BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

THIS DECISION DESIGNATES FORMER BENEFIT DECISION NO. 6147 AS A PRECEDENT DECISION PURSUANT TO SECTION 409 OF THE UNEMPLOYMENT INSURANCE CODE.

In the Matter of:

JACK A. WISWALL
(Claimant)

S.S.A. No.

DOUGLAS AIRCRAFT COMPANY, INC.
(Employer-Appellant)

Account No.

PRECEDENT
BENEFIT DECISION
No. P-B-214

FORMERLY
BENEFIT DECISION
No. 6147

The above-named employer appealed from the decision of a Referee (LA-63803) which held that the claimant was entitled to benefits under the Unemployment Insurance Code and that the employer's account is chargeable under Section 1032 of the code with respect to benefits paid to the claimant. Both the claimant and the employer have filed briefs herein.

Based on the record before us, our statement of fact, reason for decision, and decision are as follows:

STATEMENT OF FACT

The claimant was last employed as a hydro-press operator by the employer-appellant at an hourly wage of $1.89. He commenced his employment on November 12, 1951, and was terminated on October 27, 1953, under circumstances hereinafter related.

On November 5, 1953, the claimant registered for work and filed a claim for benefits in the Long Beach office of the Department. The employer-appellant filed

information with the Department alleging that the claimant was discharged for misconduct connected with his most recent work. After interviewing the claimant, the Department issued a determination under Section 1256 of the Code on November 30, 1953, holding that the claimant was not discharged for misconduct. On the same date and to the same effect, the Department issued a ruling to the employer-appellant under Section 1030 of the Code.

The claimant and a helper operated the press and straightened aircraft parts by setting blocks under the parts in such a manner that pressure could be applied to the bow or crooked part to press it back into the desired position. The helper was under the claimant's supervision and assisted the claimant in placing the parts in the press where they should be and then held them straight on jacks away from the press. If the helper did not place the part properly and hold it in the right position, the part could be damaged. If the claimant applied too much pressure or applied it too quickly in the operation of the press this could also result in damage to the parts. On two previous occasions parts had been cracked and rendered worthless in the operation performed by the claimant and his helper. On the third such occasion occurring about October 20, 1953, the claimant was discharged by his foreman on October 27, 1953.

The record does not disclose the exact dates of the alleged damaging of the spar caps. One of the leadmen under whom the claimant had worked in the past prepared a memorandum which was received in evidence in which the leadman recites that the breakage occurred once on the third shift and once on the first shift. Apparently the first such incident occurred on the third shift sometime prior to November 10, 1952, and the second on the day shift shortly before September 11, 1953.

The employer contends that the claimant's poor record of attendance, his attitude toward plant rules, damage to parts after repeated warnings on how to perform his work combined to bring about the claimant's discharge. The employer alleges that the claimant had been given two reprimands for smoking and loitering, the last one being delivered on May 22, 1953, and that the claimant had been absent a total of thirty times

without justification and had received a reprimand about ten months prior to the date of termination. The record is replete with allegations of poor workmanship and carelessness on the part of the claimant but these conclusions are not supported in regard to specific instances or the details comprising such conclusions except in one instance when the claimant was given a written reprimand on September 11, 1953, in which the claimant was accused of improper placing of the blocks which resulted in a broken spar cap.

The claimant testified that for the last three or four months he was given a new helper every few days by his leadman. This required the claimant to practically perform the work of two men and affected his production. He performed every task which he was asked to do by his superiors. The claimant had been absent on various times because of illness but had always notified the employer of his absences, and had not been talked to regarding his absenteeism. He had operated the press properly at all times, and as the work was planned, if the helper set the part improperly in the press, it would be damaged. He also inspected the work for damage, and did not notice any damage to the alleged third spar cap which he and the leadman could not find though they searched for it. He denied leaving his work any more than other press operators did and followed instructions as given. He complained about the new help, and admitted the one reprimand on September 11, 1953, but explained that in that instance it was the only logical way in which that particular spar cap could have been straightened.

The claimant contends that his supervisor "had it in for me for some reason" and wanted to get rid of him. The claimant has filed a grievance through his union but this has not yet been resolved.

REASONS FOR DECISION

Section 1256 of the Unemployment Insurance Code provides that:

> "An individual is disqualified for unemployment compensation benefits if the director finds that he left his most recent work voluntarily without good cause or that he has been discharged for misconduct connected with his most recent work."

In Benefit Decision No. 5819 in defining the term misconduct we stated as follows:

> "The Appeals Board has consistently applied the definition of misconduct laid down by the Supreme Court of Wisconsin in Boynton Cab Company v. Neubeck, 296 N.W. 636:
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> ". . . The term 'misconduct' as used in (the disqualification provision) is limited to conduct evincing such wilful or wanton disregard of an employer's interest as is found in deliberate violations or disregard of standards of behavior which the employer has the right to expect of his employee, or in carelessness or negligence of such degree or recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interest or of the employee's duties and obligations to his employer. On the other hand, mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances or good faith errors in judgement or discretion are not to be deemed 'misconduct' within the meaning of the statute."

In the instant case, the employer originally contended that the claimant was discharged for carelessness on the job but at the hearing before the Referee brought forth two other grounds upon which this discharge was based, namely, poor record of attendance and improper attitude. Though the record is replete with the employer's allegations that the claimant was performing poor work and was careless in his duties, only one concrete instance was placed in evidence in support of these allegations. The employer testified that two spar caps were damaged by the claimant. The first of such instances occurred on or about November 10, 1952, and the second on September 11, 1953. The claimant's explanation of the latter instance appears to be based on a desire to properly accomplish his assigned task, and not to any negligence or carelessness on his part.

This testimony of the claimant is uncontradicted. It is also noted that these alleged damages to parts occurred ten months apart.

The third such incident which led to his termination allegedly occurred about October 20, 1953, and was generally attributed to improper work performance by the claimant. This however, was denied by the claimant. Though he admitted the two prior incidents, he testified that only one reprimand was given to him and that it was the result of the broken spar cap of September 11, 1953.

The employer testified to thirty absences by the claimant without justification and a reprimand thereto on May 22, 1953. The claimant countered with an explanation that his absences were occasioned by his illness, that he always notified the employer, and that he had not been counseled regarding his absenteeism. In resolving this conflicting testimony in the claimant's favor, it is reasonable to infer that if the claimant had been absent unjustifiably for thirty times the employer would have not only administered additional reprimands but would have taken more drastic action.

Under the facts and circumstances of this case, we conclude that, though perhaps the claimant's conduct might not have been beyond reproach and that his work performance in the three instances before us might have been poor, it was not attributable to wilful or wanton disregard of the employer's interests, and therefore the discharge by the employer was not for misconduct within the meaning of Section 1256 of the Code.

DECISION

The decision of the Referee is affirmed. Benefits are payable immediately to the claimant if he is otherwise eligible. Any benefits paid to the claimant which are based upon wages paid by the employer prior to

October 27, 1953, shall be charged under Section 1032 of the code to Employer Account No.

Sacramento, California, July 2, 1954.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

MICHAEL B. KUNZ, Chairman

GLENN V. WALLS

EDWARD CAIN

Pursuant to section 409 of the Unemployment Insurance Code, the above Benefit Decision No. 6147 is hereby designated as Precedent Decision No. P-B-214.

Sacramento, California, February 5, 1976.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

DON BLEWETT, Chairperson

MARILYN H. GRACE

CARL A. BRITSCHGI

HARRY K. GRAFE

RICHARD H. MARRIOTT