BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

THIS DECISION DESIGNATES FORMER BENEFIT DECISION NO. 6469 AS A PRECEDENT DECISION PURSUANT TO SECTION 409 OF THE UNEMPLOYMENT INSURANCE CODE.

In the Matter of:

CLAUDE L. WALKER
(Claimant-Appellant)

S.S.A. No.

MAURICE T. SOPP & SON
(Employer)
Care of Corporation
Counseling Service

Employer Account No.

PRECEDENT
BENEFIT DECISION
No. P-B-210

FORMERLY
BENEFIT DECISION
No. 6469

Referee's Decision
No. S-7278

STATEMENT OF FACTS

Effective June 12, 1955, the claimant registered for work in the Honolulu office of the Hawaii Employment Service and filed a claim for unemployment insurance benefits against California as the liable state. On August 5, 1955, the California Department of Employment issued a determination holding that the claimant was subject to disqualification under section 1256 of the Unemployment Insurance Code because he voluntarily without good cause had left his most recent work (which was with the employer) because all interim employment of some five months duration was as an independent contractor and not as an employee. The department issued a favorable ruling to the employer. The claimant appealed to a referee from that portion of the determination which held that he had voluntarily left his most recent work with the employer; and a hearing was conducted in Honolulu at which the claimant presented no evidence with respect to his interim employment. The employer

received a notice of hearing and requested a separate hearing in the Los Angeles area "in the event the claimant introduces new evidence at his hearing." The referee issued his decision without arranging for a hearing for the employer. On November 23, 1955, the Appeals Board set aside the decision of the referee, assumed jurisdiction of the matter under section 1336 of the code, and remanded the matter for a hearing in Los Angeles. Transcripts of all proceedings are before the Appeals Board.

The claimant was employed by the employer as a new car salesman at Huntington Park, California, from January, 1954, to December 24, 1954.

The claimant testified that, early in December 1954, he had discussed with the employer's new car sales manager the possibility of purchasing a car on a long term payment basis rather than the usual salesman's contract (which would require the immediate payment of the balance due upon termination of the employment relationship) and was informed that he was discharged and could look for work elsewhere, although he could remain two more weeks to complete his pending sales transactions. About a week later, he asked the employer's general manager and vice-president why he had not received a bonus which was being received by the other employees; and, during the course of the conversation, his discharge was verified. The claimant testified further that, sometime in October 1954, he had been offered work in the Hawaiian Islands by a friend and that, when he was discharged by this employer, he immediately wrote to see if the offer was still open and received his airplane ticket by return mail. The claimant had also immediately registered for work at the Huntington Park office of the Department of Employment.

The business manager, who was also the secretary and treasurer for the employer, testified that the assistant sales manager and the employer's general manager and vice-president (with whom the claimant had discussed the matter) were no longer with the employer but that the assistant sales manager had not been authorized to discharge employees; that the general manager and vice-president had been authorized to discharge employees but had stated (when questioned about the matter) that he had not discharged the claimant;

that the details of the termination of the claimant's employment would not have been brought to the business manager's attention; but that the employer's records indicated that the claimant had not been earning very much and had left to accept work in Honolulu, Hawaii.

The claimant had left California on December 29, 1954 and worked as a commission salesman for an improvement company in Honolulu until he terminated that relationship on June 10, 1955. The claimant filed his claim for unemployment insurance benefits effective June 12, 1955, then again became employed on June 20, 1955 and ceased claiming benefits.

The questions presented to us for consideration are:

1. Was the claimant's "most recent work" or "employment" within the meaning of sections 1256 and 1030 of the code with this employer or with the improvement company in Honolulu?

2. Did the claimant voluntarily leave his most recent work without good cause or was he discharged for misconduct within the meaning of sections 1256 and 1032 of the code?

REASONS FOR DECISION

As a portion of its determination, the department held that the claimant's work for the improvement company in Honolulu ending June 10, 1955 had been as an independent contractor. The claimant did not specifically appeal from that portion of the department's determination. When one determination covers two issues, as in the present case, upon appeal from that determination, the referee and the Appeals Board have jurisdiction to consider both issues; but it is a matter of discretion as to whether evidence is taken upon or consideration given to any issues not necessarily involved in the appeal. In the absence of evidence to the contrary, it is presumed that the department's determination is correct (Benefit Decision No. 6289; 22 Cal. Adm. Code 6009). Therefore, since the claimant did not present any evidence to establish that his work for the improvement company was not as an independent contractor, we will presume that the department's determination on that issue is correct. In accordance with our prior decisions

we hold that self-employment or work as an independent contractor is not the claimant's "most recent work" or "employment" within the meaning of sections 1256 and 1030 of the code, so that we are here concerned with the claimant's leaving his work with this employer (Benefit Decisions Nos. 5236, 5543 and 6294).

From the facts before us, it is our opinion and we hold that the preponderance of the evidence established that this employer was the moving party in terminating the employment relationship for reasons which did not constitute misconduct and the claimant did not voluntarily leave his work and is not subject to disqualification under section 1256 of the code (Benefit Decisions Nos. 6375 and 5103). It follows that the employer is not entitled to a favorable ruling under section 1030 of the code (Ruling Decision No. 1).

DECISION

The determination and ruling of the department are modified. The claimant's "most recent work" was with this employer. The claimant is not subject to disqualification under section 1256 of the code. Any benefits paid to the claimant based on wages paid by the employer shall be chargeable under section 1032 of the code to Employer Account No.

Sacramento, California, March 23, 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. 6469 is hereby designated as Precedent Decision No. P-B-210.

Sacramento, California, February 3, 1976.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

DON BLEWETT, Chairperson

MARILYN H. GRACE

CARL A. BRITSCHGI

HARRY K. GRAFE

RICHARD H. MARRIOTT