

New York State Department of Labor

A-750 200 Series

A-750-200

Index No. 840-2

NEW YORK STATE DEPARTMENT OF LABOR
UNEMPLOYMENT INSURANCE DIVISION
ADJUDICATION SERVICES OFFICE

November 19, 1940

INTERPRETATION SERVICE – BENEFIT CLAIMS
CLAIMS, REGISTRATION AND REPORTING
Holidays

Appeal Board Case No. 3203-40

REGISTRATION – PREDATING APPLICATION – FAILURE TO REGISTER ON DAY
PRECEDING HOLIDAY (SECTION 503.3 AND 504.1 OF LABOR LAW)

Predating of application for benefits filed on the day following a holiday was not allowed where the claimant was unemployed but failed to register on the day preceding the holiday.

Referee's Decision: Denial by local office of claimant's request to predate his application for benefits is sustained. (May 16, 1940)

Appeal By: Claimant

Findings of Fact: Claimant's employment terminated on Friday, December 30, 1939. He filed an application for benefits on Tuesday, January 2, 1940 and requested the local office to predate the application to January 1, 1940 because the local office was closed and he was unable to register on that day. His request was denied.

Issue: Whether claimant's application may be predated to January 1, 1940.

Appeal Board Opinion: The facts indicate that, had he been diligent in the pursuit of his rights, claimant could have filed on Saturday, December 31, 1939. He has advanced no satisfactory excuse for his failure to file on that date. In view of claimant's positive assertion before the referee that he did not work on Saturday and his admission to the referee that he could have registered on Saturday, no credence may be given to his present contention that he worked all day Saturday.

Decision: Denial by local office of claimant's request to predate his application for benefits from January 2, 1940 to January 1, 1940 is sustained. Decision of the referee is affirmed.

NEW YORK STATE DEPARTMENT OF LABOR
UNEMPLOYMENT INSURANCE DIVISION
ADJUDICATION SERVICES OFFICE

November 19, 1940

INTERPRETATION SERVICE – BENEFIT CLAIMS
MISCONDUCT
Insubordination

Appeal Board Case No. 3253-40

MISCONDUCT – REFUSAL TO VIOLATE UNION RULES (SECTION 504.2(A) OF LABOR
LAW)

Refusal to follow employer’s instructions to violate union rules does not constitute misconduct.

Referee’s Decision: Ten-week penalty waiting period rescinded. Normal waiting period applies.
(May 29, 1940)

Appeal By: Employer

Findings of Fact: Corporate employer employed claimant at \$40 per week as chauffeur of funeral hearse for eight years prior to his discharge. Claimant also took care of telephone calls and made arrangements for funerals. He was a member of union of chauffeurs in the undertaking business. Union scale for chauffeurs is \$38 per week. A few months before claimant’s discharge, claimant and employer entered into an arrangement whereby claimant was relieved of duty of driving funeral hearse and his remuneration was reduced to \$30 per week. Thereafter, employer from time to time requested claimant to drive funeral hearse. Claimant refused on the ground that it would violate union rules. He demanded additional pay for driving the hearse. On April 8, 1940, he was discharged for such refusal.

Issue: Whether claimant’s refusal to drive the hearse constituted misconduct within meaning of the Law.

Appeal Board Opinion: Record shows conclusively that claimant accepted reduction in wages with understanding that he would be relieved of duty of driving hearse. It was not misconduct to refuse to render services which were not part of his regular duties and for which he received no remuneration. He was justified in refusing to drive the hearse unless he received extra remuneration. He was not obliged to violate union rules which provided a minimum scale of \$38 per week for chauffeurs.

Decision: Claimant was not guilty of misconduct. Ten-weeks’ suspension of benefit rights rescinded. Decision of referee is affirmed.

NEW YORK STATE DEPARTMENT OF LABOR
UNEMPLOYMENT INSURANCE DIVISION
ADJUDICATION SERVICES OFFICE

November 19, 1940

INTERPRETATION SERVICE – BENEFIT CLAIMS
REFUSAL OF SUITABLE EMPLOYMENT
Distance

Appeal Board Case No. 3293-40

REFUSAL OF SUITABLE EMPLOYMENT – INADEQUATE TRANSPORTATION FACILITIES –
VOLUNTARY MOVING TO ANOTHER LOCALITY (SECTION 506.1 OF LABOR LAW)

Refusal of suitable employment on account of inconvenient transportation facilities was held not justified when such inconvenience was occasioned by claimant's voluntarily moving to another locality which was 2½ miles from the place of employment.

Referee's Decision: Claimant refused an offer of suitable employment (June 24, 1940)

Appeal By: Claimant.

Findings of Fact: On May 1, 1940 local office referred claimant to a job as operator at a factory at Oneonta. She refused the job and local office suspended her benefit rights. She did not object to the nature of the work or the wages. Claimant previously had resided in Oneonta and had been employed at the same factory. At the time she filed application for benefits she resided in Delhi State, about 2½ miles from prospective employer's factory. The immediate vicinity of Delhi Stage has no employment opportunities available to claimant. Public bus operates on fixed schedule between Delhi Stage and Oneonta. Reason advanced by claimant for refusing the job is that no adequate means of transportation is available between her residence and the place of employment. She stated to the referee that she had no intention of taking the job and would accept no job at the time of the hearing. In August 1940, claimant was working at the same factory, had moved from Delhi Stage and was living near the placement of employment.

Issue: Whether the job offered claimant was at an unreasonable distance from her residence.

Appeal Board Opinion: Board does not believe that claimant is justified in refusing to accept an offer of employment for which she is fitted by training and experience merely because of inconvenient transportation facilities, when such inconvenience was occasioned by claimant's voluntarily moving to another locality. Since claimant voluntarily removed herself from the location of her work for reasons best known to herself, the distance from her work cannot now be the determining factor with regard to the suitability of the employment. An applicant for employment benefits is expected to exert some reasonable effort to reach a place of possible employment.

Decision: Claimant refused an offer of employment without good cause within the meaning of the Law. Suspension of benefit rights upheld. Decision of referee affirmed.

A-750-207

Index No. 1325-3

NEW YORK STATE DEPARTMENT OF LABOR
UNEMPLOYMENT INSURANCE DIVISION
ADJUDICATION SERVICES OFFICE

November 19, 1940

INTERPRETATION SERVICE – BENEFIT CLAIMS
STRIKE, LOCKOUT, etc.

Appeal Board Case No. 3103-40STRIKE, LOCKOUT OR OTHER INDUSTRIAL CONTROVERSY – TERMINATION OF STRIKE – AGREEMENT WITH DESIGNATED BARGAINING AGENCY (SECTION 504.2(b) OF LABOR LAW)

Industrial controversy terminated when employer entered into agreement with the union which was designated as sole collective bargaining agency as the result of a secret election before the National Labor Relations Board pursuant to written agreement executed by employer and disputing unions, even though minor number of dissenting employees picketed establishment thereafter.

Referee's Decision: Claimant lost his employment because of an industrial controversy in the establishment in which he was employed. (May 11, 1940)

Appeal By: Claimant

Findings of Fact: Claimant was employed by a manufacturer employing over 100 persons. Prior to February 15, 1940 a controversy existed between an A.F. of L. and an independent union with respect to which of the two should be the sole collective bargaining agency of the employees. Because of said controversy a strike had existed from February 2, 1940 to February 13, 1940 during which time claimant was unemployed. On February 15, 1940 employer and both unions executed written agreement providing that secret election be held before the National Labor Relations Board to determine the sole collective bargaining agency and that during the term of the contract to be entered into between the employer and the union certified, the two unions would not call any strike. On February 21, 1940 the agreement was modified to provide for a closed shop, and that all employees would have to be members of the chosen union. As a result of the election held on February 29, 1940, the National Labor Relations Board certified that a majority of the employees had chosen the independent union. On March 6, 1940, employer and independent union entered into written agreement providing for a closed shop, that all employees should become members of the independent union, and that within one week the employer would continue in its employ only such members. Notice of such contract was posted on the bulletin board. On March 14, 1940, about 30 employees, members of the A.F. of L. union, refused to join the independent union, went out on strike and began to picket the premises. On said date, claimant voluntarily terminated his employment. He did not join the independent union or did he participate in the picketing and strike activities of the A.F. of L. union. The employer instituted an action in Supreme Court to enjoin the A.F. of L. union and its members from picketing and from other relief incidental thereto. The Court granted temporary injunction and held in written opinion that, upon certification by the N.L.R.B. of the independent union as sole bargaining agency, the labor dispute had been terminated. Said decision was affirmed by the Appellate Division.

Issue: Whether claimant lost his employment by reason of an industrial controversy within the meaning of the Law.

Appeal Board Opinion: On March 14, 1940, the date when claimant's employment terminated, no industrial controversy existed at the employer's establishment. The controversy which had existed was terminated prior to that date. To hold otherwise would render meaningless (1) the formal written agreement, executed in good faith by employer and the two unions; (2) the secret election before the N.L.R.B.; (3) the latter's certification of the independent union as the designated sole collective bargaining agency and (4) the ensuing written agreement between the employer and the independent union. The mere fact that a small minority of the employees

refused to accede to the final determination, fairly and equitably arrived at, does not mean that the labor dispute continued to exist. Furthermore, claimant did not participate in the strike and picketing activities of said employees.

Decision: Claimant did not lose his employment because of an industrial controversy in the establishment in which he was employed. Decision of referee reversed.

A-750-214

Index No 715.2

NEW YORK STATE DEPARTMENT OF LABOR
UNEMPLOYMENT INSURANCE DIVISION
ADJUDICATION SERVICES OFFICE

December 5, 1940

INTERPRETATION SERVICE- BENEFIT
CLAIMS
AVAILABILITY AND CAPABILITY
Domestic circumstances

Appeal Board Case No 3612-40

AVAILABILITY - REFUSAL OF REFERRAL - CARE OF INFANT

Claimant who cannot accept referral because she must take care of child is not available for employment.

Referee's Decision: Claimant is not available for employment (August 3, 1940).

Appeal by: Claimant

Findings of Fact: Claimant was referred to employment in an occupation in which she had previously been employed for 15 years. She reported to place of employment but refused the job offered, allegedly because she was unwilling to join the union. Claimant has a baby which was 3 months old at that time. She was taking care of the baby and so stated to the employer. She testified before the referee that she had no one to take care of the infant, who was breast fed, and therefore she would not be able to work at that time.

Issue: Whether claimant was available for employment.

Appeal Board Opinion: Claimant maintains on appeal that her unwillingness to join the union was the sole cause of her refusal to accept the job offered. She states that she could have worked and left the child with someone to be cared for. Board believes there is ample basis for referee's ruling that claimant was unavailable for employment because she had to take care of her baby. In view of claimant's admission, her contention that she did not know that the question of her leaving the baby was in issue cannot avail her on appeal. If claimant's situation has changed so that she is presently in a position to accept employment, she may indicate that fact to the local office, which will make proper inquiry,

Decision: Claimant's benefit rights were properly suspended on the ground that she was unavailable for employment. Decision of referee affirmed.

NEW YORK STATE DEPARTMENT OF LABOR
 UNEMPLOYMENT INSURANCE DIVISION
 ADJUDICATION SERVICES OFFICE
 DECEMBER 1940

INTERPRETATION SERVICE - BENEFIT CLAIMS
 AVAILABILITY AND CAPABILITY

Willingness to work

AVAILABILITY - CLAIMANT'S STATEMENT OF UNWILLINGNESS TO "TAKE FULL-TIME JOB"
RETRACTED ON SAME DATE

A suspension of benefit rights on the ground of unavailability was rescinded by the Appeal Board in the case of a claimant who stated that she "could not take full-time job now" but on the same date changed her mind in order not to forfeit her benefit rights and held herself available for full-time employment.

A.B. 3243-40

Referee's Decision: Claimant was unavailable for employment. Suspension of benefit rights sustained. (6/5/40)

Appealed By: Claimant.

Findings of Fact: In October 1939, claimant left her employment to take a vacation and to get married. She was married on January 27, 1940 and opened a home. She applied for benefits on February 27, 1940, failed to report as instructed on March 11, and filed an additional claim for benefit on March 15. On the face of her application claimant made the notation: "Left to be married. Cannot take full-time job now". On the same date, employment interviewer advised her that her benefit rights would probably be suspended on grounds of unavailability for employment. Claimant thereupon stated that, in order not to forfeit her benefit rights, she was ready and willing to accept full-time employment and requested withdrawal of her application for part-time employment.

Issue: Whether claimant was available for employment.

Appeal Board Opinion: It is not contended that claimant is physically incapable of performing work. The test of her availability is therefore her state of mind of being ready and willing to accept employment when offered. Her state of mind can be judged either by her expression on the subject or by her conduct. Claimant clearly expressed her readiness and willingness to accept full-time employment on the day of filing when she discovered that otherwise unemployment insurance benefits would not be payable. Her prior conduct is not inconsistent with her claim of being ready and willing to accept employment. There was nothing in the marital status of claimant, nor was she committed to any other arrangement, which would prevent her from accepting full-time employment.

Decision: Claimant was available for employment on the date of filing. Suspension of benefit rights rescinded. Decision of Referee is reversed.

NEW YORK STATE DEPARTMENT OF LABOR
UNEMPLOYMENT INSURANCE DIVISION
ADJUDICATION SERVICES OFFICE

April 7, 1941

INTERPRETATION SERVICE – BENEFIT CLAIMS
CLAIMS, REGISTRATION & REPORTING
Misrepresentation

Appeal Board Case No. 3980-40

MISREPRESENTATION – SEVERAL OCCASIONS – SEVERAL PENALTIES
(SECTION 504.2 OF LABOR LAW)

Four separate misrepresentations as to unemployment in four separate weeks for which benefits were sought were separate offenses and subjected claimant to four extended waiting periods.

Referee's Decision: Claimant is subject to one extended waiting period. (September 13, 1940)

Appeal By: Industrial Commissioner

Findings of Fact: Claimant is a furrier. He filed an original claim for benefits and three additional claims in the benefit year starting April 1, 1939. On each filing the claimant certified, falsely, to weeks of total unemployment. The local office imposed four extended waiting periods. The referee modified the action of the local office by substituting a single extended waiting period.

Appeal Board Opinion: Claimant does not appeal from the finding of the referee that he committed four wilful misrepresentations on four separate occasions. Section 504.2 of the Law prescribes an extended waiting period for each offense. Claimant's offense is complete when he certifies that during the preceding week he was totally unemployed and had no earnings in excess of the statutory limit. Consequently, the local office was fully justified in imposing an extended waiting period for each misrepresentation. The penalty for misrepresentation is prescribed by statute. The referee is without power to minimize such penalty.

Decision: The four extended waiting periods imposed by the local office are sustained. Decision of the referee is reversed. (February 7, 1941)

Comment

See A-710-21 for imposition of wilful misrepresentation

A-750-258

Index No. 1170-1

NEW YORK STATE DEPARTMENT OF LABOR
UNEMPLOYMENT INSURANCE DIVISION
ADJUDICATION SERVICES OFFICE

December 18, 1941

INTERPRETATION SERVICE – BENEFIT CLAIMS
MISCONDUCT
Neglect of duty

Appeal Board Case No. 4655-41

MISCONDUCT – DERELICTION OF DUTY (SECTION 504.2(a) OF LABOR LAW)

Falling asleep by a hospital attendant while attending a patient afflicted with suicidal tendencies constitutes misconduct.

Referee's Decision: Ten-week waiting period imposed by local office for misconduct in connection with employment rescinded (1/3/41)

Appeal By: Industrial Commissioner

Findings of Fact: Claimant who was employed as a hospital attendant was assigned to attend a critically ill patient afflicted with suicidal tendencies. Claimant's term of duty was from 3:00 p.m. to 11:00 p.m. The patient required constant attendance and observation. One night at about 7:00 p.m., the night supervisor caught claimant sleeping while on duty. Claimant was discharged for the act. Claimant contends that his conduct resulting in his discharge was not deliberate because he dozed off to sleep while reading a newspaper and, moreover, a fine which had been imposed against him consisting of the loss of twenty days' pay, should be deemed ample punishment.

Appeal Board Opinion: The very nature of claimant's assignment required his constant attention to and observation over a critically ill patient afflicted with suicidal tendencies. Claimant was fully aware that the slightest dereliction of duty under such circumstances might cause grave consequences to the patient himself as well as to the other inmates of their institution. It was, therefore, incumbent upon claimant to keep awake and to exercise the utmost vigilance over the patient's behavior during his trick of duty. Claimant's act clearly constituted misconduct within the meaning of the Law.

Decision: Claimant lost his employment due to misconduct and the extended waiting period imposed by the local office is upheld. The decision of the Referee is reversed. (5/9/41)

A-750-260

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NEW YORK STATE DEPARTMENT OF LABOR
UNEMPLOYMENT INSURANCE DIVISION
ADJUDICATION SERVICES OFFICE
DECEMBER 18, 1941

INTERPRETATION SERVICE - BENEFIT CLAIMS
VOLUNTARY QUIT
Wages - Increase refused

Appeal Board Case Number 5703-41
VOLUNTARY QUIT - DENIAL OF REQUEST FOR ADDITIONAL WORK
(SECTION 506.2 OF LABOR LAW)

Good cause does not exist for voluntary leaving employment of 34 hours per week where the employer, due to shortage of materials, cannot furnish 40 hours work per week.

Referee's Decision: Initial determination imposing a disqualification period six weeks against claimant's benefit rights on the ground that he voluntarily left his employment without good cause is sustained. (6/20/41)

Appealed By: Claimant.

Findings of Fact: Claimant, an upholstery tacker, had been employed by the employer for over four years. He was paid at the rate of sixty cents per hour and worked together with another

employee until March 1941 when the latter was inducted into the army. Claimant states that the employer informed him that he could give 40 hours work each week if he did not replace his former co-worker. Claimant thereafter, however, received from 30 to 34 hours per week. It appears that this was the employer's slack period and for a short time there was little work because the employer could not procure certain materials which were necessary in connection with claimant's work. Claimant's former co-worker was not replaced by a regular employee. Claimant informed the employer that if he could not have 40 hours work per week, he was leaving the work and claimant accordingly left on May 23, 1941. Claimant had no definite prospect of obtaining work elsewhere, although he filed an application for work with a company which manufactures arms.

Opinion: It is undisputed that claimant voluntarily left his employment. The only question to be decided is whether such leaving was without good cause within the meaning of Section 506, Subdivision 2 (c) of the Labor Law. Claimant had no objection to the rate of pay or to the conditions of the work in his employer's establishment. His only reason for leaving the employment was that the employer refused to give him a 40-hour week so that his earnings would amount to \$24 weekly. His alleged grievance is that the employer promised to make this arrangement after his co-worker had been inducted into the army. It appears, however, from claimant's own testimony that because of the slackness of work and shortage of materials the employer did not have such additional work for him. It cannot be said that the amount of claimant's earnings on a thirty to thirty-four hour weekly basis were so low as to justify a finding that he left his employment with good cause within the meaning of the Unemployment Insurance Law. Under the circumstances of this case, we believe that the Referee correctly ruled that claimant left his employment without good cause within the meaning of Section 506.2(c) of the Labor Law.

Decision: The imposition of the disqualification period by the local office is sustained. The decision of the Referee is affirmed. (8/12/41)

A-750-261

Index 1140-2

NEW YORK STATE DEPARTMENT OF LABOR
UNEMPLOYMENT INSURANCE DIVISION
ADJUDICATION SERVICES OFFICE
JANUARY 9, 1942

INTERPRETATION SERVICE - BENEFIT CLAIMS
MISCONDUCT

Disloyalty, attitude toward employer or work

Appeal Board Case Number 4663-41

MISCONDUCT - ATTEMPT TO OBTAIN EMPLOYER'S BUSINESS (SECTION 504.2 (a) OF
LABOR LAW)

Attempt by an employee to take business away from his employer constitutes misconduct.

Referee's Decision: Claimant was discharged because of misconduct. (1/9/41)

Appealed By: Claimant.

Findings of Fact: Claimant, a painter, and others performing work for their employer, a painting contractor, at certain premises, attempted to obtain the work for themselves by representing to the owner of the premises that they could do the work cheaper than their employer. Upon discovery, the employer discharged claimant.

Appeal Board Opinion: We have previously held that a penalty period based on a charge of misconduct should not be imposed except in cases where it is clearly shown that the employee has committed some overt act which is, in its very nature, detrimental to the interests of the employer. (Appeal Board 664-39; 2812-40) We are of the opinion that the action of the claimant did constitute such an overt act. His effort to take away his employer's business by his representation that he could do the same work at a cheaper rate was detrimental to his employer's interests and constituted misconduct within the meaning of the law.

Decision: Claimant was discharged because of misconduct, and the extended waiting period is upheld. Decision of the Referee is affirmed. (4/15/41)

A-750-267

Index No 715.1

NEW YORK STATE DEPARTMENT OF LABOR
UNEMPLOYMENT INSURANCE DIVISION
ADJUDICATION SERVICES OFFICE

January 20, 1942

INTERPRETATION SERVICE-BENEFIT
CLAIMS
AVAILABILITY AND CAPABILITY
Evidence of

Appeal Board Case No.5264-41

AVAILABILITY -VOLUNTARILY LEAVING EMPLOYMENT TO PERFORM DOMESTIC DUTIES

Voluntary leaving of employment to devote entire time to domestic duties is withdrawal from the labor market and constitutes unavailability for employment.

Referee's Decision- The suspension of claimant's benefit rights for unavailability is sustained (4-22-41)

Appeal by: Claimant

Findings of Fact: Claimant for thirteen years was employed as a packer in a camera establishment. She was married in 1936. Prior to December 1940 She resided in a city where her employer's establishment was located. In December, 1940, she moved to a point twelve miles distant from her place of employment and her husband transported her to and from work in his automobile. Claimant voluntarily resigned her position on or about March 29, 1941, advising her employer that she no longer cared to work because she wanted to devote her entire time to her domestic duties. She repeated this reason to the local office placement interviewer advising him also that she found it difficult to travel back and forth to work since moving as aforesaid. Claimant admitted to the Referee that she made the above statements to her employer and to the placement interviewer. She contends, however, that the true reasons she quit her employment were that she was seriously inconvenienced by reason of being required to wait for her husband to transport her to and from work and because of lack of

adequate means of transportation from her new residence to her place of employment. Claimant expressed a willingness to return to private employment.

Appeal Board Opinion: Claimant's statements to her employer and to the interviewer constitute an unequivocal admission that she voluntarily quit her job to devote herself to her domestic duties. In so doing, she withdrew from the labor market and thereby became unavailable for employment. We agree with the conclusion reached by the referee that the question of securing proper transportation facilities to travel to and from her place of employment was a mere afterthought. The local office, therefore, properly suspended claimant's benefit rights because she was unavailable for employment. At the referee's hearing claimant professed a willingness to return to private employment. The referee properly held that if the claimant now feels she is available for employment, she may indicate that fact to the local office which will make proper inquiry.

Decision: The suspension imposed by the local office for unavailability and the ruling of the referee were proper. Decision of the referee is affirmed. (6~2-41)

A-750-272

Index 1320E-1

NEW YORK STATE DEPARTMENT OF LABOR
UNEMPLOYMENT INSURANCE DIVISION
ADJUDICATION SERVICES OFFICE
JANUARY 20, 1942

INTERPRETATION SERVICE - BENEFIT CLAIMS
STRIKE, LOCKOUT, ETC.

Unemployment due to industrial controversy

Appeal Board Case Number 4341-40

INDUSTRIAL CONTROVERSY - SAME ESTABLISHMENT - NON-STRIKING MEMBERS OF
ONE UNION REFUSING TO CROSS PICKET LINES OF STRIKING MEMBERS OF
ANOTHER UNION
(SECTION 504.2 (b) OF LABOR LAW)

Non-striking members of one union becoming unemployed because of refusal to cross picket line of striking members of another union in same establishment are subject to the extended waiting period.

Referee's Decision: Claimants lost their employment by reason of an industrial controversy and the imposition of an extended ten-week waiting period is sustained. (11/1/40)

Appealed By: Claimants.

Findings of Fact: The employer is a household furniture manufacturer and employs, among others, woodworkers and upholsterers. The woodworkers are members of the Furniture Workers Union, Local 76B. The upholsterers are members of the Upholsterers Union, Local 76. Both locals are affiliated with the United Furniture Workers of America. The eight claimants involved herein are woodworkers and members of Local No. 76B. The employer refused to renew his contract with Local No. 76 which expired on August 31, 1940. Local 76 went out on strike on September 3, 1940, the first working day immediately following the termination of said contract and commenced picketing the employer's business. No dispute existed with respect to

Local 76B and its members did not participate in the picketing. Although there was woodworking work available in the employer's establishment, claimants, members of Local 76B, refused to cross the picket line and became unemployed. On or about September 26, 1940, the employer commenced an action to enjoin Local 76 from picketing its premises. The court denied the employer's application for an injunction and held that the dispute between the employer and Local 76 is a labor dispute within the meaning of Section 876-a of the Civil Practice Act. Claimants filed applications for unemployment insurance benefits and the local office imposed extended ten-week waiting periods against each of them on the ground that they lost their employment by reason of an industrial controversy in the establishment in which they were employed.

Appeal Board Opinion: Although no controversy existed between the employer and Local 76B, of which claimants were members, and industrial controversy did exist with respect to Local 76. The members of both unions were engaged by the same employer in the same establishment (as distinguished from the facts in Appeal Board Case No. 274-38). There was no lack of woodworking work in the establishment. Claimants became unemployed only because they refused to cross the picket line of Local 76. Clearly, they lost their employment because of an industrial controversy in the establishment in which they were employed.

Decision: The initial determination of the local office is sustained. The decision of the referee is affirmed. (3/3/41)

A-750-279

Index No. 1655-4

NEW YORK STATE DEPARTMENT OF LABOR
UNEMPLOYMENT INSURANCE DIVISION
ADJUDICATION SERVICES OFFICE

March 23, 1942

INTERPRETATION SERVICE – BENEFIT CLAIMS
VOLUNTARY LEAVING

Health, affected by working conditions

Appeal Board Case No. 6143-41

VOLUNTARY LEAVING – WORKING CONDITIONS – ADVERSELY AFFECTING HEALTH
NOT ESTABLISHED (SECTION 506.2 OF LABOR LAW)

Failure to substantiate claimed adverse affect of working conditions on health resulted in finding that good cause for voluntary leaving did not exist. Medical Certificate, because obtained after interview at Insurance Section, had little weight.

Referee's Decision: Initial determination disqualifying claimant for voluntarily leaving employment without good cause is sustained. (8/26/41)

Appeal By: Claimant

Findings of Fact: Claimant worked for two years as a quotation clerk at a stock exchange. Her hours of work were from 9:30 a.m. to 3:30 p.m. and half a day on Saturdays. On July 11, 1941, she voluntarily left this employment. On July 21, 1941 she informed the interviewer at the insurance section of the local office that she left this employment because the work was "nerve racking." Claimant never complained to the employer that the work made her nervous. She did

not have any prospects of other employment when she left her position. In support of her contention that the work made her nervous, claimant produced before the referee a medical certificate dated July 21, 1941.

Appeal Board Opinion: The circumstances under which claimant left her job do not constitute good cause. During the two years of her employment, claimant never complained to the employer with respect to her duties. She never requested a change in her position. She did not have any reasonable prospects for other employment at the time of her separation. We cannot attach great weight to the medical certificate because it was obtained after claimant's interview at the insurance section.

Decision: Initial determination suspending claimant's benefit rights for voluntarily leaving employment without good cause is sustained. Decision of the referee is affirmed. (11/1/41)

A-750-282

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NEW YORK STATE DEPARTMENT OF LABOR
UNEMPLOYMENT INSURANCE DIVISION
ADJUDICATION SERVICES OFFICE
MARCH 23, 1942

INTERPRETATION SERVICE - BENEFIT CLAIMS
VOLUNTARY LEAVING
Vacation

Appeal Board Case Number 6114-41

VOLUNTARY LEAVING - DENIAL OF REQUEST TO CHANGE VACATION PLANS
(SECTION 506.2 OF LABOR LAW)

Denial of request to change vacation plans was not found good cause for voluntary leaving of employment.

Referee's Decision: Initial determination disqualifying claimant for voluntary leaving employment without good cause is overruled. (8/6/41)

Appealed By: Industrial Commissioner.

Findings of Fact: Claimant worked for twelve and a half years as secretary to the president of a corporation. It was a rule of the employer's establishment to schedule vacations of employees in the early part of the calendar year. Claimant's vacation was scheduled for July 1941 at her request. Claimant was ill in April but had recovered in May, although still in a run-down condition. She requested her employer to advance her vacation to May and also for permission to take off two additional weeks. These requests were denied, whereupon claimant resigned on May 9, 1941. Claimant filed for benefits on June 20, 1941. Her benefit rights were suspended by the local office for voluntarily leaving employment without good cause. At the hearing before the referee claimant admitted that the reason for requesting a change in vacation was not because of illness, but because she had the opportunity of taking an automobile trip if she could change her vacation period.

Appeal Board Opinion: Claimant did not advance her illness as a reason when she requested a change in her vacation plans. It appears from claimant's own testimony that her alleged illness did not prompt such a request but rather the fact that she had an opportunity to take an

automobile trip at that time. When this request was denied, claimant preferred to resign than change her vacation plans. We cannot escape the conclusion that the real reason for claimant's leaving was the denial of her request for change of vacation. Under the circumstances of this case, we do not deem this to be good cause for her voluntary leaving.

Decision: Local office properly suspended claimant's benefit rights for voluntary leaving without good cause. Decision of referee is reversed. (10/27/41)

A-750-285

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NEW YORK STATE DEPARTMENT OF LABOR
UNEMPLOYMENT INSURANCE DIVISION
ADJUDICATION SERVICES OFFICE
MARCH 23, 1942

INTERPRETATION SERVICE - BENEFIT CLAIMS
REFUSAL OF SUITABLE EMPLOYMENT
Offer, what constitutes

Appeal Board Case Number 4438-40

REFUSAL OF EMPLOYMENT OFFER - INABILITY TO HIRE BECAUSE OF UNION
AGREEMENT
(SECTION 506.1 OF LABOR LAW)

An offer of employment was not made because prospective employer could not employ claimant because of union agreement.

Referee's Decision: Initial determination suspending claimant's benefit rights for refusal to accept suitable employment is sustained. (12/3/40)

Appealed By: Claimant.

Findings of Fact: Claimant worked in a non-union shop. The shop was unionized and, because of claimant's refusal to join the union, his services were terminated. The local office referred claimant to his former job. Claimant contacted the employer but was not re-hired. Thereafter the local office suspended claimant's benefit rights for refusal to accept an offer of employment. At the hearing before the referee the employer's representative testified that although desirous of re-employing claimant they were unable to do so in view of their union agreement.

Appeal Board Opinion: The record fails to establish that claimant refused an offer of employment. He accepted the referral to his former employer. It appears that although a job might have been open, the employer was not in a position to offer claimant employment because of its agreement with the union. Consequently no offer of employment was made to the claimant and there could be no refusal. There is nothing to indicate that claimant was unwilling to return to his former employment.

Decision: Local office determination in suspending claimant's benefit rights for refusal of employment is overruled. Decision of the referee is reversed. (5/13/41)

NEW YORK STATE DEPARTMENT OF LABOR
UNEMPLOYMENT INSURANCE DIVISION
ADJUDICATION SERVICES OFFICE

APRIL 8, 1942

INTERPRETATION SERVICE - BENEFIT CLAIMS
VOLUNTARY LEAVING

Health, affected by working conditions

Appeal Board Case Number 6275-41

VOLUNTARY LEAVING- WORKING CONDITIONS ADVERSELY AFFECTING HEALTH
(SECTION 506.2 OF LABOR LAW)

Working conditions which adversely affected health constituted good cause for voluntary leaving of employment.

Referee's Decision: Initial determination disqualifying claimant for voluntary leaving employment without good cause is sustained. (9/4/41)

Appealed By: Claimant.

Findings of Fact: Claimant was employed as a secretary and stenographer, receiving \$22.00 per week. Because of the large amount of work handled by claimant, the employer provided her with three other girls to assist her in the performance of her duties. These girls were inexperienced and accordingly claimant was required to carry the major burden of the work and compelled to work overtime. On or about August 1, 1941 a heated discussion ensued between claimant and the employer over the claimant's handling of a delinquent account. There was no question but that claimant handled the matter in accordance with the usual rules prevailing in the office. Because of her highly nervous condition, claimant in the heat of the argument resigned her position.

Appeal Board Opinion: The local office does not question claimant's availability for employment. Concededly she is willing to work under conditions that commonly prevail in the labor market. We believe that under the circumstances of this case, claimant had good cause in the interest of her health and well-being for voluntarily leaving her employment.

Decision: Claimant left her employment with good cause. Initial determination of local office is overruled. Decision of referee is reversed. (1/26/42)
