BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD
E R R A T A

In the Matter of:

ROBERT E MITCHELL
(Claimant)

S.S.A. No.

UNITED STATES POSTAL SERVICE
(Employer)

PRECEDENT
BENEFIT DECISION
No. P-B-479
Case No. 93-06881

JUL 25 1994

Office of Appeals No. S-UCFE-05928

On June 28, 1994, the Appeals Board issued a decision in the above entitled matter. Subsequently, it was discovered that it contained an error an is corrected as follows.

In the Reason for Decision section at page 6, first paragraph, line 12 change "1286-17(d) to "1256-17(d).

In all other respects, the decision shall stand as issued.

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Office of Appeals No. S-UCFE-05928

The claimant appealed from the decision of the administrative law judge which held the claimant was disqualified for benefits under section 1256 of the Unemployment Insurance Code.

STATEMENT OF FACTS

The claimant was most recently employed by this employer as the postmaster of a small branch office in a remote, rural location. He had worked for the employer for approximately 32 years up to October 2, 1992, when he retired. His annual salary as postmaster was $42,776.

In the summer of 1992, the employer had embarked on a massive restructuring program, the result of which meant that several thousand of its management employees faced reassignment. Although the possibility of layoffs was of some concern to those affected by the restructuring, the Postal Service and the National Association of Postal Supervisors reached an agreement regarding the implementation of the restructuring program. One of the elements included in that agreement was protection against layoffs.

To facilitate the restructuring process, and to minimize the necessity of reassigning or downgrading employees having lesser seniority, the employer announced an early retirement program available to management employees with 25 or more years of service. The incentive offered to encourage eligible employees to participate in the early retirement program was the offer of a bonus of six months' salary to be paid in a lump sum in January 1993. The decision to participate in the program had to be communicated to the employer no later than November 20, 1992.

Although it was clear that the claimant's position was not affected by the restructuring program, he decided to opt for early retirement for two basic reasons: his concern that his position might be subject to restructuring sometime in the future, and his desire to prevent the reassignment, downgrading, or potential layoff of an employee with lesser seniority than he. A third factor in his calculation, but ancillary to the other two, was his assumption he would be eligible for unemployment insurance benefits upon retirement. The claimant could have retired outside the early retirement program within six months of when he did, inasmuch as he was 54 years and six months of age and had at least 30 years of Federal service.

REASONS FOR DECISION

Section 8502 of Title 5 of the U.S. Code and supplementing regulations provide for unemployment benefits to federal employees. Entitlement to benefit payments is determined under the unemployment insurance law of the state to which wage credits have been assigned, which in this case is California.

Section 1256 of the Unemployment Insurance Code provides that an individual is disqualified for benefits if he or she left his or her most recent work voluntarily without good cause or has been discharged for misconduct connected with the most recent work.

In Precedent Decision P-B-37 the Appeals Board held that in determining whether there has been a voluntary leaving or a discharge under section 1256 of the code, it must first be determined who was the moving party in the separation. If the claimant left employment while continuing work was available, the claimant was the moving party. If the employer refused to permit the claimant to continue working, although the claimant was ready, willing and able to do so, the employer was the moving

party.

The record in this case admits of no conclusion other than there was work available for the claimant on the same terms and conditions as had prevailed during the long existence of the employer/employee relationship. Although the employer had undertaken a restructuring program, and had offered a modest incentive to management personnel to retire early, the claimant was not the target of the employer's desire to reduce its work-force. Furthermore, whatever inducement was offered was not specifically directed to him. Despite the claimant's assertion that he opted to retire because of a desire to assist the employer and to negate the need to redeploy or possibly lay off a fellow employee having lesser seniority, we are of the view the claimant was a mere interloper in the employer's program, and had the claimant done nothing he could have continued in his employment with no threat of reassignment or possible layoff. But for the claimant's opting to participate in the restructuring program, he would still be working as postmaster. Consequently, we conclude the claimant was the moving party in the separation from employment within the meaning of Precedent Decision P-B-37.

It has been suggested in cases involving an acceptance of an employer offer of a monetary inducement to retire early that the original employment agreement between the employee and the employer is extinguished and superseded by the employee's acceptance of the terms and conditions set forth in the incentive offer. In essence, the employer and the employee sever the employer-employee relationship by mutual agreement and, therefore, a disqualification under section 1256 of the code does not arise. This suggestion is based on section 1256-1(e)(4), Title 22, California Code of Regulations, which states:

> "Termination by Mutual Agreement. There may be a separation by mutual agreement if the employer and employee have mutually agreed to separate, either at the time of termination or, initially, at the time of hire. In such cases the termination is neither a discharge nor a leaving and thus a disqualification cannot arise under Section 1256 of the code. The expiration of a fixed term contract of hire to which the parties initially agreed is an example of a termination by mutual agreement."

We consider such an analysis to be a convenient means to obviate resolution of the moving party issue, but contrary to the purpose of unemployment insurance (section 100, California Unemployment Insurance Code). Furthermore, the example cited by

the Employment Development Department (EDD) under the foregoing section is a reference to the holding in Appeals Board Precedent Decision P-B-275, a case in which the employer and the employee entered a written contract of employment at the inception of the relationship which provided for a specific beginning and termination date for the claimant's services. That case does not support the proposition that an employer and employee can, once employment has commenced under a contract of hire, agree to a necessarily nondisqualifying termination of employment at a mutually agreeable point in the relationship. Such an empowerment pre-empts the EDD's responsibility to make a determination covering such issues as who the moving party was and whether or not the factual matrix involved embraces "good cause" for voluntarily quitting employment.

Section 1256 of the code addresses, in plain and simple language, the two circumstances leading to disqualification from receiving unemployment insurance benefits: (1) leaving work voluntarily without good cause, and (2) being discharged for misconduct connected with work. The EDD's regulations regarding "voluntary leaving" state that, "A voluntary leaving of work occurs when an employee is the moving party causing his or her unemployment." Illustrations given for this axiom include, "(1) A leaving of work at a time when work is available." Section 1256-1(b)(1), Title 22, California Code of Regulations.

Section 1256-1(e)(4) in our view is not applicable to the circumstances before us on appeal and is inconsistent with section 1256-17(c) of the regulations which specifically address voluntary leaving through early retirement. That section states:

> "An individual who exercises an option for early retirement prior to compulsory retirement ordinarily leaves the most recent work without good cause in the absence of other factors. If an employer offers employees who elect to retire prior to compulsory retirement age an increased pension or other monetary inducement, the individual who elects optional early retirement does not have good cause to leave work solely due to such monetary inducements."

The language ". . . leaves the most recent work . . ." in the above regulation is moving party language (P-B-37). In this case, the claimant could have continued to work indefinitely. His election to retire while continuing work was available made him the moving party and constitutes a voluntary leaving of work. The question is whether he had good cause to leave work under section 1256 of the Unemployment Insurance Code.

While subsection (c) of section 1256-17, of Title 22, California Code of Regulations, recognizes that monetary incentive alone will not constitute good cause to voluntarily leave one's employment prior to a mandatory retirement date, 1256-17(d) sets forth factors which in addition to a monetary incentive may constitute good cause. Section 1256-17(d) states:

> "Other Factors. An individual whose decision to elect early retirement is substantially motivated by a factor other than monetary inducements may have good cause for leaving the work if a reasonable person genuinely desirous of retaining employment would have retired under the circumstances which motivate that individual to retire. Other factors which may motivate early retirement include, but are not limited to, the following:
>
> (1) The individual's age.
> (2) The individual's health (see Section 1256-15 of these regulations).
> (3) Whether the individual's job will be abolished, and if so, the date the job will be abolished.
> (4) The length of time between the retirement and the date of mandatory retirement or the abolition of the job, if applicable.
> (5) The individual's wage at the time of early retirement (see Section 1256-22 of these regulations).
> (6) The extent and degree of encouragement of early retirement given an individual by his or her supervisory personnel.
> (7) Whether a transfer to other employment was offered by the employer.
> (8) Whether a leave of absence was available to the individual, and if so, whether the leave would meet the individual's needs (see Section 1256-16 of these regulations).
> (9) If the employment is federal employment, consideration is given to the findings of the federal agency. The fact that the individual leaves federal work due to a desire to work in private employment to establish wages for the purpose of federal social security benefits is not, taken alone, good cause for leaving work."

If monetary incentive alone is not good cause to leave work prior to mandatory retirement age, logic demands that the same

rationale should apply where a claimant is facing a layoff. The net result in either case is the same - - the loss of employment before any such separation would normally occur. We recognize that the above regulation (section 1256-17(c) and (d), Title 22, California Code of Regulations) addresses early retirement in the context of mandatory retirement, however, we see no meaningful distinction between a leaving before mandatory retirement and a leaving via retirement before a certain layoff. In each case, the length of employment has been shortened and the employee is the moving party. Therefore, in situations where an individual is given incentives to voluntary quit in the face of layoff, we think factors such as these listed in section 1286-17(d) are useful to determine whether a voluntary quit is with good cause.

In general, "good cause" to leave work voluntarily 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, 133 Cal.Rptr. 488).

It was held in Precedent Decision P-B-306, a case involving a claimant who voluntarily quit his work so as to position himself for anticipated employment as a merchant seaman, that the term "good cause" as used within the context of section 1256 of the code can include reasons of a purely personal nature. However, personal reasons constitute "good cause" for quitting one's employment only if the reasons are so compelling and imperative as to convert a voluntary quit into involuntary unemployment (Zorrero v. California Unemployment Insurance Appeals Board (1975), 47 Cal. App. 3d 434, 120 Cal. Rptr. 855).

We search the record in vain for such factors as are set forth in 1256-17(d) that would constitute imperative and compelling reasons for the claimant's taking advantage of the early retirement program offered by the employer. As noted above, the claimant was not among the class of employees to whom the employer addressed its early retirement program, although as postmaster he was in management and therefore came within its ambit. He was within six months of being eligible for retirement, and but for his desire to retire he could have continued working indefinitely.

In Precedent Decision P-B-456 an employee was informed that

his position was being eliminated. He could either leave work immediately with severance pay, or he could continue working for a four week period while the employer attempted to redeploy him to another position. If no new position was uncovered, the claimant would have been separated with a lesser severance payment. The employer had been able to place all employees who had taken the latter course. The claimant took the first option and the Appeals Board held that he was disqualified from receiving unemployment insurance benefits because "a person genuinely desirous of retaining employment would not opt for immediate unemployment when continued employment for a four week period was a certainty and there was reason to believe permanent employment was in the offing".

The claimant's concern here, that at sometime in the future his position with the employer would be restructured, had no basis in fact, at least insofar as the evidence produced at the hearing. This concern was, thus, purely speculative and not the type of compelling personal reason which would constitute good cause for quitting one's work. Similarly, the claimant's concern with displacing or downgrading a fellow worker with less seniority than he is without merit. As noted, the employer's incentive program was not directed at postmasters. Hence, the claimant would not displace or downgrade anyone had he remained on the job. Furthermore, there is no evidence the employer and its employees had entered a contract which addressed the provisions contained in the final paragraph of section 1256 of the code.

The circumstances facing the claimant in the case now before us fall far short of those faced by the claimant in Precedent Decision P-B-456. In fact, as noted above, there was absolutely no threat to the former's job security. After examining the relevant facts and the claimant's rationale for quitting, we conclude the claimant quit his work for reasons not constituting good cause within the meaning of the code.

P-B-479

DECISION

The decision of the administrative law judge is affirmed. The claimant is disqualified from receiving benefits under section 1256 of the code.

Sacramento, California, June 28, 1994.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

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June 28, 1994

PRESS RELEASE

Attached is a newly issued precedent decision of the California Unemployment Insurance Appeals Board. The case addresses the issue of voluntarily quitting to accept financial inducements provided by the employer when the employee could have continued working. In a 7-0 decision, the Appeals Board holds that a claimant who voluntarily quits his job in order to accept six months pay in a lump sum and retirement benefits when continuing work was available quits without "good cause" and therefore is disqualified for unemployment benefits.

The claimant, Robert E. Mitchell, worked for the United States Postal Service for approximately 32 years as a postmaster. The claimant left his job on October 2, 1992 to take advantage of an early retirement program available to management employees with 25 or more years of service.

The claimant was not in danger of losing his job, but decided to take advantage of the employer's program because of his concern that his position might be subject to restructuring sometime in the future and his desire to prevent the reassignment, downgrading, or potential layoff of an employee with less seniority. Another factor in the claimant's decision was his assumption he would be eligible for unemployment insurance benefits.

The claimant applied for unemployment benefits. The Employment Development

Department denied the claimant's application and he appealed to an Administrative Law Judge of the California Unemployment Insurance Appeals Board. The Administrative Law Judge also denied the claimant benefits. The claimant then appealed to the Board, which affirmed the decision of the Administrative Law Judge.

The Board notes in its decision that it could not find an imperative and compelling reason for the claimant's decision to leave continued employment to take advantage of the employer's early retirement program. The claimant was not among the class of employees to whom the employer addressed its early retirement program. The claimant could have worked for an additional six months and have been eligible for retirement. The Board also notes that the claimant could have continued working indefinitely had he not desired to retire.

In finding that the claimant voluntarily quit without good cause, the Board has established the legal principle that voluntarily quitting to accept financial inducements when there is no danger of a loss of employment is a voluntarily quit without good cause. The new precedent decision also affirms a long standing line of unemployment insurance cases holding that voluntarily quitting to retire does not entitle a claimant to benefits under the unemployment insurance program.

Precedent decisions of the Appeals Board are binding on the Employment Development Department and on the Board's Administrative Law Judges.

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