CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD
P O Box 944275
SACRAMENTO CA 94244-2750

MEAGAN J POLESKY
Claimant-Appellant

Precedent Benefit
Decision No. P-B-497

DECISION

Attached is the Appeals Board decision in the above-captioned case issued by Board Panel members:

DENISE MORENO DUCHENY

BONNIE GARCIA

ALBERTO TORRICO

ROBERT DRESSER

ROY ASHBURN

Pursuant to section 409 of the California Unemployment Insurance Code, AO-144947 is hereby designated as Precedent Decision No. P-B-497.

Adopted as Precedent: September 13, 2011

CALIFORNI. JNEMPLOYMENT INSURANCE A. EALS BOARD
P O Box 944275
SACRAMENTO CA 94244-2750

MEAGAN J POLESKY
Claimant-Appellant

Case No.: **AO-254427 Remand**

OA Decision No.: 3653913
EDD: 0250 BYB: 01/16/2011

DECISION

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DENISE MORENO DUCHENY

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This is the final decision by the Appeals Board. The Appeals Board has no authority to reconsider this decision. If you disagree with the decision, please refer to the information attachment which outlines your rights.

Date Mailed: SEP 06 2011

REM

The claimant appealed from that portion of the decision of the administrative law judge that held the claimant disqualified for unemployment insurance benefits under section 1256 of the Unemployment Insurance Code.[1]

ISSUE STATEMENT

The issue before us is whether someone who is neither married nor a domestic partner, as those terms are used in section 1256 of the code, and who voluntarily leaves work because of a need to move to follow another person to a location from which it is impractical to commute to work is necessarily disqualified from receiving benefits under section 1256.

FINDINGS OF FACT

In November, 2010, the claimant and her same-sex partner decided that they would like to get married and announced their engagement. They had started living together six or seven months earlier and were living in an apartment that cost approximately $1,000 a month to rent. Before that, the $13.00 an hour that the claimant was earning meant that she could only afford her rent by working seven days a week. By moving in with her fiancée, she was able to reduce the number of days she worked each week from seven to five.

Because of the 2008 passage of Proposition 8, the claimant and her fiancée were unable to get married in California. (*Strauss v. Horton* (2009) 46 Cal.4th 364, 385.) They considered a domestic partnership to be an inadequate substitute for marriage and therefore decided not to register as domestic partners.

The claimant's fiancée had a mother in Rhode Island who had been disabled by back problems for many years. The mother lived by herself, was unable to drive, and needed assistance with her daily activities. By December, 2010, a screw that

[1] Unless otherwise specified, all section references are to the Unemployment Insurance Code.

had been used in an earlier back surgery had come loose and was pressing against one of the mother's nerves, causing her pain.

The fiancée had a brother who lived near enough to help the mother, but he was not always available. There were other relatives in the area, but caring for the fiancée's mother was proving difficult for them. The mother therefore wanted her daughter to move east to help her.

The claimant and her partner discussed the situation and felt the partner should move to Rhode Island to provide support for her mother. The couple wanted to preserve their relationship and decided that they would both move to an area closer to the partner's mother to allow the partner to provide the care. The couple also believed that such a move would allow them to fulfill another one of their goals, living in a state, Massachusetts, where they could be married.[2] They first located suitable towns in Massachusetts that were only 45 minutes to an hour from the mother's apartment. They did not want to move to Rhode Island itself because they thought that their job prospects there were less favorable than those in Massachusetts.

The claimant and her fiancée both quit their jobs in January, 2011. The claimant's employer had no locations outside of California, so the claimant was unable to transfer. She gave her two week notice in early January and her last day of work was January 12, 2011.

Rather than moving to Massachusetts together, the claimant and her fiancée decided on a two-stage moving plan in which the fiancée would move directly to Rhode Island and live with her mother while she looked for work and a place to live. Once she found work, the claimant would come to Massachusetts to join her. Instead of remaining in California during this time, the claimant decided to move to Michigan and live with her mother in order to save money.

The claimant left California with her mother on January 17 or 18, 2011, and drove to Michigan with her possessions. She then flew back to California to help her fiancée move. The two of them drove to Rhode Island, arriving sometime in the first week of February. On February 28, the claimant flew back to Michigan while her fiancée remained in Rhode Island. As of March 5, 2011, the claimant was still living in Michigan, but was hoping to move to Massachusetts within two months.

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[2] The Massachusetts Supreme Court held in *Goodridge v. Dept. of Public Health* (2003) 798 N.E.2d 941, that denying same-sex couples the right to marry violated the state constitution. The Court gave the Massachusetts legislature 180 days to take appropriate action in light of its ruling. Acting on orders from the governor, town clerks began issuing marriage licenses to same-sex couples on May 17, 2004.

The claimant filed for unemployment benefits with an effective date of January 16, 2011. On February 4, 2011, the Employment Development Department issued a notice of determination finding her disqualified under section 1256 because she had quit her last job due to domestic reasons and without exploring all reasonable options.

The claimant filed an untimely appeal from the determination on March 5, 2011, and the case was set for a hearing on April 20, 2011, before an administrative law judge. After the hearing, the judge first found that the claimant had shown good cause for the late filing of her appeal.[3] The remainder of the judge's thoughtful decision concluded that, because the claimant and her partner were not married and had no imminent prospects of becoming married, qualification for benefits was precluded by the California Supreme Court's decision in *Norman v. Unemployment Insurance Appeals Board* (1983) 34 Cal 3d 1. The decision further found that, while *McGregor v. California Unemployment Insurance Appeals Board (1984) 37 Cal.3d 205*, provides an exception to the *Norman* rule for unmarried couples with children, the claimant did not fall within the exception because she and her partner had no children.

The claimant maintained that she could not remain employed in California while her fiancée found them a place to stay in Massachusetts because she could not afford the rent. The administrative law judge rejected this assertion on the ground that the claimant had lived on her own in California before she met her fiancée. The decision concluded that this was an additional reason for denying benefits.

At the time of the hearing, the claimant and her fiancée had set their wedding date for July 16, 2011, in Massachusetts.

REASONS FOR DECISION

The general principles governing voluntary resignations in the unemployment context are well-settled. An individual is disqualified for benefits if he or she left his or her most recent work voluntarily without good cause. (Unemployment Insurance Code, section 1256.) In general, "good cause" is such a cause as would, in a similar situation, reasonably motivate the average able-bodied and qualified worker to give up his or her employment with its certain wage rewards in order to enter the ranks of the unemployed. (*Evenson v. California Unemployment Insurance Appeals Board* (1976) 62 Cal.App.3d 1005, 1016.) If a claimant has more than one reason for quitting, he or she is entitled to benefits if one of those reasons constitutes good cause and is a substantial motivating

[3] Because this is an appeal by the claimant, we need not address the correctness of this part of the decision.

factor in the decision to quit. (*Rabago v. California Unemployment Insurance Appeals Board* (1978) 84 Cal.App.3d 200, 209.)

Good cause need not arise out of, or be attributable to, the claimant's employment. (*California Portland Cement Company v. California Unemployment Insurance Appeals Board* (1960) 178 Cal.App.2d 263.) When good cause exists for personal reasons, those reasons must be so imperative and compelling as to make the voluntary leaving involuntary. (*Evenson,* 62 Cal.App.3d at 1016.)

Although each case must be judged on its own facts, some situations arise with enough frequency that the legislature, the judiciary, and this Board have all devised rules for dealing with them. One of these situations concerns what has sometimes been called a "domestic quit," i.e., when one member of a cohabiting couple decides to move to a new location that is far enough away that the other member cannot make the move and still retain his or her job. (*Altaville Drug Store, Inc. v. Employment Development Department* (1988) 44 Cal. 3d 231, 235.)

Whether section 1256 of the code allows a domestic quit claimant to receive benefits has a long history. Section 1264 originally provided that, even in the case of married couples, benefits could not be paid unless the individual filing for benefits was "the sole or major support of his or her family." (*Douglas v. Unemployment Insurance Appeals Board* (1976) 63 Cal.App.3d 110.) We nevertheless held that this rule applied only to a claimant's eligibility under section 1264 and did not prevent a claimant from qualifying under section 1256. (Precedent Decision P-B-26.) In 1976, a Court of Appeal held that section 1264 improperly disqualified women from benefits without sufficient justification and the Legislature repealed the statute entirely. (*Boren v. Department of Employment Dev.* (1976) 59 Cal.App.3d 250; Stats.1976, c. 1169, p. 5249, § 1.) In repealing the statute, the Legislature tacitly found that, as a matter of public policy, a domestic quit involving a married opposite-sex couple should be considered good cause for quitting. (*Altaville*, 44 Cal. 3d at 235.)

In 1980, the Employment Development Department promulgated a regulation recognizing that an imminent marriage might also supply good cause for leaving work. (California Code of Regulations, title 22, section 1256–12(b)(1).)[4] The Legislature adopted a similar rule two years later by amending section 1256 to

[4] The regulation provides that "[a] claimant leaves the most recent work with good cause if the claimant has taken reasonable steps to preserve the employment relationship and the claimant left work due to circumstances relating to the claimant's prospective or existing marital status of such a compelling nature as to require the claimant's presence, including ...(1) The claimant's prospective marriage is imminent and involves a relocation to another area because the claimant's future spouse has established or intends to establish his or her home there, and it is impossible or impractical for the claimant to commute to work from the other area."

state expressly that a claimant's decision to resign in order to move to be with a spouse constituted good cause. (Stats. 1982, c. 1073, § 1.) An uncodified part of the amendment stated that the "amendment...is intended ... to endorse the policy of the Employment Development Department, as expressed in its regulations, which distinguishes persons who are married or whose marriage is imminent from others in determining whether a person has left his or her most recent work without good cause." (Stats. 1982, ch. 1073, § 13, pp. 3873–3874.) This was eventually codified by additional legislation in 1988 that added the language "For purposes of this section "spouse" includes a person to whom marriage is imminent" to section 1256. (Stats.1988, c. 781, § 3.)

The courts first addressed the issue of the domestic quit rule for couples with no imminent marriage prospects in *Norman v. Unemployment Insurance Appeals Board.* (1982) 131 Cal.App.3d 946, *overruled*, 34 Cal.3d 1. The claimant in that case was living with her boyfriend in California, but was not married to him. (34 Cal. 3d at 4.) When he found a new job in Washington, the claimant quit her job so that she could move to be with him. (*Id.*) The claimant had inquired about work in Washington before she left California and felt that she would be able to find work there. *(Id.)* After she moved, however, she was unable to find work and so filed for unemployment benefits. *(Id.)* The claimant acknowledged that her sole reason for quitting her job was to be with her boyfriend. *(Id.)* The two had decided to marry before they left California and had set a date for their wedding approximately nine months after their move to Washington. *(Id.)*

The Court of Appeal held that neither the fact that the claimant was living with her boyfriend nor the nine month lapse before the couple's intended marriage prevented the claimant from qualifying under section 1256. (131 Cal. App. 3d at 713.) The Supreme Court disagreed. Noting its previous recognition of a strong public policy favoring marriage and the lack of a similar policy favoring the maintenance of non-marital relationships, the Court concluded that the claimant could not, as a matter of law, establish good cause for her voluntary departure from her employment within the meaning of section 1256. (34 Cal. 3d at 9.) "In the absence of legislation which grants to members of a non-marital relationship the same benefits as those granted to spouses, no basis exists in this context for extending to non-marital relations the preferential status afforded to marital relations." (*Id.*)

The Court considered a similar issue the following year in *McGregor v. California Unemployment Insurance Appeals Board (1984) 37 Cal.3d 205.* In that case the Court upheld under section 1256 the claim of a waitress who voluntarily quit her job to accompany her fiancé and their infant daughter to New York to live with the fiancé's ailing and aged father. (*Id.* at 208.) The Court found that the lack of a legally recognized marriage did not prevent the claimant from demonstrating that

"compelling familial obligations" provided good cause for leaving employment. (*Id.* at 213.)

When, in 2001, the legislature created domestic partnerships, it also modified section 1256 to extend the domestic quit rule to domestic partners. (Stats.2001, c. 893 (A.B.25), § 59.) In 2010, the rule was expanded again to include those for whom a domestic partnership is imminent. (Stats.2010, c. 590 (A.B.2055), § 3.) This effectively put domestic partners in the same position as spouses for purposes of the domestic quit rule.

While *Norman* is undoubtedly the Supreme Court's definitive statement on the domestic quit situation, it is susceptible to differing interpretations. On the one hand, it can be read to announce an inflexible rule that one person has good cause to leave employment in order to join another in a distant place only if the two are either married or engaged with a definite and early date for the wedding. (34 Cal 3d at 10 n.1. (Broussard, J., dissenting).) We have, in fact, sometimes interpreted *Norman* in just this fashion and that appears to be the position taken by the administrative law judge in this case. On closer inspection, however, the holding in *Norman* is much more limited.

Norman explicitly states that nothing in its holding would prevent claimants who are not married or engaged "from establishing 'good cause' based on compelling circumstances which make [their] voluntary leaving akin to an involuntary departure." (*Id.* at 10.) Furthermore, the benefits that *Norman* confers on married couples are not substantive, but evidentiary. (*Id.*) In other words, Norman creates a presumption for married couples that good cause for a resignation exists in domestic quit cases where the claimant is either an actual or imminent spouse. By virtue of the domestic partnership legislation, a similar rule applies to domestic partners. Other people do not enjoy the benefit of this presumption, but can still demonstrate good cause based on their own particular circumstances.

This view of *Norman* is affirmed by *McGregor*. *McGregor* explicitly states that what *Norman* created was not a hard and fast rule, but a presumption that attaches to legally married couples. (37 Cal. 3d at 211.) This presumption is, however, not the only way that a claimant can demonstrate good cause based on compelling circumstances as the facts of *McGregor* show. (*Id.*) Even though the claimant in *McGregor* was not married and had no immediate plans to marry, the need to preserve the family unit was sufficient to provide good cause for her to quit her job to follow the father of their child. (*Id.* at 212.)

We now explicitly adopt this view of *Norman*. When a spouse or domestic partner[5] of a claimant moves to a place from which it is impossible or impractical for the claimant to commute to his or her job, there is a presumption that the claimant has good cause to resign from work to follow the spouse or partner. In the case of other people who make such a move, there is no such presumption, but a claimant in this situation might still be able to demonstrate a prima facie case of good cause for resigning by showing that the legal, financial, emotional, and other ties between those involved are "so imperative and compelling as to make the voluntary leaving involuntary." (Evenson, 62 Cal.App.3d at 1016.) As in other contexts, good cause here cannot be determined in the abstract, but only in relationship to the totality of the claimant's circumstances. (*Zorrero,* 47 Cal.App.3d at 439.) All relevant aspects of the claimant's relationship to the person and the decision to quit and move to follow that person to a new location must therefore be considered.

A rule requiring consideration of the totality of the circumstances surrounding a claimant's decision to resign is also more faithful to the language of section 1256 than fixed rules based on the claimant's status. The statute, after all, phrases the right to benefits in terms of the general concept of good cause and not in terms of a claimant's marital status or sexual orientation. Imposing a limitation based on these latter factors has no basis in the language of the statute.

Finally, a totality of the circumstances interpretation of good cause in domestic quit cases furthers the fundamental purpose of the unemployment insurance laws which is to provide benefits to those who are unemployed through no fault of their own..(Unemployment Insurance Code, section 100; *Air Couriers International. v. Employment Development Department* (2007) 150 Cal.App.4th 923, 936.) To that end, the code "must be liberally construed to further the legislative objective of reducing the hardship of unemployment". (Gibson v. Unemployment Insurance Appeals Board (1973) 9 Cal.3d 494, 499.) Imposing a test based on a claimant's marital status runs the risk of disenfranchising those who, through no fault of their own, are unable to marry in California.

Other states have adopted similar rules. In *Reep v. Commissioner of the Department of Employment and Training* (1992) 412 Mass. 845, for example, the Massachusetts Supreme Court considered the case of an unmarried woman who quit her job to be with her partner of 13 years who was moving to a different city. (*Id.* at 845-46.) The Court held that the fact that the couple was not married did not prevent the claimant from showing that she had good cause to resign. The Court also held that the emotional ties between the two could be considered in

[5] These terms include, of course, those to whom marriage or a domestic partnership is imminent. (Unemployment Insurance Code, section 1256, para. 4.).

deciding whether good cause existed as well as the couple's financial relationship. *Id.* at 851, 852. Among the factors that might be considered would be whether the two partners "regarded each other and were regarded by others as spouses; whether they shared income; whether they maintained joint checking and savings accounts and joint credit card accounts; whether they had executed powers of attorney in order for one partner to make decisions during the illness of the other; whether they were the named beneficiaries of each other's life insurance policies; and whether they were the legatees or executors of each other's estates."

The New York Appeals Board, in Case No. 513233-A, has also held that good cause for resigning in these situations is not limited to marital partners. An unmarried claimant can establish good cause by proving that he and his partner maintain "an emotionally and financially interdependent committed relationship." Among the factors to be considered are co-ownership of property, the existence of joint bank and credit accounts, registration as domestic partners, and the partners' status as beneficiaries on each other's insurance policy and will. These factors, and those described in *Reep*, are appropriate considerations in domestic quit cases, but the inquiry is by no means limited to them. As an example, consideration is also appropriate of the length of time the individuals have been involved in a relationship is a factor in assessing the nature of the relationship.

We see no reason why the result in this case should be different because the claimant and her partner are of the same sex. Unlike many other states, California grants "same-sex couples who choose to become domestic partners virtually all of the legal rights and responsibilities accorded married couples." (*In re Marriage Cases*, 43 Cal. 4th at 779.) Because of this, the Supreme Court has held that denying same-sex couples the same constitutional right to marry in California that opposite-sex couples enjoy violates their rights to privacy, equal protection, and due process under the California Constitution. (*Strauss*, 46 Cal. 4th at 384-85.) As a result, same-sex couples have a constitutional right to enter into a "protected family relationship that enjoys all of the constitutionally based incidents of marriage." (*In re Marriage Cases*, 43 Cal. 4th at 829.) It follows that the ability of one member of a couple to receive benefits cannot be denied based solely on the fact that the other member is of the same sex.

The holding of *In re Marriage Cases* was modified by the passage of Proposition 8 in 2008, but the import of that proposition is limited.[6] Proposition 8 had the effect of limiting the use of the term "marriage" to heterosexual couples, but it did not change the right of same-sex couples to all of the benefits opposite-sex

[6] Proposition 8 added a new section to the California Constitution. The new article I, section 7.5 reads: "Only marriage between a man and a woman is valid or recognized in California."

couples enjoy by virtue of their marriage. (*Strauss v. Horton*, 46 Cal. 4th 364, 408.)

The rule that we adopt today is also not limited to cohabiting couples. Whenever any claimant has decided to move to a new location to be with another person or persons and the new location is far enough away from the old that retaining the claimant's job is impossible or impractical, the issue of whether the claimant is disqualified under section 1256 must always be decided based on the totality of the circumstances. This inquiry is greatly simplified when the person involved is entitled to the presumption created by *Norman* and currently embodied in the fourth paragraph of section 1256. In all other cases, the decision must be based on a consideration of all relevant facts and not by the application of rules of thumb based on the claimant's marital status.

For all of these reasons, we conclude that the decision of the administrative law judge denying benefits to the claimant was based on limited legal principles that did not incorporate the totality of circumstances analysis mentioned in this decision and must be set aside. Because analysis under the proper standard may require the taking of additional evidence, we also remand the case for further proceedings. We express no view on whether, on the facts that will be developed, the claimant is disqualified for benefits.[7]

DECISION

The decision of the administrative law judge is set aside. The case is remanded to an administrative law judge for a hearing and decision on the merits. The hearing transcript/audio recording, exhibits, and other documents previously produced in the course of these proceedings shall remain a part of the record.[8]

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[7] The decision in this case holds, as an additional ground for denying benefits, that the claimant could have remained at her job in California while her fiancée found a job and an apartment in Massachusetts. This conclusion is based on a factual finding that the claimant could have afforded to live in California because she had done so previously. The only evidence in the record to support that finding is the claimant's statement that she could afford to live on her own in California only by working seven days a week and that moving in with her fiancée enabled her to cut back her work schedule to five days a week. No evidence was taken on whether the claimant could have worked seven days a week at the time of her quitting the job, how many hours the claimant had to work during those seven days, how much her apartment cost, whether similar apartments were still available, or how much the claimant needed to spend on other necessities. Because the record on this point is so meager and because we must remand the case for the reasons stated above, we find it prudent to set aside this part of the administrative law judge's decision as well and allow for the taking of additional evidence on this point.

[8] In designating this decision a precedent, we are guided by section 5109 of Title 22 of the California Code of Regulations. That section provides that a decision may be designated a precedent if it contains a significant legal or policy determination of general application that is likely to recur. (California Code of Regulations, title 22, section 5109(a).) In this context, we note that the issue we address here is not only likely to recur, but appears almost certain to occur more and more often. In 1976, the Supreme Court

stated with respect to unmarried heterosexuals that, "the mores of the society have indeed changed so radically in regard to cohabitation that we cannot impose a standard based on alleged moral considerations that have apparently been so widely abandoned by so many." (*Marvin v. Marvin,* 18 Cal.3d 660, 684.) At that time, there were fewer than 1 million unmarried cohabiting couples in the United States. Recent census figures show that this number has now increased to 7.5 million couples. According to the 2000 census, approximately 12.2 percent of California households now contain two unmarried adults who are living together in an intimate relationship. This includes both same-sex and opposite-sex couples and represents an increase from 495,223 couples in 1990 to 683,516 in 2000.