings an unfortunate result in that certain individuals will receive benefits while others will not. If any such inconsistency exists, this is a matter for the Department to resolve. We are bound by the facts and the law.

DECISION

The decision of the referee is affirmed. Benefits are denied as provided in the referee's decision.

Sacramento, California, January 26, 1971.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

ROBERT W. SIGG, Chairman

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