BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

In the Matter of:

FLOYD W. HEASLET AND OTHERS
(Claimants)
(See Appendices A and B)

S.S.A. No. and Others

THEO. HAMM BREWING COMPANY
(Employer)

Employer Account No.

PABST BREWING COMPANY
(Employer)

Employer Account No.

PRECEDENT
BENEFIT DECISION
No. P-B-75
Case No. 69-3668

The employers appealed from Referee's Decision Nos. LA-15850 and Others which held that the claimants were not disqualified for benefits under subdivision (b) of section 1257 of the Unemployment Insurance Code and that they were not ineligible for benefits under subdivisions (c) and (e) of section 1253 of the code.

STATEMENT OF FACTS

This decision is concerned with 11 claimants, eight of whom were employed by Hamm Brewing Company and three by Pabst Brewing Company. The appeals were consolidated by the referee for hearing and decision, and they are here consolidated for decision (section 5107, Title 22, California Administrative Code).

The issues with respect to each claimant are as follows:

See Appendices

1. Did the claimants, within the meaning of subdivision (b) of section 1257 of the code, refuse an offer of suitable employment without good cause; or fail, without good cause, to apply for suitable employment when notified by a public employment office?

2. Were the claimants, during certain weeks which are specified in the appendices, available for work within the meaning of subdivision (c) of section 1253 of the code?

3. Did the claimants, during the weeks specified in No. 2, conduct a search for suitable work in accordance with specific and reasonable instructions of a public employment office, as required under subdivision (e) of section 1253 of the code?

We will begin with the claimants employed by Hamm Brewing Company. These are listed in Appendix A. The case of Floyd W. Heaslet is arbitrarily selected as the lead case. We will go into his case at some length, setting forth both facts which are peculiar to his case and also certain other facts which are common to all the cases. We will then treat each of the remaining claimants individually but more briefly. We will close with some specific findings regarding all of the claimants.

FLOYD W. HEASLET: Heaslet registered for work with the Department of Human Resources Development and filed an additional claim for unemployment benefits as of January 28, 1968 in Duarte. Before filing this claim, he had last been employed by Hamm Brewing Company in Los Angeles until January 26, 1968. He worked 37 and one-half hours a week for this employer as a bottler at a wage of something over $4 an hour. He was laid off on January 26, 1968 because of lack of work. He claimed unemployment benefits for the weeks ending February 3, 1968 and February 10, 1968 and then returned to work. These are the only weeks involved in Heaslet's case.

Heaslet has worked in the brewing industry since 1954. He is classified under the union contract to

which the employers are parties as a "Permanent Bottler." He and the other seven claimants listed in Appendix A were among the 54 Permanent Bottlers laid off by the employer on January 26, 1968. At that time there were 17 so-called "Extra Bottlers" working at the Anheuser-Busch Brewery at 15800 Roscoe Boulevard in Van Nuys, and two "Extra Bottlers" at the Maier Brewery Company at 500 East Commercial Street in Los Angeles. Under the union contract, 19 of these permanent bottlers had the right, in connection with this layoff, and in the order of their plant seniority, to "bump" or displace these extra bottlers. The Anheuser-Busch and Maier Breweries were within the so-called "bumping area." Insofar as the instant case is concerned, this area contains the industrial plants within the Los Angeles area of the five members of the California Brewers Association, as well as the Maier Brewing Company plant. The Association members are parties to a master collective bargaining agreement with the union. Maier Brewing Company is a party to a separate but identical agreement with the union. The five members of the Association are as follows:

Anheuser-Busch, Inc.
(aka Budweiser Brewery)
15800 Roscoe Boulevard
Van Nuys, California

Theo. Hamm Brewing Company
2080 East 49th Street
Los Angeles, California

Miller Brewing Company
819 North Vernon Avenue
Azusa, California

Pabst Brewing Company
1910 North Main Street
Los Angeles, California

Jos. Schlitz
7521 Woodman Avenue
Van Nuys, California

The union representing the claimants is Bottlers Union Local 896 in Los Angeles. This union is a part of the Teamster Brewery and Soft Drink Workers Joint Board of California which negotiated the collective bargaining agreements referred to above.

In the manner prescribed by the union agreement, Heaslet and the other permanent bottlers involved in the aforesaid layoff were notified on Thursday, January 25, 1968 that they would be laid off on the following day. Such notice was promulgated in the following manner.

The employer notified the union of the impending layoff on Thursday morning, and the union in turn notified the union steward at the employer's plant. The steward then posted a list on Thursday afternoon or Friday morning showing the names of the men who were to be laid off. The list also showed that there were 17 extra bottlers employed at Anheuser-Busch and two at Maier Brewing Company who could be bumped. The permanent bottlers who were to be laid off could make an entry on the posted notice showing whether or not they wished to bid for the jobs held by the extra bottlers. The steward could then relay this information to the union. The union in turn could dispatch as many as 19 permanent bottlers to displace the extra bottlers. Heaslet bid for one of the available jobs at Maier Brewing Company, but he did not have enough seniority to be dispatched by the union to that brewery. He made it known to the union steward that he did not wish to bid for a job at Anheuser-Busch. He was not interested at that time in trying to bump an extra bottler at that brewery because he considered that it was too far from his home. According to Heaslet, it took him over an hour to drive from his home in Azusa to the employer's plant on East 49th Street in Los Angeles. The distance between the two points was about 28 or 29 miles. He considered that it would have taken him two hours each way to drive between his home and the Anheuser-Busch plant in Van Nuys, the one-way distance being 50 miles. The employer submitted data purporting to show that the distance could be traversed in 65 minutes via the freeway system.

If Heaslet had had sufficient seniority in relation to the other bidders to bump an extra bottler at Anheuser-Busch, he could have been dispatched by his union so as to start work there on Monday, January 29, 1968. Under the union contract, Anheuser-Busch could have rejected him as an employee only if he were not "competent to fill the position held by the extra Bottler to be displaced."

Anheuser-Busch did not make Heaslet or any other of the claimants an offer of employment. The union agreement provides that "all employees must be secured through the union if the union can supply competent men within 48 hours." Extra Bottlers are paid 50¢ an hour less than Permanent Bottlers. There was no contention that Anheuser-Busch desired to have its 17 extra bottlers displaced by 17

of the 54 permanent bottlers who had been laid off by Hamm on January 26, 1968. Hamm Brewing Company made no attempt to refer bottlers to Anheuser-Busch. Such an attempt would have been contrary to the union contract. All referrals are made by the union.

During his two weeks of unemployment in the early part of 1968 Heaslet complied with the Department's instructions that he seek work through his union. He was duly registered for work with his union. He was entitled to be referred by his union to breweries in accordance with both his "industry seniority" and his "plant seniority."

The claimants listed in Appendix A, who were among the permanent bottlers laid off by Hamm on January 26, 1968, believed that the layoff period would be short. This belief was predicated on "rumors" and on their general knowledge of layoff and hiring patterns in the local brewing industry. They were not told by the employer how long the layoff was expected to last. Hamm Brewing Company recalled 14 bottlers during the week following the layoff date. Others were recalled later. Five of the claimants claimed benefits for only one week, five claimed benefits for two weeks, and one claimant claimed benefits for three weeks. (Pursuant to stipulation by the parties, the referee obtained this information as to the duration of the appeal periods from the various local offices after the hearing was concluded.) All of these claimants stopped claiming benefits in February 1968 because they had returned to work. During the layoff period they did not look for work outside the brewing industry and were not instructed by the Department to do so.

Heaslet was ready at all times while claiming benefits to return to work for the employer or to accept employment at any of the six breweries in the bumping area except two. He was not willing during that time to work in the two breweries in the San Fernando Valley; namely, Anheuser-Busch and Schlitz. He considered that they were not within reasonable commuting distance from his home.

According to Heaslet, at the time he was confronted with the option of bidding for one of the jobs held by the extra bottlers at Anheuser-Busch, he did not know what his working hours might be in that establishment if he were to bid successfully for such work. Anheuser-Busch maintains a variety of working shifts and has in the past made a practice of moving employees with low plant seniority from one shift to another on short notice. Each of these shifts is a seven and one-half hour shift. Besides the more or less standard first, second and third shifts within a 24-hour period there are also certain overlapping shifts. For example there is an "early" day shift and a "late" day shift. The permanent bottlers who bump extra bottlers at Anheuser-Busch may get the least desirable working hours there by virtue of their low plant seniority, and they are subject to frequent shift changes. They can be moved around to as many as three different shifts within a single week. Because of such irregular working hours, it was alleged that they cannot establish a ride-sharing arrangement for commuting.

JACK PFIRRMAN: Following his layoff on January 26, 1968, Pfirrman filed an additional claim for benefits as of January 28, 1968 in Alhambra. He filed continued claims for the weeks ending February 3, 1968 and February 10, 1968, and then returned to work. He did not try to bump an extra bottler at Anheuser-Busch because he considered that the commuting time and distance would be excessive. The distance between his home in Rosemead and the plant in Van Nuys is about 36 miles. The employer submitted data purporting to show that the commuting time by automobile over this distance would be about 40 minutes each way.

ROLAND W. MAYS: Following his layoff on January 26, 1968 Mays filed an additional claim for benefits as of January 28, 1968 in Whittier. He filed continued claims for the weeks ending February 3, 1968 and February 10, 1968 and then returned to work. He did not try to bump an extra bottler at Anheuser-Busch because he was of the opinion it would take him too long to traverse the distance of about 42 miles between his home in Whittier and the plant. He considered that he would have to allow two hours each way to traverse this distance if the traffic were heavy. He lives about four or five miles from the nearest freeway on-ramp. The employer submitted data purporting to show that Mays could have traversed the 42 miles in 45 minutes. Mays made an unsuccessful bid to bump an extra bottler at Maier Brewing Company.

Mays contended that brewery bottlers are tired when they reach the end of their work shifts and that they cannot drive safely over long distances while in a state of fatigue.

WILLIAM E. BARRY: Following his layoff on January 26, 1968 Barry filed an additional claim for unemployment benefits in Inglewood as of January 28, 1968. He entered the phrase "temporary layoff" on the additional claim form. He filed a continued claim for only one week, the week ending February 3, 1968. He then went to work at Anheuser-Busch on February 5, 1968. He did not go to work there on January 29, 1968 because his "car was not in condition to make that long a drive." This quoted phrase appeared in a letter dated February 15, 1968 which the claimant sent to the Department. His car was in running condition but needed some repairs to render it capable of long-range commuting. Barry's estimate of the one-way distance between his home in Hawthorne and the Anheuser-Busch brewery was 31 miles. The employer submitted data purporting to show that the distance was 27 miles and that it could be traversed in 28 minutes. Barry had his automobile repaired and proceeded to displace an extra bottler at Anheuser-Busch on February 5, 1968, as mentioned above.

ALEX M. BEATTIE: Following his layoff from Hamm Brewing Company on January 26, 1968 Beattie filed an additional claim for unemployment benefits as of January 28, 1968 in Norwalk. He claimed benefits for three weeks and then returned to work at the same brewery. He understood at the outset (on the basis of rumors) that the layoff period would be short. He told the Department on February 7, 1968 that he was "off temporarily due to floor tax." He was the only one of the 11 claimants who was unemployed for more than two weeks. He would have bid for one of the jobs at Anheuser-Busch if he had been informed that his failure to do so would jeopardize his claim for unemployment insurance. He did not exercise his bumping right because he considered that the distance and travel time between his home in La Mirada and the Anheuser-Busch plant were excessive. He testified that the distance each way was about 50 miles and that the one-way trip could take as long as two hours and 15 minutes when the freeways were congested. He conceded that under favorable conditions he could make the trip in little over an hour. The employer submitted data purporting to show that the distance was 47 miles and that it could be traversed in 50 minutes.

JOHN J. ROWE: Following his layoff from Hamm Brewing Company on January 26, 1968, Rowe filed an additional claim for unemployment benefits as of January 28, 1968 in Norwalk. He claimed benefits for two weeks and returned to work for Hamm Brewing Company on February 12, 1968.

Rowe, who has relatively low seniority, did not bid for one of the jobs at Anheuser-Busch because he considered that the distance and travel time between Downey and Van Nuys were excessive. The distance is 40 miles, and, according to the employer, it can be traversed within 41 minutes by automobile.

JOHN T. EWING: Following his layoff from Hamm Brewing Company on January 26, 1968, Ewing filed an additional claim for unemployment benefits as of January 28, 1968 in the Huntington Park area. He claimed benefits for the week ending February 3, 1968 and then returned to work.

His home is located 37 miles from Anheuser-Busch. He did not bid for a job at that brewery because he considered that it was too far from his home. The employer presented data purporting to show that the distance between his home in Walnut Park and the brewery could be traversed within 48 minutes by automobile.

ROBERT J. ULMEN: Following his layoff from Hamm Brewing Company on January 26, 1968, Ulmen filed an additional claim for benefits as of January 28, 1968 in Pasadena. He claimed benefits for the week ending February 3, 1968 and then returned to work.

He elected not to bid for a job at Anheuser-Busch because he was of the opinion that the plant was too far from his home. The Department estimated the distance at 40 miles. The employer submitted data purporting to show that the commuting time between Ulmen's home in Sierra Madre and the plant was not over 63 minutes by the most direct route (a distance of 27 miles), or 50 minutes by a roundabout route (41 miles long) involving more freeway driving.

Thus far we have been concerned with the eight claimants employed by Hamm Brewing Company. We will now turn our attention to the three claimants employed by the Pabst Brewing Company. These are listed in Appendix B.

JOSEPH TROISI: Troisi had been employed by the Pabst Brewing Company for about a year. He was laid off by this employer on February 9, 1968. He did not try to bump an extra bottler at the Anheuser-Busch plant because he decided that it was too far from his home in Huntington Beach. He estimated that the distance was about 57 miles each way. He filed his initial claim for benefits as of February 11, 1968. He returned to work after being credited by the Department with the week ending February 17, 1968 as a noncompensable waiting period. This is the only week involved in the appeal as to Troisi.

The employer presented evidence purporting to show that the aforesaid distance was 58 miles each way, and that it could be traversed in from 50 minutes to one hour and ten minutes by automobile, depending on traffic conditions.

JOE SPINELLA: Spinella filed an additional claim for benefits as of February 11, 1968. Thereafter he claimed benefits for the week ending February 17, 1968 and then returned to work on February 20, 1968. He was laid off by Pabst Brewing Company on February 9, 1968 and did not try to bump an extra bottler at the Anheuser-Busch plant because he thought it was too far from his home in El Monte. The Department found that the distance each way was 35 miles. The employer agreed with this finding and submitted evidence to the effect that this distance could be traversed in 40 minutes.

HARRY PETERSON: Peterson filed an additional claim for benefits as of February 18, 1968. He claimed full benefits for the week ending February 24, 1968 and partial benefits for the week ending March 2, 1968. These are the only weeks involved in the appeal as to Peterson. He was laid off by the employer on February 16, 1968. He did not try to bump an extra bottler at the Anheuser-Busch plant because he thought that it was too far from his home in Azusa. The Department found that the distance between the two points was 50 miles and that the travel time over this distance would be from one and a half to two hours each way. The employer presented evidence purporting to show that this distance could be traversed in 45 minutes on the freeway system.

Work cards entered as exhibits for the 11 claimants involved in this case show that seven of the claimants had specific opportunities for work at Anheuser-Busch for the periods of entitlement to benefits involved, which for one reason or another they did not take advantage:

Claimant	Week of Opportunity
Peterson	--
Beattie	2-04-68
Ulmen	--
Heaslet	2-04-68
Rowe	1-28-68 & 2-04-68
Ewing	--
Mays	2-04-68
Troisi	--
Barry	1-28-68
Spinella	2-11-68
Pfirrman	1-28-68

We note in passing that an examination of the work cards also reveals that various claimants, including the four claimants who did not have specific opportunities for work at Anheuser-Busch for the periods of entitlement involved herein, did have work opportunities at other breweries during these periods of entitlement of which for one reason or another they did not take advantage. We also note that claimant Barry missed a work opportunity at Hamm Brewing Company on January 30, 1968.

The travel times testified to by the claimants are, at best, educated guesses of the times involved. The travel times presented by the employer resulted from actually driving the distances involved at representative times of day. We therefore resolve the conflict in travel times by finding that the travel times submitted by the employer more accurately represent the actual travel times.

None of the claimants, upon being interviewed by the Department, gave as a reason why they would not work at Anheuser-Busch that they might have difficulty getting to and from work because of changes in shifts. This matter was raised by the claimants for the first time at the hearings held before the referee.

REASONS FOR DECISION

Subdivision (b) of section 1257 of the code provides that an individual is disqualified for unemployment benefits if he, without good cause, refused to accept suitable employment when offered to him, or failed to apply for suitable employment when notified by a public employment office.

Subdivision (b) of section 1253 of the code provides in part that a claimant shall register for work and report at a public employment office "or such other place as the director may approve."

In the instant case the claimants were instructed by the Department to report for work to their union. Part of the responsibility of the claimants in carrying out this instruction would be to act or not act in a manner which would preclude an opportunity for suitable employment. In failing to sign up for the jobs about which they were notified that were available at Anheuser-Busch, the claimants failed to carry out this responsibility because it is evident from the above table that many job opportunities were lost because of the failure of the claimants to sign up.

In Benefit Decision No. 6554, the claimant was a marine fireman and oiler in the maritime industry. With the approval of the Department, such individuals seek employment through their union hiring hall by "throwing in" their cards as required by union regulations. In that case the claimant failed to "throw in" his card on an occasion because he did not want a particular job. This board held that such conduct resulted in a disqualification under subdivision (b) of section 1257 of the code since the failure to "throw in" the card was a failure to apply for suitable employment.

In the instant case the failure of the claimant to sign up is equivalent to the failure of the claimant in Benefit Decision No. 6554 to "throw in" his card.

We therefore are presented with the question of whether the claimants "failed to apply for suitable employment" without good cause. (Although subdivision

(b) of section 1257 of the code is in terms of a failure to apply for suitable employment "when notified by a public employment office," such condition is satisfied when, as here, the notification of suitable employment has been supplied by the union which has been furnishing appropriate employment opportunities to its members with the approval of the Department. (Benefit Decision No. 6554))

We next turn to the question of good cause. In Tax Decision No. 515 this board stated:

> "What constitutes good cause is not defined in the Act or by regulations. It must be separately determined from the facts of each situation. It has been held that good cause has no fixed meaning, but must depend upon the circumstances of each case to be determined by the sound discretion of the court. . . . The mere advancing of an excuse is not sufficient. There must be a substantial or legal cause as distinguished from an imaginary pretense. . . . Similarly, good cause means a substantial reason and one that will afford a legal excuse. . . . It is expected that where good cause is asserted, that degree of diligence men of ordinary prudence would have used under similar circumstances was exercised. . . . Factors beyond an individual's control may constitute good cause for failure to take required action where it is shown that the failure was due to fraud, accident, surprise or adventitious circumstances. . . ."

Two bases are advanced by the claimants for a finding of good cause; namely, excessive travel time and frequent shift changes which would prevent or make difficult the establishment of a means of transportation to and from work.

In Appeals Board Decision No. P-B-25 we held that no single standard of travel time can be devised and applied in all situations. We also held in that case

that travel time of one and one-half hours was not unreasonable, at least for a reasonable period of time until a problem of transportation could be otherwise solved.

In the instant case the most credible evidence is that the longest transportation time involved is an hour and ten minutes. Since the claimants expected their layoffs to be of brief duration, and such was the case, we find that the claimants did not exercise that degree of diligence which men of ordinary prudence would have used under similar circumstances in refusing to travel for the lengths of time involved. Transportation time therefore cannot form the basis for a finding of good cause.

The frequent changes of shifts was not advanced as a basis for a finding of good cause until the times of hearing before the referee. Also, it was only conjecture on the part of the claimants that shift changes would in fact take place in regard to them. Again, the claimants expected their layoffs to be of brief duration. In our judgment, and we so find, a man of ordinary prudence under such circumstances would have tried the job out, and then if transportation problems arose which could not be solved by ordinary prudence (Appeals Board Decision No. P-B-25), a decision as to what course of action to take would then be made. Instead, the claimants refused to give the job a try. Accordingly, no good cause exists.

The claimants therefore failed to apply for suitable employment when notified by a designate of the Director of the Department of Human Resources Development without good cause within the meaning of subdivision (b) of section 1257 of the code.

Under subdivision (b) of section 1260 of the code the period of disqualification to be assessed under subdivision (b) of section 1257 of the code is from two to ten weeks. In light of the facts that the period of unemployment was of short duration and since it is alleged that the claimants were available for work at four of the breweries, we find that a three-week period of disqualification is appropriate for each of the claimants herein.

Since the claimants are disqualified for all of the periods of entitlement to benefits involved herein, we need not decide the question of entitlement to benefits under subdivisions (c) and (e) of section 1253 of the code.

DECISION

The decision of the referee is reversed. The claimants are disqualified for benefits under subdivision (b) of section 1257 of the code for three weeks each as provided by subdivision (b) of section 1260 of the code. The questions of the claimants' entitlement to benefits under subdivisions (c) and (e) of section 1253 of the code are not decided.

Sacramento, California, May 26, 1970

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

ROBERT W. SIGG, Chairman

CLAUDE MINARD

JOHN B. WEISS

DISSENTING - Written Opinion Attached

LOWELL NELSON

DON BLEWETT

APPENDIX A

Referee Case Number	Name and Address of Claimant	LO Number BYB Date SSA Number	Period Involved In Appeal	Date Appeal Filed
LA-15850	Floyd W. Heaslet 16517 E. Laxford Rd Azusa CA 91702	104 12317 563-09-4976	1-28-68 to 2-10-68	2-15-68
LB-11266	John J. Rowe 8406 Stewart & Gray Rd Downey CA 90241	125 02127 547-28-9446	1-28-68 to 2-10-68	2-12-68
LB-11253	Alex M. Beattie 14944 Oakbury Dr La Mirada CA	125 12317 547-24-1447	1-28-68 to 2-17-68	2-12-68
LA-16060	Roland W. Mays 14132 E. Anola St Whittier CA 90604	016 02127 557-16-6283	1-28-68 to 2-10-68	2-15-68
LB-11630	John T. Ewing 3055 Live Oak St Walnut Park CA 90255	005 12317 563-30-3266	1-28-68 to 2-03-68	3-08-68
BK-13355	Robert J. Ulmen 181 E. Alegria Sierra Madre CA 91024	008 02127 566-24-3925	1-28-68 to 2-03-68	4-15-68
LA-16324	Wm. E. Barry 4320 W. 139th Hawthorne CA 90250	006 02057 503-07-6913	1-28-68 to 2-03-68	2-21-68
LA-15996	Jack Pfirrman 8721 Edmond Dr Rosemead CA 91770	001 12318 568-07-0743	1-28-68 to 2-10-68	2-09-68

APPENDIX B

Referee Case Number	Name and Address of Claimant	LO Number BYB Date SSA Number	Period Involved In Appeal	Date Appeal Filed
LA-16611	Harry Peterson 1035 N. Orange Ave Azusa CA 91702	104 01288 233-01-6074	2-18-68 to 3-02-68	3-12-68
LA-17362	Joe Spinella 4464 N. Esta Avenue El Monte CA 91731	018 12317 553-10-6993	2-11-68 to 2-17-68	4-05-68
LB-11874	Joseph A. Troisi 16692 Lucia Lane Huntington Beach CA 92647	042 021168 031-03-9912	2-11-68 to 2-17-68	3-12-68

DISSENTING OPINION

The Department and the referee concluded that the claimants herein were not subject to disqualification under section 1257(b) of the code. We agree with this conclusion. We are persuaded by the well-reasoned opinion of the referee which we adopt as our own and set forth as follows:

> "Section 1257(b) of the California Unemployment Insurance Code provides as follows:
>
> "'An individual is also disqualified for unemployment compensation benefits if:
>
> "'(b) He, without good cause, refused to accept suitable employment when offered to him, or failed to apply for suitable employment when notified by a public employment office.'
>
> "In the opinion of the referee, the language in this code section is clear and unambiguous. As the California Unemployment Insurance Appeals Board held in Benefit Decision No. 6612, where the statute is clear and unambiguous, its meaning may not be altered by administrative regulation. It is hardly necessary to add that it would be unacceptable for the department, the referee, or the Appeals Board to alter the meaning of a provision of the code which is clear and unambiguous. Since code section 1257(b) is such a provision, the referee must accept it as enacted by the Legislature and scrupulously avoid any strained interpretation thereof.
>
> "Code section 1257(b) provides for a disqualification for benefits for either of two, and only two, kinds of occurrences. The first type of occurrence is a refusal on the part of a claimant to accept suitable employment when offered to him. The second type is a failure on the part of a claimant to apply for suitable employment when notified by a public employment office. The first type entails an offer of employment from an employer.

"In Benefit Decision No. 5537 the Appeals Board held that a claimant may not be disqualified for benefits for refusing suitable work (as distinguished from failing to apply for work) unless an outright offer has been made by an employer.

"The second type entails an offer by the Department of Employment to a claimant of a referral to an employer.

"Neither of these types of occurrences took place in the instant cases. The record shows that the claimants did not receive an offer of employment from Anheuser-Busch or any other employer. There is no evidence that Anheuser-Busch was even interested in hiring any of the claimants. There is no evidence that Anheuser-Busch had any vacancies for bottlers. The company had some temporary bottlers working at a lesser wage than it was paying its permanent bottlers. It is perhaps likely that Anheuser-Busch did not particularly desire to increase its wage costs by accepting permanent bottlers in place of the temporary bottlers.

"The number of permanent bottlers who were laid off by Hamm and Pabst in the early part of February 1968 was several times as great as the number of temporary bottlers who were employed then by Anheuser-Busch. Obviously the bids of only a fraction of the unemployed permanent bottlers for the positions of the temporary bottlers could have been successful.

"The record does not clearly establish that every single one of the eleven claimants had sufficient seniority to compete successfully for the jobs of the temporary bottlers. It is possible that all of them could have done so, but it is unnecessary for the referee to settle this question. The fact remains that none of the claimants refused an offer of employment within the meaning of code section 1257(b) and Benefit Decision No. 5537 (cited above). Since there was no direct offer of employment from Anheuser-Busch or any other employer, there was no refusal of an offer.

"The next question is whether the claimants failed without good cause to apply for suitable work when notified by a public employment office, within the meaning of the second part of code section 1257(b). The plain fact here is that the public employment office did not notify the claimants that they would be required to apply to Anheuser-Busch for employment.

"Since there was no referral by a public employment office the failure of the claimants to apply to Anheuser-Busch for work is nondisqualifying under the second part of code section 1257(b).

"In reaching this conclusion, the referee is not unmindful of Appeals Board Benefit Decision No. 6554. In that decision, the Board considered the case of a maritime worker who had failed to 'throw in' his card at the union hiring hall for a job as a fireman. By virtue of his seniority he could have had the job by bidding for it. He did not do so. In this Board case there was a specific written agreement between the department and the claimant's union which permitted the members of the union to register for work with the union instead of the department and thereby satisfy the registration-for-work requirements of code section 1253(b). (See Appeals Board Benefit Decision No. 1327 for a further discussion of this type of contract between a union and the department.) The Board held in Benefit Decision No. 6554 that the aforesaid maritime worker had failed without good cause to apply for suitable employment when notified by a public employment office. This conclusion was predicated on the finding that the union by virtue of the aforesaid written contract was authorized to act for the department in referring claimant-members to prospective employers.

"The facts of the instant cases are sharply distinguishable from those of the board case just cited. All of the claimants herein registered for work with the department. There was no written contract between the department and their union which permitted them to satisfy the registration-for-work requirements of code section 1253(b) solely by registering with their union, and which thereby relieved them of their obligation to register for work with the department. There was no written agreement which authorized the bottlers' union to act for the department in making referrals of claimants to prospective employers. Thus it is evident that the union herein was not the agent of the department as to referrals of claimants to prospective employers, and Board Decision 6554 does not constitute a precedent for the cases at hand.

"To explore another avenue, the referee will now assume what is not the case, namely, that the union was duly authorized by the department to make referrals to prospective employers. What follows? If this fictitious assumption were valid, the referee would have to take into account Appeals Board Precedent Decision No. 6. In that case a placement interviewer in a public employment office told the claimant that there was an opening for an order filler in a grocery warehouse at a wage of $3.55 an hour on a shift extending from 6 p.m. to 3 a.m., five days a week. This job was in the claimant's usual line of work. The claimant replied to the interviewer that he preferred a daytime job. The interviewer thereupon concluded the conversation by saying to him, 'This is all I have.' She did not tell him that, in her opinion, he had refused a referral to suitable employment, that she would report the alleged refusal to the claims section of the local office, and that he might be disqualified for unemployment benefits by the claims section. The department later disqualified him for his failure to apply to the grocery company. The claimant testified that he would have applied to the employer if he had been informed that he would be disqualified.

The Appeals Board held that the claimant had not failed without good cause 'to apply for suitable employment when notified by a public employment office.' In reaching this result the Board reasoned that the placement interviewer had an obligation, which she did not carry out, to inform the claimant clearly that he was being offered a referral to an employer, and that if he rejected the referral, he might be disqualified for unemployment benefits.

"In the instant cases the union did not tell the claimants herein that their failure to try to bump temporary bottlers at Anheuser-Busch was tantamount to a failure to 'apply for suitable employment when notified by a public employment office.' The union did not tell the claimants that they might be disqualified for benefits if they failed to bid for jobs at Anheuser-Busch. On the fictitious assumption that the union was the authorized agent of the department, the union, pursuant to Appeals Board Precedent Decision No. 6 (cited above) would have been under an obligation to give such information to the claimants. It will be recalled that one of the claimants testified -- very convincingly, in the opinion of the referee -- that he would have bid for one of the jobs at Anheuser-Busch if he had known that his failure to do so might cause him to be disqualified for unemployment insurance. It is the referee's conclusion that even on the aforesaid fictitious assumption, the claimants would not under Precedent Decision No. 6 have been subject to disqualification under code section 1257(b)."

If we were to conclude that the claimants failed to apply for suitable employment when notified by a public employment office, we would hold that under the facts before us some of the claimants had good cause for failing to do so.

Section 1258 of the Unemployment Insurance Code enumerates various factors which shall be considered in determining whether work is suitable. Among those

factors are the individual's length of unemployment, prospects of securing local work in his customary occupation and the distance of the available work from his residence. In considering distance of available work, it is appropriate to consider travel time which may vary considerably depending upon the time of day, traffic and road conditions, the driving abilities of the individual and age and condition of the automobile to be used for commuting purposes.

While there is not too much variance in the testimony as to the distance of the available work from the residences of the various claimants, there is considerable conflict as to the travel time. We cannot accept our colleagues' resolution of this conflict.

Our colleagues find that "the travel times testified to by the claimants are, at best, educated guesses of the times involved. The travel times presented by the employer resulted from actually driving the distances involved at representative times of day."

Several of the claimants formerly had worked at Anheuser-Busch. Claimant Heaslet testified that he would leave his home at 6 a.m. in order to report for the shift commencing at 8:15 a.m. There were times when he arrived at the plant just in time to punch in on account of traffic and tieups. He figured it was always necessary to allow at least two hours. Claimant Mays testified to the same effect.

Claimant Rowe had never worked at Anheuser-Busch, but submitted into evidence a statement prepared by a traffic expert for an automobile club who said the claimant should allow one and one-half to two hours travel time from his home in Downey to the plant. This is in contrast to the testimony of the employer's witness that the distance is 40 miles and can be traveled in 41 minutes.

Claimant Peterson testified he had formerly worked at Anheuser-Busch and that from his home at that time it was 49 miles one way requiring a travel time of one and one-half to one and three-fourths hours. He would have

an additional three or four miles to travel from his present residence. The employer testified this distance could be traveled in 45 minutes.

It is obvious from the foregoing that at least as to some of these claimants, their testimony cannot properly be considered as "educated guesses." Rather, their testimony was based upon actual driving experience. In contrast, the employer's evidence as to travel time is inherently improbable in several instances. For example, in the case of claimant Peterson the distance was at least 50 miles which the employer's witness testified he traversed in 45 minutes. Clearly the witness must have exceeded the maximum speed limits. In some instances, the employer's witness testified he did not traverse the distance from a claimant's home to the nearest freeway and did not know the number of stop signs or traffic signals on the route. One of the employer's witnesses was a police officer who presumably is skilled in driving at high speeds in heavy traffic conditions. He also utilized a late model car in conducting his tests. Many of the claimants own older cars and expressed concern regarding the use of these cars for travel at such great distances or at high speeds.

We deem it unnecessary to make specific findings as to the travel times and distances involved. It is clear that in some instances the time and distance were excessive. Further, there would be the cost involved which at the rate of ten cents per mile would in some instances amount to $10 per day. It is very unlikely that the claimants could have arranged for car pools for such a short period of time and with the varying shifts involved.

When we consider these circumstances together with the fact that the duration of the layoff was generally believed to be from two to three weeks, it would be unreasonable to conclude that some of these claimants did not have good cause for refusing to indicate their willingness to work at Anheuser-Busch. Specifically, we would find that claimants Heaslet, Mays, Beattie, Rowe, Troisi and Peterson had good cause for refusing to apply for work at Anheuser-Busch and would not be subject to disqualification under section 1257(b) of the code.

LOWELL NELSON

DON BLEWETT