BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

In the Matter of:

MARIA E. CLOWER
(Claimant)

PRECEDENT
BENEFIT DECISION
NO. P-B-490
CASE NO. 98-15028

GILROY UNIFIED SCHOOL DISTRICT
(Employer)
Santa Clara County Office of Education
(Employer Representative)

EMPLOYER ACCOUNT NO. N/A

OFFICE OF APPEALS NO. SJ-34634-A (formerly Case No. SJ-25760)

The employer appealed from the decision of the administrative law judge which held the claimant was not disqualified for unemployment insurance benefits under section 1257(b) of the Unemployment Insurance Code.

STATEMENT OF FACTS

The claimant worked for the employer, a school district, as a substitute teacher. The employer asserted that the claimant should be disqualified for benefits because she refused offers of suitable work for January 14, 1998 and January 23, 1998.

The Employment Development Department (EDD) issued a Determination which held that the claimant was not disqualified for benefits because she had good cause for refusing the offers of work. The employer filed a timely appeal specifically requesting EDD to inform it of the reasons for the claimant's refusals of the assignments, indicating that if there were good cause for the refusal of work it would drop the appeal. EDD did not respond to the request.

The employer appeared and provided testimony, which was supported by documentation. In summary, the employer showed at the hearing in its appeal that it had offered work to the

claimant as a teacher for January 14 and 23, 1998 at school sites, for grade levels, of a type, and at a pay rate that the claimant had previously indicated were suitable. In response to these offers of work, however, the claimant rejected them on the basis they were not suitable.

The employer had an automated telephone system which it used to offer jobs to its substitute teachers and through which the teachers responded to the offers. When the substitute received a telephone call from the automated system, he or she would enter an ID number to receive the detailed offer of an assignment. The substitute was then required to choose among options such as "accept" or "decline" or provide an additional response.

On January 12, 1998, at 4:19 p.m., the claimant was offered a one-day assignment, from 8:00 a.m. to 3:30 p.m., for January 14 at a specified elementary school teaching a bilingual class in grade 4, 5, or 6. The claimant declined the offer, choosing an option on the automated system that indicated the position was not suitable. On January 13, the claimant notified the employer through the telephone system that she was not available for assignments on January 14. The reason for her non-availability was not given.

On January 21, at 4:43 p.m., the claimant was offered a similar assignment for January 23 at a specified elementary school teaching grade 4, 5, or 6. She declined the offer on the basis that it was not suitable.

On January 21, at 4:55 p.m., the claimant was offered another assignment for January 23 at another elementary school teaching grade 4, 5, or 6. She declined the offer on the basis that it was not suitable.

On January 22, at 4:05 p.m., the claimant was offered another assignment for January 23 at a different elementary school teaching a bilingual class in grades 4, 5, or 6. The offer was declined on the basis that it was not suitable.

On January 22, at 4:14 p.m., the claimant was offered another assignment for January 23 at the above elementary school teaching grade K, 1, 2, or 3. The offer was declined on the basis that it was not suitable.

On the evening of January 22, the claimant notified the employer that she was not available for work on January 23.

There is nothing in the record to explain why the claimant indicated the above offers were not suitable.

The claimant accepted offers to work as a substitute teacher and did work for this employer on January 13, 15, 20, 21, and 22.

The employer's automated telephone system did not provide a mechanism to explain why an assignment was not suitable and the employer had no knowledge as to why the claimant so indicated in response to the offers made for January 14 and 23. The claimant had previously let the employer know that she was available at the school sites, and for the grades and types of classes offered to the claimant on these occasions. The employer had no information as to why the claimant indicated, after the offers had been made and declined, that she was not available for assignments on the days at issue.

Neither the claimant nor EDD appeared at the noticed hearing. EDD documents submitted for the hearing did not include any evidence from the claimant explaining why the jobs offered were not suitable.

The administrative law judge held that the employer had the burden of proof to show that the claimant did not have good cause to refuse the offers of work and failed to meet that burden. The claimant was found not disqualified under section 1257(b).

REASONS FOR DECISION

An individual is disqualified for unemployment benefits if he or she, without good cause, refused to accept suitable employment when offered to him or her, or failed to apply for suitable employment when notified by a public employment office. (Unemployment Insurance Code, section 1257(b))

An individual disqualified under section 1257(b) is ineligible to receive unemployment benefits for not less than two nor more than ten consecutive weeks. (Unemployment Insurance Code, section 1260(b))

The pivotal issue in this case is the allocation of the burden of proof. We reverse because the administrative law judge improperly allocated that burden.

Generally the burden of proof is on the party for each fact the existence or nonexistence of which is essential to its claim for relief or affirmative defense. (Evid. Code section 500.) The Court may alter the normal allocation of the burden of proof depending upon such factors as the knowledge of the parties concerning the particular fact, the availability of the evidence to the parties, the probability of the existence of a fact, and public policy. (*Morris* v. *Williams* (1967) 67 C.2d 733 [63 Cal.Rptr. 689].)

Section 1257(b) and section 1253(c) of the Unemployment Insurance Code are integrated parts of the legislative scheme to grant unemployment insurance benefits to unemployed individuals deemed to be eligible. Section 1253(c) provides that, to be eligible for benefits, an unemployed individual must be able and available for work each week during which he or she claims benefits. Section 1257(b) provides that an unemployed individual, otherwise eligible, will be disqualified for benefits if he or she without good cause has refused an offer of suitable work.

In *Garcia* v. *California Employment Stabilization Commission* (1945) 71 Cal.App.2d 107, the Court, interpreting the predecessor of section 1253(c), declared that "availability to work requires no more than availability for suitable work which the claimant has no good cause for refusing." The Court further held that the statutory scheme behind the antecedents of section 1253(c) and section 1257(b) required a consistent standard and result as to the issue of the claimant's availability. This interpretation was affirmed by the California Supreme Court in *Sanchez* v. *Unemployment Appeals Board* (1977) 20 Cal.3d 55. The Court emphasized that the eligibility requirement under section 1253(c) and the disqualification provision under section 1257(b) must be harmonized.

Regarding the allocation of the burden of proof for eligibility under section 1253(c) the Supreme Court in *Sanchez* stated:

> "It has been repeatedly stated that the burden is generally on a claimant to prove his availability for work. (*Loew's*

> *Inc.* v. *California Emp. Stab. Com.* (1946) 76 Cal.App.2d 231, 238; *Ashdown* v. *State of California* (1955) 135 Cal.App.2d 291, 300; *Spangler* v. *California Unemployment Insurance Appeals Board* (1971) 14 Cal.App.3d 284, 287; but cf. *Prescod* v. *Unemployment Ins. Appeals Bd.* (1976) 57 Cal.App.3d 29, 37-38.) The allocation corresponds to the general rule that 'a party has the burden of proof as to each fact the existence or nonexistence of which is essential to the claim for relief or defense that he is asserting.' (Evid. Code, section 500.) However, this rule by its own terms applies only 'except as otherwise provided by law.' Fn.16. Thus we have held that 'Where the evidence necessary to establish a fact essential to a claim lies peculiarly within the knowledge and competence of one of the parties, that party has the burden of going forward with the evidence on the issue although it is not the party asserting the claim.' (*Morris* v. *Williams* (1967) *supra*, 67 Cal.2d 733, 760; see also *Garcia* v. *Industrial Accident Com.* (1953) 41 Cal.2d 689, 694.) We are satisfied here that the second step of the determination of availability to a 'substantial field of employment'--calls for testimony regarding the size and character of the labor market which is 'peculiarly within the knowledge and competence' of the department . . . . Accordingly, once a claimant has shown he is available for suitable work, which he has no good cause for refusing, the burden of proof on the issue of whether he is available to a 'substantial field of employment' lies with the department. . . ." (pp. 659-661.)

Thus, since *Sanchez*, we have utilized a two-prong test for deciding eligibility under section 1253(c) that allocates the burden of proof as follows. First, the claimant has the burden to prove that he or she is willing to accept suitable work for which he or she has no good cause to refuse. This allocation follows the general rule that the party asserting a claim or defense has the burden to prove the facts of that claim or defense. Under section 1253(c) the claimant is asserting the claim that he or she is eligible for benefits on the basis that he or she is available for work. Once the claimant has met his or her burden, he or she is eligible for benefits under section 1253(c) unless the department meets its burden to show that the claimant is not available to a substantial field of employment.

Similarly, the issue of disqualification under section 1257(b) should be a two-pronged inquiry. Absent any reallocation the burden of proof as to the facts necessary to disqualify a claimant under section 1257(b) would lie with the employer or EDD. However, in accordance with the principles discussed above

in *Sanchez* (supra), we find that partial reallocation of the burden of proof is warranted here. Thus, it is the burden of the employer, or EDD, to prove that the claimant was offered, and refused, a suitable job. However, whether or not there was good cause to refuse the offer is a burden that rightfully lies with the claimant. The reallocation to claimant of this aspect of the burden of proof under section 1257(b) is based upon the fact that information regarding the existence of good cause is solely or primarily within the knowledge of the claimant.

In this case, EDD initially held that the claimant was not disqualified under section 1257(b) because she had good cause to refuse the offers of work. However, EDD did not substantiate that finding, and neither the claimant nor EDD appeared at the hearing. The only evidence in the record relating to the issue of good cause for refusing the offers of work is the claimant's bare assertion reflected on the employer's automated response system that the work was not suitable.

On the other hand, the employer did appear at the hearing and proved that it had offered suitable work to the claimant for the days of January 14 and 23, 1998. The employer showed that the work offered was for days, places, pay, and of a nature that the claimant had previously informed the employer she would accept, and further that the claimant refused the offers.

Accordingly, we find that the claimant has not met her burden to show good cause for refusal to accept suitable work, and consequently is disqualified for benefits under section 1257(b). We remand the matter to EDD to determine the period of ineligibility pursuant to section 1260(b).

DECISION

The decision of the administrative law judge is reversed. The claimant refused offers of suitable work without good cause and is disqualified for benefits under section 1257(b). The matter is remanded to the Department to determine the period of ineligibility pursuant to section 1260(b).

In accordance with section 1380, the claimant is entitled to be relieved of liability for any benefits pursuant to EDD's initial determination herein that were received prior to the date of this decision.

Sacramento, California, March 12, 2002.

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