

# New York State Department of Labor

## A-750 400 Series

A-750-400

Index No. 1650D-1

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

February 13, 1943

INTERPRETATION SERVICE – BENEFIT CLAIMS  
VOLUNTARY LEAVING OF EMPLOYMENT  
Grievances – other

Appeal Board Case No. 7927-42

VOLUNTARY LEAVING OF EMPLOYMENT – DISSATISFACTION WITH EMPLOYER'S  
METHOD OF OPERATION  
(SECTION 506.2 OF THE LABOR)

Dissatisfaction with employer's reasonable method of operation of business was not good cause for voluntary leaving of employment.

Referee's Decision: Initial determination disqualifying claimant for voluntary leaving of employment without good cause is sustained. (9/18/42)

Appeal By: Claimant

Findings of Fact: Claimant worked for an employer engaged in defense work for six months prior to January 16, 1942. Claimant was dissatisfied with the manner in which the employer's establishment was operated. He contended that the piece-work rates were low, that he lost time being transferred from one machine to another, that he had to be satisfied with \$35 a week while other employees earned \$75 a week, and that he was not given credit for spoiled work. On January 9, 1942 claimant requested his superior to assign him to a sixteen-hour daily work schedule. This request was denied. On January 16, 1942 claimant was reprimanded for mixing good work with twelve pieces of scrap in order to obtain credit for the spoiled work. After this incident claimant voluntarily left this employment, although he had no prospects for other employment. It was a rule in the establishment that employees would not receive in excess of their basic rate for work which was spoiled through their own carelessness.

Appeal Board Opinion: Claimant voluntarily left his employment because he was dissatisfied generally with the manner in which the employer operated the establishment. The rules in the plant were not unreasonable and applied to all of the employees alike. Furthermore, it does not appear that claimant's piece-work rate was substantially less favorable than the wages

prevailing for similar work in the locality. Claimant's reasons for leaving his employment do not constitute good cause within the meaning of law.

Decision: The initial determination disqualifying claimant for voluntarily leaving his employment without good cause is sustained. The decision of the referee is affirmed. (12/14/42)

A-750-402

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

February 19, 1943

INTERPRETATION SERVICE-BENEFIT CLAIMS  
AVAILABILITY AND CAPABILITY  
Evidence of

A.B. 7959-42

AVAILABILITY -RESTRICTION OF EMPLOYMENT WITHIN WALKING DISTANCE FROM HOME

Restricting employment to establishments within walking distance from home, where there was no reasonable probability of obtaining it, constituted unavailability.

Referee's Decision: Initial determination suspending claimant's benefit rights for unavailability is sustained. (10/19/42)

Appealed by: Claimant.

Findings of Fact: On June 3, 1942 claimant, a dress finisher, filed an application for benefits. Her last employer's establishment was located a few blocks from her residence, which made it possible for her to be at home from 12:00 noon to 1:30 in the afternoon to prepare meals for her family. Her children are five, nine and eleven, respectively. The youngest child attends kindergarten. Her highest earnings with this employer were \$10 a week. On July 1, 1942 claimant was referred to a job as a dress finisher paying a salary of \$20 to \$25 a week, depending upon her speed. She refused to accept the referral for the following reasons: first, she was under the impression that she could not earn more than \$10 a week with the prospective employer; second, it would not pay her to work for this salary because she has to hire a maid to take care of her children; third, the prospective employer's establishment is too far distant for her to travel to her home at noontime to prepare meals for her children; and, fourth, her sick husband requires her care and attention. Claimant was willing to accept a job paying at least \$15 a week if the prospective employer's establishment were within walking distance from her home. This would permit her to attend to her family during lunchtime. However, if she were required to travel a greater distance to reach the employer's establishment, she refused to accept a job unless it paid \$25 a week. Under the latter circumstances, she would be required to pay a maid \$8 a week to take care of her children. There are available to claimant very slight employment opportunities within walking distance from her home, other than her former employer, who because of business conditions had no work for claimant from December 1941 to at least October 3, 1942. Claimant was unemployed during this period.

Appeal Board Opinion: Claimant refuses to accept any employment which is not within walking distance of her home unless it pays at least \$25 a week. Considering the fact that in her previous employment her maximum production amounted to about \$10 a week, it is questionable whether this contention was made in good faith. Aside from her former employer, there is very little likelihood that employment can be obtained for her within walking distance from her home. By reason of her domestic circumstances, claimant has restricted her field of employment to such an extent that she cannot be considered available for employment within the meaning of the law.

Decision: The initial determination suspending claimant's benefit rights as of June 3, 1942 on the ground that she was unavailable for employment is sustained. The decision of the referee is affirmed. (12/28/42)

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A-750-403

Index No. 1650D-4

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

February 19, 1943

INTERPRETATION SERVICE – BENEFIT CLAIMS  
VOLUNTARY LEAVING OF EMPLOYMENT  
Grievances – Other

Appeal Board Case No. 7559-42

VOLUNTARY LEAVING OF EMPLOYMENT – AS PROTEST TO CO-WORKER'S DISMISSAL  
(SECTION 506.2 OF LABOR LAW)

Voluntary leaving as protest against co-worker's dismissal was without good cause.

Referee's Decision: Initial determination disqualifying claimant for voluntary leaving of employment without good cause is sustained. (6/11/42)

Appeal By: Claimant

Findings of Fact: Claimant induced his co-worker to object to the performance of certain menial work required of him, as the result of which the co-worker's employment was terminated. Upon learning of the co-worker's separation, claimant voluntarily left his job in order, as he stated, "to ease his conscience," feeling that his advice to the co-worker to refuse to perform the menial work was the cause of the co-worker's loss of employment. Claimant thereupon determined to quit as a protest, hoping thereby to bring about restoration of both the co-worker and himself to the payroll. The employer, however, did not recall either of the men. At the time of his separation claimant had no definite prospect of other employment.

Appeal Board Opinion: The Board adopts the decision of the referee as the decision of the Board. Upon consideration of the facts, it appears that claimant left his employment partly because of a feeling of contrition at having persuaded a co-worker to protest an assignment given him, with the consequent loss of the co-worker's job, and partly in the expectation that by quitting himself the employer would be compelled to rehire both men. However, commendable claimant's action may have been as an expression of loyalty to his co-worker, it does not constitute good cause for voluntary separation of employment. Without a definite prospect of

employment elsewhere, claimant's failure to have continued in his employment cannot be excused.

Decision: Initial determination disqualifying claimant for voluntary leaving of employment is sustained. The decision of the referee is affirmed. (10/13/42)

A-750-404

Index No. 1650D-2

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

February 19, 1943

INTERPRETATION SERVICE – BENEFIT CLAIMS  
VOLUNTARY LEAVING OF EMPLOYMENT  
Grievances – other

Appeal Board Case No. 7921-42

VOLUNTARY LEAVING – DISSATISFACTION WITH SUPERVISION SYSEM  
(SECTION 506.2 OF LABOR LAW)

Dissatisfaction with employer's system of supervision over personnel, which was reasonable, was not good cause for voluntary leaving.

Referee's Decision: Initial determination disqualifying claimant for voluntary leaving of employment without good cause is overruled. (11/30/42)

Appeal By: Industrial Commissioner

Findings of Fact: Claimant, a maker of artificial flowers, was employed for three years in a small shop in which four operators were employed. Her maximum production was twelve dozen per hour. She was laid off on May 29, 1942 and filed an application for benefits. In July 1942 she was referred to an accepted a job paying \$16 a week for a maker of artificial flowers in a factory in which about six hundred employees worked. The employees were kept under constant surveillance by a floor lady to speed production. The quota of work fixed for claimant was seven dozen an hour. The production record of each employee was taken hourly by the floor lady. After working at this job for two and a half days, she voluntarily left this employment on July 22, 1942. At that time she was producing at the rate of five dozen flowers per hour. Claimant attributed her greater production capacity in a smaller establishment to the fact that her work was not watched constantly. She advanced three reasons for leaving: (1) she worked under nervous tension because she was watched constantly by the floor lady; (2) she could not stand the pressure for production; and (3) she could not produce the quote of work demanded of her. The employer testified that the employees were given a three to four week trial period to acquire the production capacity necessary to meet their quota of work; that during this period they were not discharged for failure to turn out their quota, provided they showed ability to produce; that claimant was occasionally reminded by the floor lady to accelerate her production to meet her quota; and that the floor lady was satisfied with claimant's work and insisted that she remain with the employer. Claimant had no prospect of other employment at the date of her leaving.

Appeal Board Opinion: Claimant complained that she worked under nervous tension because the floor lady kept a close surveillance over the employees in her department. Considering the large number of employees in the establishment, it cannot be said that the employer's system of supervision over its personnel was oppressive or unreasonable. Claimant was not justified in leaving her job for this reason. The employees were allowed a period of three or four weeks within which to acquire the productive capacity demanded by the employer. Claimant's floor lady was satisfied with claimant's ability to work and was willing to have her continue in the establishment. Since claimant chose to leave the job after working only two and a half days, it must be held that she did not give it a fair trial. Moreover, she did not have any prospect of other employment at the date of separation and remained unemployed for at least two months thereafter. Claimant voluntarily left her employment without good cause.

Decision: The initial determination of the local office, disqualifying claimant for voluntarily leaving her employment without good cause, is sustained. The decision of the referee is reversed. (12/21/42)

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A-750-406

Index No. 1140-3

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

February 23, 1943

INTERPRETATION SERVICE – BENEFIT CLAIMS  
MISCONDUCT

Disloyalty, attitude toward employer at work

Appeal Board Case No. 7946-42

MISCONDUCT – ACCEPTING WORK FROM EMPLOYER'S CUSTOMERS  
(SECTION 504.2(a) OF LABOR LAW)

Acceptance of work from employer's customers to his detriment constituted misconduct.

Referee's Decision: Initial determination suspending claimant's benefit rights for loss of employment due to misconduct is sustained. (10/20/42)

Appeal By: Claimant

Findings of Fact: Claimant was employed for about five years as an artist and layout man for the employer, who conducted a printing company. His duties brought him in contact with customers of the employer. He admits that he personally obtained from a number of these customers art work which had formerly been performed by his employer's firm. In such instances, the employer lost not only the art work but the reproduction work formerly performed for them. Claimant had business stationery printed containing his name as an artist, together with the employer's address and telephone number. He admits that he obtained some business in this way, but stated that this work was done on his own time, at his home, and with the employer's knowledge. The employer reported to the local office that claimant was discharged for misconduct after repeated warnings not to work on his private jobs on the employer's time and not to use the telephone to communicate with his own accounts. He denied that claimant's activities were with his knowledge or consent. After the discharge claimant was immediately

replaced by another artist. Claimant states that he was not discharged but was laid off because business was slow.

Appeal Board Opinion: The evidence amply sustains the referee's decision that claimant lost his employment through misconduct in connection therewith. In spite of the serious conflict in the evidence as to the privileges extended to claimant by his employer, it is undisputed that claimant accepted work from his employer's customers which resulted in a loss of business to the employer. The referee correctly reasoned that the nature of the acts charged to claimant was detrimental to the employer's interests.

Decision: Claimant lost his employment due to misconduct in connection therewith. The initial determination is sustained. The decision of the referee is affirmed. (12/21/42)

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A-750-407

Index No. 1215B-4

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

February 23, 1943

INTERPRETATION SERVICE – BENEFIT CLAIMS  
REFUSAL OF SUITABLE EMPLOYMENT

Other reasons for refusal

Appeal Board Case No. 7890-42

REFUSAL OF OFFER OF EMPLOYMENT – CONDITIONAL ACCEPTANCE  
(SECTION 506.1 OF LABOR LAW)

Claimant's refusal to accept an offer of permanent employment, except on condition that she be permitted to try out job for one or two weeks, which condition was rejected by the employer, resulted in a disqualification for refusal.

Referee's Decision: Initial determination disqualifying claimant for refusing to accept an offer of employment without good cause is sustained. (11/17/42)

Appeal By: Claimant

Findings of Fact: Claimant, a stenographer-bookkeeper, had been employed by a manufacturer of artificial flowers for eight years. She lost this employment on February 14, 1942. Her salary was \$26 a week. On March 13, 1942 she applied for unemployment insurance benefits. On June 10, 1942 she was referred to a job as a bookkeeper for an artificial flower manufacturer paying \$30 a week. She was interviewed by the prospective employer's accountant, who asked her to take the job at once on a permanent basis. Claimant requested permission to take the job on a contingent basis for a "week or two to see if I had a wrong impression of these people." Her request being denied, claimant refused the offer. She did not care to work for the prospective employer because she had learned in her former position that it was "not a pleasant place to work."

Appeal Board Opinion: Claimant submitted a statement to the Board which in part stated that because of her home responsibilities she had to be particular about the position she accepts. While the Board sympathizes with claimant's desire to secure a position that she believes will best suit her needs and family responsibilities, the Law is specific in denying benefits to an

employee who without good cause refuses to accept an offer of employment for which he is reasonably fitted by training and experience. The reasons advanced by claimant do not constitute good cause for refusal as defined in Section 506.1 of the Act. Neither are these reasons of such character as would raise doubt as to the suitability of claimant for the job offered. She has had eight years of experience as a bookkeeper-stenographer in the prospective employer's line of business. Her qualifications were such that the employer's accountant wished to employ her immediately before interviewing any other persons for the job. There can be no doubt therefore that she was technically suited for the position. Her objection to the job is based on speculation. It is possible that if she tried it she might have found that the rumors she had heard would have resulted in a conclusion that she "had a wrong impression of these people."

Decision: Initial determination disqualifying claimant for refusing to accept an offer of employment without good cause is sustained. The decision of the referee is affirmed. (12/14/42)

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A-750-411

Index No. 1205C-1

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

March 15, 1943

INTERPRETATION SERVICE – BENEFIT CLAIMS  
REFUSAL OF SUITABLE EMPLOYMENT

Offer, what constitutes

Appeal Board Case No. 7920-42

REFUSAL TO ACCEPT AN OFFER OF EMPLOYMENT – OFFER BY PRIVATE EMPLOYERS  
(SECTION 506.1 OF LABOR LAW)

A refusal without good cause to accept an offer of employment made through a channel other than the Employment Service may result in a disqualification of a claimant from benefits.

Referee's Decision: Initial determination disqualifying claimant for refusal without good cause to accept an offer of employment is overruled. (9/30/42)

Appeal By: Industrial Commissioner

Findings of Fact: Claimant was employed for eight years by a dress company as an examiner and cleaner. She was a member of the union and earned about \$23 a week. In June 1942 she was laid off for an indefinite period because of lack of work. On June 4 she filed an application for employment and unemployment insurance benefits. Subsequent to July 4, 1942 claimant's former employer resumed operations and several postcards were addressed to claimant directing her to return to her former job. Claimant refused to accept this employment and advised the employer that she would not work for him any more. Claimant stated as the reason for refusing the employment that her former employer was very nervous, high-strung and irritable.

Appeal Board Opinion: The referee ruled on the authority of Appeal Board 43-38 that since the offer of employment was made to the claimant through channels other than the Placement

section, she may not be disqualified from benefits because of her refusal to accept the employment offered. The Industrial Commissioner has requested that the Board reconsider its position in the case last mentioned. It is urged that we now recognize a disqualification for refusal to accept employment in all cases where it is shown that the offer meets the requirements of the statute, irrespective of the channels through which an offer reached a claimant. We believe that the language of the statute leaves room for either interpretation. We pointed out in our previous decision that it was necessary in referring claimants to employment that reasonable standards be set up to judge the suitability of the offer, and that it was advisable that control over the flow of labor by way of placements be reposed in the organizational unit created specifically for that purpose, rather than that it be left to chance or be made the subject of competition among employers. We still feel that these safeguards are not only wise but that they also constitute the cornerstone upon which the solution of this problem rests. Having this in mind, we have nevertheless considered the problem anew in the light of present conditions and we have reached the conclusion that the Industrial Commissioner's position should be sustained. It should be pointed out, first, that the placement unit as represented by the United States Employment Service is now separate and apart from the Division of Placement and Unemployment Insurance. The insurance section of the Division, which is charged with the making of initial determinations, does not exercise placement functions. We are advised that each case of refusal of a job offer arising from a source other than the employment service will receive the same scrutiny as that arising within the service, and that in making determinations the same analysis will be made and similar standards be applied in order to determine the adequacy of the job offer and related questions. In this way it is proposed to safeguard the rights of the claimants involved and at the same time to retain, in the place where it belongs, control of the flow of labor. The Industrial Commissioner urges in brief that this method will accomplish the purpose sought and that we accordingly relax our previous ruling that the offer of employment must emanate from the employment service in order that a disqualification may lie for a refusal. In the final analysis, this is the Industrial Commissioner's responsibility. In view of this and all the foregoing, we are constrained to hold that a refusal without good cause to accept an offer of employment made through a channel other than the United States Employment Service may, under the circumstances which we have outlined, result in a disqualification of a claimant from benefits. In the instant case, claimant has failed to satisfy us that she had good cause for her refusal to accept her former employer's offer. In view of the fact that she had worked for him for eight years, little credence can be given to her testimony with respect to the reasons for her refusal. However, the record is not clear as to the exact date when the offer and refusal occurred. Claimant states that it occurred after July 15, and we are inclined to accept her testimony. We accordingly fix the time of the refusal as July 16, 1942.

Decision: The determination of the local office disqualifying claimant for refusing, without good cause, to accept employment is hereby sustained. The effective date thereof should be changed from July 6, 1942. The decision of the referee is reversed. (1/25/43)

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A-750-415

Index No. 1735A-2

NEW YORK STATE DEPARTMENT OF LABOR  
UNEMPLOYMENT INSURANCE DIVISION  
ADJUDICATION SERVICES OFFICE  
April 6, 1943

INTERPRETATION SERVICE – BENEFIT CLAIMS  
VOLUNTARY LEAVING OF EMPLOYMENT  
Wage increase refused

Appeal Board Case No. 7996-42

VOLUNTARY LEAVING – DENIAL OF PROMISED INCREASE  
(SECTION 506.2 OF LABOR LAW)

Denial of promised wage increase after promotion to more responsible position was good cause for voluntary leaving of employment.

Referee's Decision: Initial determination disqualifying claimant for voluntary leaving of employment without good cause is sustained. (10/27/42)

Appeal By: Claimant.

Findings of Fact: For approximately nine years prior to April 1942, claimant was employed as a stock control clerk for a chain store. She commenced such employment at \$8 per week and by April 1942 was receiving \$20 per week. During April of 1942 claimant was advised by the employer that she would be promoted to the position of assistant millinery buyer, in which capacity she would be paid \$25 per week. During May of 1942 claimant was promoted to the position of assistant millinery buyer, but instead of the promised \$25 per week, claimant received \$22 per week. When claimant protested to the employer about his failure to pay the \$25 per week as promised, she was advised to wait and that she would received \$3 more at a later date. After waiting for the additional increase from May to September, claimant again approached the employer for the promised increase. At that time she was told if she did not like it should could quit. Claimant thereupon resigned.

Appeal Board Opinion: The position of assistant millinery buyer to which claimant was promoted carried a salary of \$25 per week. The employer failed to keep his promise to the claimant that she would get that amount. After the promotion, the employer made a new promise that claimant would receive an increase to the full amount of the salary at a later time. Claimant waited a reasonable time and approached the employer again about the promised increase. Instead of a reasonable explanation, claimant's complaint was summarily rejected. Such conduct on the part of the employer justified claimant in leaving her employment.

Decision: Initial determination disqualifying claimant for voluntary leaving of employment without good cause is overruled. The decision of the referee is reversed. (12/31/42)

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A-750-417

Index No. 1290A-3

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

April 17, 1943

INTERPRETATION SERVICE – BENEFIT CLAIMS  
REFUSAL OF SUITABLE EMPLOYMENT  
Wages

Appeal Board Case No. 8136-42

REFUSAL TO ACCEPT OFFER OF EMPLOYMENT – PREFERENCE FOR HIGHER WAGES  
(SECTION 506.1 OF LABOR LAW)

Preference for higher wages because of financial and domestic responsibilities did not justify refusal of employment for which fitted by prevailing wages.

Referee's Decision: Initial determination disqualifying claimant for refusal to accept an offer of employment without good cause is sustained. (11/24/42)

Appeal By: Claimant

Findings of Fact: Claimant for three years prior to March 14, 1942 was employed as a Polish language typist. On March 15, 1942 her employment terminated, at which time she was earning \$20 per week. At the time of the termination of her employment claimant was pregnant. Her child was born on July 29, 1942. On September 30, 1942 claimant was referred by the United States Employment Service to three typist positions paying \$18 to \$20 per week. Claimant refused to accept the referrals stating that she would not accept employment at less than \$20 per week. She contended that she needed more money in order to hire a person to care for her infant child. The prevailing rate in the locality for her type of services is from \$18 to \$20 per week.

Appeal Board Opinion: The offers to the claimant were at the prevailing rates of wages for the type of skill possessed by her. Claimant was not fitted by training and experience for any position carrying a higher remuneration. While claimant had greater financial and domestic responsibilities, such responsibilities did not justify her in demanding a salary greatly in excess of the prevailing rate. We hold that she did not have good cause to refuse the offers.

Decision: Initial determination disqualifying claimant for refusing to accept offers of employment without good cause is sustained The decision of the Referee is affirmed. (1/11/43)

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A-750-418

Index No. 1550-1

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

May 19, 1943

INTERPRETATION SERVICE – BENEFIT CLAIMS  
CLAIMS, REGISTRATION, REPORTING AND  
CERTIFICATION

Misrepresentation or misstatement

Appeal Board Case No. 8385-43

MISREPRESENTATION – CONCEALMENT OF LAST EMPLOYER  
(SECTION 504.2 OF LABOR LAW)

Deliberate concealment of identity of last employer constituted wilful misrepresentation.

Referee's Decision: Initial determination finding that claimant misrepresented in order to obtain benefits is sustained. (1/5/43)

Appeal By: Claimant

Findings of Fact: Claimant filed an additional claim for benefits on October 25, 1942, giving as his last employer M. Dress Co. On November 16, claimant was interviewed in the local office, at which time he disclosed that his last employer had been the A. Dress Co. He failed to name this employer because of an alleged threat on the part of the employer to the effect that he, the employer, would prevent claimant from obtaining benefits. The local office issued an initial determination that claimant had wilfully made a false statement to obtain benefits.

Appeal Board Opinion: The issue to be determined herein is whether the deliberate failure of a claimant to disclose his last employer, naming a prior employer instead, constitutes in and of itself a wilful false statement to obtain benefits. Had claimant disclosed the identity of his last employer, he would have been entitled to benefits under the facts found by the referee. The proper operation of many of the provisions of the Unemployment Insurance Law hinges upon the disclosure of the identity of a claimant's last employer. Section 504-1, which pertains to "Suspension of accumulation of benefit rights," and Section 506, which pertains to "Disqualification for benefits," are examples. Local office procedure has been promulgated pursuant to which information is obtained from the last employer. Access to this information is the safeguard which makes these sections of the Law more than dead letters. When claimant deliberately referred the local office to an employer other than his last employer, he committed a wilful misrepresentation to obtain benefits pursuant to the language of Section 507-a of the Unemployment Insurance Law. He attempted to deprive the local office of access to information without which it could not properly make a determination. The claimant contends that the alleged threats of the employer excuse the misrepresentation. If such threats were based on facts which would lead to an initial determination adversely affecting claimant's benefit rights, then clearly claimant was bound to disclose not only his employer's identity, but also the facts themselves. If the alleged threats were without foundation, claimant should have had nothing to fear. He should have given the local office the name of his last employer as required under the Law.

Decision: Initial determination finding that claimant wilfully misrepresented in order to obtain benefits is sustained. The decision of the referee is affirmed. (3/8/43)

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A-750-420

Index No. 1640B-3

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

May 19, 1943

INTERPRETATION SERVICE – BENEFIT CLAIMS  
VOLUNTARY LEAVING OF EMPLOYMENT  
Grievances – transfer to other work not desired

Appeal Board Case No. 8337-43

VOLUNTARY LEAVING – OBJECTION TO TRANSFER (SECTION 506.2 OF LABOR LAW)  
Transfer to other work comparable to work previously performed without change of pay was not good cause for voluntary leaving of employment.

Referee's Decision: Initial determination disqualifying claimant for voluntary leaving of employment without good cause is overruled. (12/19/43)

Appeal By: Industrial Commissioner

Findings of Fact: Claimant worked in a laundry for about eleven years prior to August 16, 1942. For over five years preceding this date she work in the capacity of an assistant forelady in the shirt department. Her duties were to inspect, assign work, make production cards and supervise the girls. Claimant was on vacation from August 1 to August 15, 1942. When she returned to her employer's establishment on August 16, 1942 she discovered that another person had taken over her duties. The employer, with the approval of the business agent of the union, transferred claimant on the same day to another department of the plant which handled family wash. Her title and wages remained the same. Claimant complained to the shop chairman about her transfer. The latter advised her that nothing could be done about the matter. Thereupon claimant undertook the new assignment and worked all day on August 16, 1942. The work performed in both departments was substantially the same. After completing the day's work, claimant voluntarily left her job, stating that she could not do the work required in the new assignment.

Appeal Board Opinion: The referee held that claimant had good cause for her leaving because she had received unfair treatment from the employer. The record fails to establish, however, that the employer acted unreasonably or arbitrarily in assigning her to different duties. Neither her title nor her rate of pay was changed. The transfer was approved by her union and her attempt to adjust her grievance through union channels was unsuccessful. Furthermore, it does not appear that she gave the job a fair trial. There is no showing that the new assignment involved more onerous duties or created any hardship on the claimant. Under the circumstances, her mere statement that she could not perform the new duties assigned to her cannot be accepted as constituting a sufficient basis for holding that she had good cause for leaving.

Decision: Initial determination disqualifying claimant for voluntary leaving of employment without good cause is sustained. The decision of the referee is reversed. (3/8/43)

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A-750-423

Index No. 1280-4

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

June 22, 1943

INTERPRETATION SERVICE – BENEFIT CLAIMS  
REFUSAL OF EMPLOYMENT

Distance

Appeal Board Case No. 7823-42

REFUSAL TO ACCEPT AN OFFER OF EMPLOYMENT – UNREASONABLE DISTANCE NOT  
SUBSTANTIATED

(SECTION 506.1 OF LABOR LAW)

Contention that proffered employment was at an unreasonable distance was overcome by the fact that a large number of residents of claimant's community were employed by proposed employer and additional expenses were provided for by increased compensation.

Referee's Decision: Initial determination disqualifying claimant for refusing to accept an offer of employment without good cause is overruled. (8/21/42)

Appeal By: Industrial Commissioner

Findings of Fact: Claimant, a telephone operator, had been employed by the New York Telephone Company in Niagara Falls on a temporary basis as a night worker. Her salary was \$23 for a work week of 30 hours. Day operators employed by the company earned \$23 for a work week of 40 hours. Claimant has two children, aged two years and six months respectively. On April 30, 1942 claimant filed an application for benefits. On May 28, 1942 she was offered a day job as a telephone operator in a war plant located about ten miles from Niagara Falls. The rate of pay was \$25 for a work week of 40 hours with overtime pay at the rate of time and a half for all hours in excess thereof. Claimant refused the referral on the ground that "the hours were longer and it would take longer to go and come from it. Also the cost of transportation would be greater." The plant to which claimant was referred was about forty-five minutes distance from downtown Niagara Falls. The round trip fare at the time of referral was 45 cents. On September 1, 1942 the fare was reduced to 35 cents for the round trip. Buses are operated to and from the plant on an hourly schedule. About 4,000 persons living in Niagara Falls make the trip daily to and from the plant. Claimant lived within walking distance from her last employment. She will accept no work other than that of a telephone operator. Placement opportunities for telephone operators in Niagara Falls are negligible. Opportunities for employment in war factories are plentiful for women with no experience in production work. The job offered was at the rate prevailing for similar work in the community.

Appeal Board Opinion: In all respects except distance from her residence the job offered claimant compared favorable with her former job. About 4,000 persons whose homes are in Niagara Falls are employed in the plant to which claimant was referred. They make the trip to and from the plant daily. The job offered to claimant paid \$2 per week more, exclusive of overtime pay, than claimant's previous employment. The additional traveling expense entailed in the offered employment was thus overcome by the increased pay. Furthermore, in the Niagara Falls district the war has precipitated a manpower shortage. Under all of the facts and circumstances herein, we believe that the offered employment was not at an unreasonable distance from claimant's residence and that travel to and from the place of employment did not involve expense substantially greater than that required in her former employment.

Decision: The initial determination of the local office disqualifying claimant for refusing to accept referral without good cause is sustained. The decision of the referee is reversed. (3/8/43)

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A-750-424

Index No. 1685-B1

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

June 22, 1943

INTERPRETATION SERVICE – BENEFIT CLAIMS  
VOLUNTARY LEAVING OF EMPLOYMENT  
Other personal affairs

Appeal Board Case No. 8840-43

VOLUNTARY LEAVING OF EMPLOYMENT – ALLEGED INADEQUATE LIVING  
ACCOMODATIONS

(SECTION 506.2 OF LABOR LAW)

Failure to substantiate claimed lack of suitable living quarters at site of employment and no prospects of other employment resulted in finding that voluntary leaving was without good cause.

Referee's Decision: Initial determination disqualifying claimant for voluntary leaving of employment without good cause is sustained. (2/25/43)

Appeal By: Claimant

Findings of Fact: Claimant was employed from June 1942 to November 30, 1942 as a laborer by a construction company at a naval base located at Sampson, New York. During the period of his employment he lived at a private boarding house in Geneva. The proprietor of the boarding house was taken sick and informed claimant that he would have to seek living quarters elsewhere. Claimant made inquiry at two other places for room accommodations. His efforts in this respect were unsuccessful. He voluntarily left this employment, stating that he could not find suitable living quarters. Barracks are maintained at the naval base for the housing of construction workers. The barracks are under the supervision of the government and a guard is employed to see that occupants conduct themselves in a proper manner. Admittedly claimant could have secured living quarters at the barracks located at the naval base. However, he alleged that living conditions at the barracks were unsuitable because there were numerous altercations among the occupants. The barracks at which the construction workers live afford the same accommodations which are had by the naval men who are receiving training at the naval base. Claimant had no prospects for other employment at the date of his separation.

Appeal Board Opinion: The record amply sustains the referee's conclusion that claimant voluntarily left his employment without good cause. Claimant did not make a diligent effort to seek living accommodations. There is no evidence that conditions at the government barracks were such that living there would create an unreasonable hardship on claimant. He had no prospect for other employment at the date of his separation.

Decision: Initial determination disqualifying claimant for voluntary leaving of employment without good cause is sustained. The decision of the referee is affirmed. (4/28/43)

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A-750-427

Index 1210A-5  
NEW YORK STATE DEPARTMENT OF LABOR  
UNEMPLOYMENT INSURANCE DIVISION  
ADJUDICATION SERVICES OFFICE  
JUNE 25, 1943

INTERPRETATION SERVICE - BENEFIT CLAIMS  
REFUSAL OF EMPLOYMENT  
Other reasons for refusal

Appeal Board Case Number 8273-42

REFUSAL OF OFFER OF EMPLOYMENT - NON DISCLOSURE OF JOB DETAILS  
(SECTION 506.1 OF LABOR LAW)

Non-disclosure of job details was not good cause for refusal where claimant's attitude and conduct discouraged or prevented disclosure.

Referee's Decision: Initial determination disqualifying claimant for refusing to accept an offer of employment without good cause is sustained. (12/2/42)

Appealed By: Claimant.

Findings of Fact: On August 21, 1942 claimant was referred to a job, for which she was qualified by training and experience, at the prevailing rate for similar work in the locality. She refused the referral, stating that she expected one or two days' notice before she could accept the job; that it was 4:30 p.m. when she visited the employment office in response to a call-in card; and, further, that she was not given the full details of the job offer.

Appeal Board Opinion: The documentary evidence establishes that the placement office had a job offer for which claimant was qualified by training and experience; that it paid the prevailing rate for similar work in the locality and that such job was offered to claimant. The fact that she was not given the full details of the job offer does not, under the circumstances of this case, justify her summary refusal to accept the referral. Accepting claimant's version of the incident, this situation was brought about by her insistence that she would not accept the job unless she was given a few days' notice. In view of her arbitrary attitude, it would have been a futile gesture for the employment service to have given her any further details. In any event, had claimant evinced an interest in the job offer, she could have obtained such information either from the employment office or the employer. Furthermore, it appears from claimant's entire course of conduct that she was more interested in collecting unemployment insurance benefits than in working.

Decision: Initial determination disqualifying claimant for refusing to accept an offer of employment without good cause is sustained. The decision of the referee is affirmed. (3/22/43)

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A-750-429

Index 755 E.2

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

June 26, 1943

INTERPRETATION SERVICE-BENEFIT CLAIMS  
AVAILABILITY AND CAPABILITY

Evidence of

A.B. 8603-43

AVAILABILITY - CANNERY WORKER - NON-EXISTENCE OF PLACEMENT  
OPPORTUNITIES

Unwillingness to work elsewhere than in a community which offered no reasonable prospect of employment constituted unavailability.

Referee's Decision: Initial determination suspending claimant's rights for unavailability is sustained. (1/19/43)

Appealed by: Claimant.

Findings of Fact: Claimant worked during the past four years in a cannery located near her home in Egypt, New York. The work was seasonal and usually lasted from July to December of each year. During the slack periods claimant remained at home. This is the only industry in the town and no other placement opportunities existed. Claimant filed an application for benefits on December 10, 1942, her employment having terminated on December 8. She was interviewed in the placement section with respect to the possibility of her accepting work in Rochester, which is seven miles away. She stated that she could not accept work there because she had no means of transportation and that although buses ran through the town they were not dependable. The town of Egypt is located about four miles from Fairport, where there are factories and employment opportunities. Claimant testified at the hearing before the referee that she would be unwilling to work either in Fairport or Rochester.

Appeal Board Opinion: The referee had ample basis for his ruling that claimant failed to meet the statutory test for availability. Upon her own admissions she is unwilling to work elsewhere than in her own town, which offered no opportunities for employment. Thus she removed herself from the possibility of obtaining employment.

Decision: Initial determination suspending claimant's benefit rights for unavailability is sustained. The decision of the referee is affirmed. (3/22/43)

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A-750-433

Index 1215A-6

NEW YORK STATE DEPARTMENT OF LABOR  
UNEMPLOYMENT INSURANCE DIVISION  
ADJUDICATION SERVICES OFFICE  
JULY 6, 1943

INTERPRETATION SERVICE - BENEFIT CLAIMS  
REFUSAL OF EMPLOYMENT  
Other reasons for refusal

Appeal Board Case Number 8179-42

REFUSAL OF OFFER OF EMPLOYMENT - PREFERENCE FOR DIFFERENT JOB  
(SECTION 506.1 OF LABOR LAW)

Where a claimant was not misled as to her rights and had indicated an unwillingness to accept a referral to a job for which she was fitted by training and experience, because it was not to her liking, as charged, an employment interviewer's promise to secure another job more to claimant's liking was not good cause for refusal of the offered job.

Referee's Decision: Initial determination disqualifying claimant for refusing to accept without good cause referral to employment is overruled. (11/24/42)

Appealed By: Industrial Commissioner.

Findings of Fact: Claimant for two years had worked as a bookkeeper in New York City, receiving a salary of \$22 per week. She terminated this employment to join her husband in Baltimore. On July 29, 1942 claimant filed an original application for benefits in the State of Maryland against New York as the liable state. On August 26, 1942 the United States Employment Office in Baltimore referred claimant to a position as typist-bookkeeper for a rug manufacturer at \$25 per week for a forty-hour week. Claimant was advised that she would be

required to work on accounts receivable. She refused to accept the referral, stating that she preferred work as a full-charge bookkeeper. Claimant upon her return to New York City was interviewed at the local office, at which time she stated that her experience was as a full-charge bookkeeper and that she refused the referral because she preferred working in a smaller office. At the hearing before the referee claimant testified that when she told the Baltimore interviewer her preference for a different type of work, she was advised that an effort would be made to secure such a job for her. Claimant further contended that if she accepted the referral it would entail a loss of previously acquired skill.

Appeal Board Opinion: The job offered claimant was one for which she was reasonably fitted by training and experience and satisfied the requirements of the statute. The fact that the type of work offered did not satisfy claimant's personal conditions and that she preferred full-charge bookkeeping is not sufficient of itself to justify her refusal of the referral. The referee overruled the initial determination on the theory that claimant was justified in refusing the referral because the employment interviewer indicated that an attempt would be made to secure employment more in keeping with claimant's expressed desires, as the result of which claimant believed that she would be referred to employment more in keeping with her former experience and training. We cannot agree with the referee's conclusion. Accepting the claimant's own version of the interview, there is no indication that she was misled as to her rights. It might be that the Baltimore interviewer did promise to endeavor to secure for claimant a job more to her liking. However, the choice of accepting or refusing the offer lay with claimant and she had already indicated her unwillingness to accept. We have consistently held that where work is available for which a claimant is reasonably fitted, he must accept the offer of employment or suffer the penalty of disqualification of his benefit rights. In the absence of circumstances justifying the refusal, the initial determination must be upheld.

Decision: Initial determination disqualifying claimant for refusing to accept referral without good cause is sustained. The decision of the referee is reversed. (3/31/43)

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A-750-434

Index 770.9

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

JULY 1943

INTERPRETATION SERVICE - BENEFIT CLAIMS  
AVAILABILITY AND CAPABILITY

Evidence of

AVAILABILITY - SEASONAL WORKER - NO RECORD OF EMPLOYMENT DURING SLACK  
PERIOD

A race track mutuel clerk and cashier, who for the past three years worked only seven months a year and never sought or wanted any other employment during the five-month slack season of each year, held unavailable for employment because he was not truly in the labor market during the slack season.

A.B. 8929-43

Referee's Decision: The initial determination suspending claimant's benefit rights for unavailability effective January 25, 1943 is sustained. (3/11/43)

Appealed By: Claimant.

Findings of Fact: During 1940, 1941 and 1942 claimant was employed as a mutuel clerk and cashier at various racetracks situated in the State of New York. During each of these years he worked about seven months. In 1940 he only worked part time, earning a total of \$896 for that year. In 1941 his working hours were increased so that he earned a total of \$1424 during the year. In 1942 he worked full time at the tracks. When thus employed claimant's earnings were about \$60 per week. Claimant's duties consisted of accepting wagers, making change and filling in records of receipt and other data for his employers. He is a member of the Mutuel Agents Union. Prior to 1940 claimant was employed for short periods of time as a clerical worker at various race- tracks. During each of the five-month periods in 1940, 1941 and 1942, when claimant was not associated with racetracks, he remained totally unemployed. During these periods of unemployment he never answered a newspaper advertisement for a position nor did he ever seek or obtain an interview with a prospective employer. During these periods of unemployment, claimant played billiards, betting on his own games and sometimes winning and at other times losing various sums of money. On November 15, 1942 claimant filed an application for employment and unemployment insurance benefits and reported regularly thereafter up to the date of the hearing before the referee, March 4, 1943. He received eight benefit checks, each in the sum of \$18. On February 4, 1943 claimant signed a statement at the local office, stating in part:

"I am not willing to accept any work in a war plant because I do not want to be frozen in that job. It would prevent me from returning to my usual job as a mutuel clerk at tracks. I expect to become employed at the J. racetrack which opens on April 8, 1943."

On February 10, 1943 an initial determination was issued suspending claimant's benefit rights effective January 25, 1943 on the ground that he was not available for employment. Claimant requested a hearing on February 11, 1943. On February 12, 1943 claimant was referred by the United States Employment Service to a position as a guard at the United States Army Port of Embarkation. The salary offered was \$39.29 per week. Claimant accepted the referral and was interviewed by the personnel interviewer at the Port of Embarkation. Claimant informed the latter that he intended to return to his racetrack employment in about six weeks. Claimant did not obtain the position. No formal initial determination with respect to claimant's alleged refusal of employment was made by the local office.

Appeal Board Opinion: The sole issue herein is whether or not claimant was available for employment as of January 25, 1943. During the last three years claimant's only employment was at the racetracks for about seven months of each year. During the balance of each year he made no attempt to obtain other employment. Claimant concedes that he is qualified to perform general clerical services and that he has the capacity to act as cashier or bookkeeper for commercial firms. He states, however, that as a bookkeeper he desires to work for \$60 per week but that in no event would he work for less than \$40 either as a bookkeeper or as a cashier. We believe from all of the facts before us that claimant was not truly in the labor market during each of the five-month periods in 1940, 1941 and 1942 when he was not associated with the race tracks. There has been no change in claimant's lack of desire to be gainfully employed during said five-month periods. His entire course of conduct indicates clearly that he has been unavailable for employment from at least January 25, 1943, the effective disqualification date set by the local office.

Decision: Initial determination suspending claimant's benefit rights for unavailability as of January 25, 1943 is sustained. The decision of the referee is affirmed. (5/20/43)

NEW YORK STATE DEPARTMENT OF LABOR  
UNEMPLOYMENT INSURANCE DIVISION  
ADJUDICATION SERVICES OFFICE  
AUGUST 1943

INTERPRETATION SERVICE - BENEFIT CLAIMS  
AVAILABILITY AND CAPABILITY  
Evidence of

AVAILABILITY - NON-EXISTENCE OF PLACEMENT OPPORTUNITIES

Where a claimant resided in a community of no present or past placement possibilities and her husband, the owner of an automobile, was unwilling to furnish the necessary four-mile transportation to the nearest possible place of employment, it was decided that claimant was unavailable for employment.

A.B. 9030-43

Referee's Decision: The initial determination holding that claimant had withdrawn from the labor market is overruled. (2/24/43)

Appealed By: Industrial Commissioner.

Findings of Fact: Claimant worked for the past six years in a paper mill in Pulaski, New York. Up to December 1942 she resided in Altmar, New York. She then moved to her husband's farm located in Richland, New York, which is about four miles from her place of employment. Claimant's husband is postmaster at Richland and uses the family car every day. Up to January 6, 1943 claimant had been riding back and forth from her home to her place of employment in the automobile of a friend who also worked in Pulaski. At that time claimant's friend left her employment. Claimant thereafter had no means of transportation to her place of employment and was compelled to give up the job. She filed an application for benefits on January 18, 1943. There is no bus, railroad or other service from claimant's home to her place of employment. There is no possibility of claimant obtaining employment at Richland or at any other location to which she can find transportation. Claimant's husband testified at the hearing before the referee that because of his farm work he was not available to use his automobile to take his wife back and forth to her former place of employment.

Appeal Board Opinion: The referee ruled that since the only reason for claimant's inability to continue her employment was the lack of transportation and she otherwise would have been employed, she had not withdrawn from the labor market and was available for employment. We cannot agree with the referee's conclusion. It must be said that in this case claimant's avowed willingness to work is not sufficient of itself to constitute a basis for a determination of availability. As a practical matter there is no possibility of claimant working while matters remain as they are, since no place of employment exists to which she can be transported. Since claimant's husband is unwilling to furnish the necessary four-mile transportation to the nearest possible place of employment, it must be held that family and other circumstances compelled claimant to withdraw from the labor market.

Decision: Claimant withdrew from the labor market and is unavailable for employment. The initial determination is sustained. The decision of the referee is reversed. (5/20/43)

NEW YORK STATE DEPARTMENT OF LABOR  
UNEMPLOYMENT INSURANCE DIVISION  
ADJUDICATION SERVICES OFFICE  
AUGUST 23, 1943

INTERPRETATION SERVICE - BENEFIT CLAIMS  
TOTAL OR PARTIAL UNEMPLOYMENT  
Compensation without work

Appeal Board Case Number 8808-43

TOTAL UNEMPLOYMENT - COMPENSATION WITHOUT WORK - PROVISIONS OF UNION  
AGREEMENT  
(SECTION 502.10 OF LABOR LAW)

Where claimant, under an agreement between his employer and his union received fifty per cent of his regular weekly salary during weeks for which no work was available to him from his employer, such payments constituted remuneration and claimant was not totally unemployed during those weeks.

Referee's Decision: Initial determination suspending claimant's benefit rights on the grounds that he was not totally unemployed is sustained. (2/10/43)

Appealed By: Claimant.

Findings of Fact: Claimant, a clothing cutter, had been employed by a single employer for approximately eight years. His regular weekly salary was \$65. Under an arrangement existing between claimant's employer and his union of which claimant is a member, each of the cutters in the employer's establishment received \$32.50 per week during the weeks in which there was no work available for them. If partial employment was available in a given week, the cutters would be compensated in accordance with the work actually performed, but in no event did they receive less than the said sum of \$32.50 each. Claimant, however, could not perform work for any other employer during slack periods without forfeiting the minimum payment of \$32.50 in its entirety. Claimant was also required to hold himself available to the employer at all times if his services were required. On May 21, 1942 claimant filed an application for benefits. The local office denied claimant credit for the weeks in which claimant performed no services for the employer and during which he received the minimum payment of \$32.50 per week. The employer paid social security taxes and unemployment insurance contributions based on payments made to claimant and the other cutters in accordance with the foregoing arrangements.

Appeal Board Opinion: The issue is whether claimant was totally unemployed within the meaning of the Law for the periods in question. It would appear from the facts of this case that claimant received the sum of \$32.50 per week from his employer when no work was available by reason of an agreement or arrangement between the employer and claimant's union. This arrangement contemplated that claimant would not work for any other employer while receiving this sum and that claimant would be subject to call whenever needed. Under such circumstances it cannot be said that there is present herein a "total lack of any employment . . . together with the total lack of all compensation . . .", as required under Section 502.10 of the

Labor Law. Clearly, the money paid to the claimant during the weeks in question must be regarded as compensation pursuant to a contract of hire under a continuing employer-employee relationship. This money was paid to the claimant only on condition that he remain subject to call by the employer and that he refrain from performing work for any other employer.

Decision: Claimant was not totally unemployed during the weeks in question. The determination of the local office is sustained. The decision of the referee is affirmed in all respects. (5/28/43)

A-750-451

Index 1250D-2

NEW YORK STATE DEPARTMENT OF LABOR  
UNEMPLOYMENT INSURANCE DIVISION  
ADJUDICATION SERVICES OFFICE  
SEPTEMBER 4, 1943

INTERPRETATION SERVICE - BENEFIT CLAIMS  
REFUSAL OF EMPLOYMENT  
Hours

Appeal Board Case Number 8951-43

REFUSAL TO ACCEPT OFFER OF EMPLOYMENT - UNWILLINGNESS TO WORK  
OVERTIME  
(SECTION 506.1 OF LABOR LAW)

Unwillingness to work occasional overtime customary in the trade and for which extra compensation would be paid was not good cause for refusal of employment for which reasonably fitted by training and experience.

Referee's Decision: Initial determination disqualifying claimant for refusing without good cause an offer of employment is sustained. (2/26/43)

Appealed By: Claimant.

Findings of Fact: Claimant has been married since June 1942 and resides with her husband, a patrolman at an army base. They have no children. From March 6, 1942 to September 18, 1942 claimant was employed as a sorter of ladies' dresses. She earned from \$16 to \$20 per week, including overtime pay. She voluntarily left this job for an undisclosed reason. Claimant refiled on November 2, 1942. On November 27, 1942 she was referred to a dress firm as a sorter of dresses. The salary offered was \$24 per week plus time and a half for overtime. Claimant called at the prospective employer's place of business and was interviewed by the two partners of the employer. One informed her that no overtime work would be required and the other told her "about an hour or so might be necessary." Claimant refused to accept the job because she did not desire to work overtime.

Appeal Board Opinion: The position offered to her paid a salary greater than that received by her in her previous employment. Claimant's stated reason for the refusal of the job was the fact that she would be required to work overtime. Under the facts presented herein this excuse is insufficient to constitute good cause for her refusal. It is customary in the dress industry to work overtime on occasion. There is nothing in the record to indicate that claimant would be required to work overtime more than occasionally. Furthermore, claimant's domestic circumstances were not such as to necessarily require her presence at home at an early hour.

Decision: Initial determination disqualifying claimant for refusing without good cause an offer of employment is sustained. The decision of the referee is affirmed. (6/21/43)

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A-750-455

Index No. 1605A-1

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

September 24, 1943

INTERPRETATION SERVICE – BENEFIT CLAIMS  
VOLUNTARY LEAVING OF EMPLOYMENT  
GRIEVANCES - Annoyance from supervisor

Appeal Board Case No. 8936-43

VOLUNTARY LEAVING – OPTION OF RESIGNING AS AGAINST DISMISSAL  
(SECTION 506.2 OF LABOR LAW)

Where claimant, given the option to resign or be discharged because of disagreements with foreman, resigned, it was held leaving was not voluntary.

Referee's Decision: Initial determination disqualifying claimant for voluntarily leaving employment without good cause is sustained. (2/19/43)

Appeal By: Claimant

Findings of Fact: Claimant was employed from February 7, 1942 to April 1948 as an expert clothing consultant and designer by a federal governmental agency engaged in war work. During this period of employment claimant had difficulties with his immediate supervisor who was also a clothing designer. It is the contention of the claimant that said supervisor improperly claimed credit for clothing designs which in fact were designed by the claimant. Their disagreements came to the attention of the chief supervisor, who, after listening to both parties, informed the claimant that he would have to resign or be discharged. Claimant did not desire to have a discharge against his record. Consequently he submitted his resignation which was accepted by the employer.

Appeal Board Opinion: In the booklet entitled "Issues Involved in Decisions on Disputed Claims for Unemployment Benefits" reprinted from the Social Security Yearbook, 1940, by the Social Security Board, the applicable principle is aptly summarized as follows:

"If an employer gives the claimant the choice of leaving or being discharged and the claimant resigns in order to avoid discharge, it is generally held that he does not leave voluntarily." (at p. 48)

We believe that this concept is applicable to the instant facts. We therefore hold that claimant did not leave his employment voluntarily.

Decision: Initial determination disqualifying claimant for voluntarily leaving employment without good cause is overruled. The decision of the referee is reversed. (6/21/43)

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NEW YORK STATE DEPARTMENT OF LABOR  
UNEMPLOYMENT INSURANCE DIVISION  
ADJUDICATION SERVICES OFFICE  
SEPTEMBER 24, 1943

INTERPRETATION SERVICE - BENEFIT CLAIMS  
VOLUNTARY LEAVING OF EMPLOYMENT  
GRIEVANCES  
Annoyance from Supervisor

Appeal Board Case Number 9189-43

VOLUNTARY LEAVING - ERRONEOUS BELIEF OF DISMISSAL  
(SECTION 506.2 OF LABOR LAW)

Assumption by claimant that because of an argument with his foreman in a war plant he would be discharged did not constitute good cause for voluntary leaving of employment.

Referee's Decision: Initial determination disqualifying claimant for voluntarily leaving employment without good cause is sustained. (3/30/43)

Appealed By: Claimant.

Findings of Fact: Claimant had been employed as a machine operator by the B. Manufacturing Company of the City of Utica, New York, at a rate of fifty-five cents per hour. He operated a turret lathe and, because of the mechanical condition it was in, he could not turn out any great volume of work. The machine fixer advised him it would take about four days to repair and told claimant to take it easy while it was being fixed. Before the machine was repaired the shop foreman stopped at the claimant's machine and requested information with reference to the condition it was in. An argument ensued as to who had been the cause of the machine's failure. After the argument claimant left his employment of his own volition. He contends that he felt he was going to be fired because of the volume of work he was turning out. The employer at no time threatened to dismiss the claimant. During claimant's period of employment with the employer herein, he had applications to file with the S.A. Corporation and the R.A. Corporation and, if he were successful in obtaining employment with either of these corporations, he would receive higher wages than those paid him by the instant employer. The employer herein is engaged in the manufacture of equipment necessary for the successful promotion of the war. After leaving his employment, the claimant immediately contacted the R.A. Corporation, and this corporation requested a release from the employer herein. In answer to this request, the employer advised that as far as it was concerned the claimant was still in its employ and refused to issue a release in favor of the claimant.

Appeal Board Opinion: A claimant seeking unemployment insurance benefits must conform with the provisions of Section 506 of the Labor Law and demonstrate that his separation from employment was founded on a good and reasonable cause rather than on the arbitrary or capricious will of the claimant. (See Appeal Board, 6179-41) The claimant concedes that he left his employment as a result of an argument with his foreman, who, up to that time, had no knowledge of the alleged breakdown of claimant's machine. In this time of national emergency much stress is placed upon the employer and employee in establishments engaged in the war effort. Arguments, disputes and differences of opinion are bound to arise during the course of one's daily employment. The claimant did not have the right to infer that as a result of the alleged argument the employer was about to discharge him. As a matter of fact, the employer's

refusal to grant a release of the claimant to the R.A. Corporation on the ground that the employer considered claimant still in its employ, tends to negate claimant's contention that he anticipated being discharged.

Decision: The initial determination that claimant voluntarily left his employment without good cause is sustained. The decision of the referee is affirmed. (6/14/43)

A-750-457

Index 1750-6

NEW YORK STATE DEPARTMENT OF LABOR  
UNEMPLOYMENT INSURANCE DIVISION  
ADJUDICATION SERVICES OFFICE  
SEPTEMBER 24, 1943

INTERPRETATION SERVICE - BENEFIT CLAIMS  
VOLUNTARY LEAVING OF EMPLOYMENT  
Method of Computation

Appeal Board Case Number 8876-43

VOLUNTARY LEAVING OF EMPLOYMENT - WAGES - METHOD OF COMPUTATION  
UNKNOWN

(SECTION 506.2 OF LABOR LAW)

Where claimant's hourly earnings were computed by a formula applied by employer, but unknown to claimant, and claimant, in order to determine adequacy of pay, requested employer to furnish basis of payment, the employer's non-compliance with this request constituted good cause for voluntary leaving of employment.

Referee's Decision: Initial determination disqualifying claimant for voluntary leaving employment without good cause is overruled. (2/27/43)

Appealed By: Employer.

Findings of Fact: Between March 4, 1942 and June 19, 1942, claimant was employed as an assembler by a firm engaged in manufacturing drawing instruments, school supplies and defense materials, on a forty-hour weekly basis with time and a half for overtime. During this period of employment, she was paid on an hourly basis which varied weekly from a minimum of 33 4/7¢ per hour to a maximum of 57¢ per hour. The rate was fixed by the employer at the end of each week. The employer's explanation for the differences in the hourly rate from week to week was that claimant's rate of production determined her hourly rate. During the course of her employment, claimant repeatedly asked to be informed with regard to the basis upon which she was being paid. At no time was claimant (a) apprised of the system under which she was working; (b) furnished with a schedule so that she could determine her hourly rate; or (c) furnished with a daily or weekly statement of her production to verify employer's computations. Accordingly, she terminated this employment on June 19, 1943.

Appeal Board Opinion: Under the facts of this case, claimant voluntarily left her employment with good cause. The wages paid to claimant were allegedly the result of the use of a formula applied unilaterally by the employer without the knowledge or consent of claimant. She could not determine whether she was adequately compensated in any week. No opinion is expressed with regard to the good faith of this employer in the use of the formula. It is the method of its

use that is objectionable, since there were no standards, schedules or production records furnished to the employee that would enable her to determine whether the formula was justly applied.

Decision: Initial determination disqualifying claimant for voluntary leaving of employment without good cause is overruled. The decision of the referee is affirmed. (6/7/43)

A-750-458

Index 770.11

NEW YORK STATE DEPARTMENT OF LABOR  
UNEMPLOYMENT INSURANCE DIVISION  
ADJUDICATION SERVICES OFFICE  
OCTOBER 1943

INTERPRETATION SERVICE - BENEFIT CLAIMS  
AVAILABILITY AND CAPABILITY  
Evidence of

AVAILABILITY - CANNERY WORKER - NO WORK HISTORY DURING OFF SEASON.)

The fact that a worker had no employment during off-seasons was insufficient in itself to support a determination of unavailability.

A.B. 9155-43

Referee's Decision: The initial determination suspending claimant's benefit rights for unavailability is sustained. (3/31/43)

Appealed By: Claimant.

Findings of Fact: Claimant is a resident of Holley, New York, which is about twenty-six miles from Rochester. For the past seven years, during the season which extends about six or seven months, commencing in June or July of each year, claimant worked in a canning factory located in Holley. Her only other work experience for the past thirty years has been in fruit packing houses and occasional work in the field around harvest time. She is fifty years old, married and has a nineteen-year old daughter who is working. Her husband works in Rochester. At interviews at the local office claimant signed statements to the effect that in the previous seven years she worked during the canning season and that during the off season did not look for work outside of Holley. She stated also that she would work during the hours 6:30 A.M. to 4:30 P.M. and that with these restrictions she was willing and able to work. No rights were suspended for unavailability.

Appeal Board Opinion: The referee upheld the initial determination on the theory that "claimant admits that she is only desirous of working during the canning season." We have carefully examined the written statements of the claimant and the testimony before the referee and are unable to find any basis for the referee's conclusion; nor did the local office have any basis for its initial determination of unavailability. Far from admitting her unwillingness to work, claimant in her written statement and in her testimony expressed a contrary contention. At the hearing she testified that she knew that she was required to be available for work in order to be eligible for benefits and that she had made efforts to obtain work elsewhere. No offer of employment was ever made to her and she at no time indicated that she would refuse to entertain one. In cases where it appears that a seasonal worker has had no employment during the off season

over a long series of years, it may be an indication that the person has no desire to work after the season. However, the fact that the person had no work is not sufficient in itself to support a determination of unavailability. Each individual case must be carefully scrutinized with a view to determine whether all the circumstances as well as the claimant's entire course of conduct warrant the conclusion that there was no desire to work. The record herein falls short of establishing that essential fact.

Decision: The initial determination suspending claimant's benefit rights for unavailability is overruled. The decision of the referee is reversed. (7/31/43)

A-750-460

Index 1230-4

NEW YORK STATE DEPARTMENT OF LABOR  
UNEMPLOYMENT INSURANCE DIVISION  
ADJUDICATION SERVICES OFFICE  
OCTOBER 15, 1943

INTERPRETATION SERVICE - BENEFIT CLAIMS  
REFUSAL OF EMPLOYMENT  
Domestic and personal reasons

Appeal Board Case Number 9228-43

REFUSAL OF REFERRAL TO EMPLOYMENT - PREFERENCE FOR WORK IN NEW YORK  
(SECTION 506.1 OF LABOR LAW)

Where claimant's work experience was solely of a live-in nature, at an out-of-the city children's camp, and she was offered a job at an out-of-the city children's camp for substantially similar work as that previously performed by her, held that in the absence of changed domestic circumstances, her refusal of the offered job, on the ground that she could not leave the city because of her domestic circumstances, was not with good cause.

Referee's Decision: Initial determination disqualifying claimant for refusing without good cause referrals to employment is overruled. (5/5/43)

Appealed By: Industrial Commissioner.

Findings of Fact: Claimant, twenty-nine years of age, married and the mother of a child about one and a half years of age, resides with her husband and child in the Borough of Manhattan, New York City. From 1931 to 1940 she had no work experience. During the first six months in 1941 claimant was employed in a factory engaged in making belts for ladies' hats at a salary of about \$15 per week. During July, August and September of 1941 claimant lived at a children's camp located at Ulster Park, New York, the beneficial owners and operators of which were her father-in-law and mother-in-law. Claimant contended that she was employed at said camp as a camp mother and that she earned a total of \$409.75 during the third quarter of 1941; that during the fourth quarter of 1941 she was employed at the New York City office of the camp as "clerk", earning \$50. During July, August and September 1942 claimant again lived at the camp and allegedly was employed there as camp mother. She testified that she earned about \$100 in the first quarter, about \$200 in the second quarter and about \$400 in the third quarter of 1942. In February 1942 claimant's baby was born and the child spent the summer of 1942 with the claimant at the camp. On November 10, 1942 claimant filed an application for benefits and in stating her previous work experience to the employment interviewer, claimant failed to mention

her previous experience to the employment interviewer, claimant failed to mention her previous factory employment. She did, however, stress her alleged employment as camp mother at a children's camp during the summers of 1941 and 1942. On February 3, 1943 claimant was referred to two living-in positions at children's camp located outside the City of New York. The primary function of the positions to which claimant was referred was to work with and care for children. One position was at Binghamton, New York and the other at Chappauqua, Westchester County, New York. Claimant had no objection to the compensation offered but refused the referral on the ground that she "could not accept any jobs outside of New York City because of my family." The local office disqualified claimant and claimant in her request for a hearing stated "Placement had no right to send me out of town for a job." Claimant has no knowledge of or experience in stenography, typing or bookkeeping. She does not desire to work in a factory or work at a salary less than \$25 per week.

Appeal Board Opinion: Viewing all of the facts in this record as a whole, we are not convinced that claimant's alleged employment as "camp mother" during the summers of 1941 and 1942 was genuine employment. However, that issue is only collateral to the issue before us and we therefore need not decide it herein. Even if we assume that her employment as "camp mother" was genuine, her position with respect to the issue before us is unaided. The work experience revealed to the employment interviewer by the claimant herself indicates employment solely of a living-in nature and at an out-of-the city children's camp during the two summers immediately preceding the referral in question. Yet when offered two positions at children's camps out of the city to perform work substantially similar to that allegedly performed by her in her previous employment, claimant refused the referral. We believe from all of the fact and circumstances herein that claimant had a desire to collect unemployment insurance benefits and not to obtain employment. We hold that claimant refused the referrals without good cause.

Decision: The initial determination disqualifying claimant for refusing without good cause to accept referrals to employment is sustained. The decision of the referee is reversed. (7/19/43)

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A-750-462

INDEX 755 A.2

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

June 26, 1943

INTERPRETATION SERVICE-BENEFIT CLAIMS  
AVAILABILITY AND CAPABILITY

Evidence

EMPLOYEE

Part-time worker

A.B. 9358-43

AVAILABILITY - THREE DAYS A WEEK ONLY

Unwillingness to work more than three days a week rendered claimant ineligible for benefits since she could not have "four or more days of total unemployment" or accumulate any "effective" days in any statutory week.

Referee's Decision: Claimant was available for employment as a short-time worker and is eligible for benefits as such, subject to the regulations of the Industrial Commissioner. (5/12/43)

Appealed by: Industrial Commissioner.

Findings of Fact: For nine years prior to January 1941 claimant was employed as a full-time worker for a life insurance company. When she became separated from this employment she was pregnant. Her baby was born about September 1941. Claimant was last employed as a bookkeeper on a part-time basis from November 1941 to January 1943. From November 1941 to May 1942 claimant worked mornings only. From May 1942 to January 1943 she worked three full days a week. Her hours of work were changed to enable her to save carfare and lunches. On January 26, 1943 claimant filed an application for benefits. On February 11, 1943 she was referred to two full-time jobs at defense plants. Claimant refused to accept these referrals as, because of her domestic duties, she would not consider working more than three days a week. Claimant resided in the same building with her mother, who was willing to take care of claimant's child during claimant's absence.

Appeal Board Opinion: Claimant's most recent history is that of a part-time worker on a three day a week basis. Because of her domestic duties she is unwilling to accept any other type of employment. Claimant, therefore, is available for employment on only three days during any calendar week. It is argued on behalf of the Industrial Commissioner that claimant cannot, in any event, qualify for benefits because she cannot accumulate any effective days in any statutory week. The Commissioner's position is well taken. The pertinent subsections of Section 502 of the Labor Law read as follows:

"10. 'Total unemployment' means the total lack of any employment on any day, including employment not subject to this article, caused by the inability of an employee who is capable of and available for employment to obtain any employment in his usual employment for which he is reasonably fitted by training and experience, including employment not subject to this article." (Underscoring ours)

"12. 'Effective day' means a full day of total unemployment provided such day falls within a week in which an employee had four or more days of total unemployment and provided further that only those days of total unemployment in excess of three days within such week shall be deemed 'effective days,' except that no effective day shall be deemed to occur in a week in which the employee has days of employment for which he is paid remuneration exceeding an aggregate of twenty-four dollars." (Underscoring ours)

"13. A 'week' means seven consecutive days beginning with Monday." Claimant is available for work only three days a week. On this basis she could not have "four or more days of total unemployment" in any statutory week and would be unable to accumulate any "effective days." It must be held, therefore, that claimant cannot qualify for benefits by reason of her unwillingness to work on more than three days a week.

Decision: The claimant cannot qualify for benefits because she cannot accumulate any effective days in a statutory week. The initial determination of the local office is sustained. The decision of the referee is reversed. (9/1/43)

ADJUDICATION SERVICES OFFICE

NOVEMBER 8, 1943

INTERPRETATION SERVICE - BENEFIT CLAIMS  
RESIGTRATION, REPORTING AND CERTIFICATION

Misinformation  
Delay in registering

Appeal Board Case Number 9440-43

FAULURE TO REGISTER - RELIANCE ON ERRONEOUS INFORMATION NOT FURNISHED  
BY DIVISION

(SECTION 510.1 OF LABOR LAW)

Registration was not predated where claimant's delay was due to his reliance on erroneous information received from sources outside the Division.

Referee's Decision: Initial determination refusing predating of claimant's application for benefits to January 11, 1943 is overruled. (6/7/43)

Appealed By: Industrial Commissioner.

Findings of Fact: Claimant worked for thirty-one years prior to January 1943 as an assistant manager in the revenue accounting department of a telegram company. He was retired by his employer in January 1943. Claimant filed an application for employment at the United States Employment Service on January 11, 1943. He was assigned a reporting date of March 8, 1943 at placement. Claimant failed to meet this reporting date because commencing about January 31, 1943 he was visiting his son who was stationed at an army camp in Louisiana. Claimant filed an application for unemployment insurance benefits on April 26, 1943 and reported currently. On May 4, 1943 claimant requested the local office to credit him with his period of unregistered unemployment commencing January 11, 1943. The local office denied claimant's request on the ground that he had not filed a claim for benefits prior to April 26, 1943. Claimant stated that he had not filed a claim for benefits prior to April 26, 1943 because (a) he did not need the money and (b) he relied upon erroneous information received from his employer and other governmental agencies outside of the Division of Placement and Unemployment Insurance that he was not eligible for benefits. Claimant knew that he was not filing a claim for benefits when he made an application for employment at the placement section on January 11, 1943.

Opinion: Claimant having relied upon outside sources of information, it must be held that his failure to file a claim for unemployment insurance benefits prior to April 26, 1943 cannot be excused. Claimant knew that he did not file a claim for benefits when he applied for employment at the placement section on January 11, 1943. Moreover, he admits that he had no intention of doing so at that time.

Decision: Initial determination denying claimant's request to be credited with his unregistered period of unemployment is sustained. The decision of the referee is reversed. (8/18/43)

NEW YORK STATE DEPARTMENT OF LABOR  
UNEMPLOYMENT INSURANCE DIVISION  
ADJUDICATION SERVICES OFFICE  
November 19, 1943

INTERPRETATION SERVICE- BENEFIT CLAIMS  
DETERMINATION OF BENEFITS  
AVAILABILITY AND CAPABILITY  
Evidence of  
REFUSAL OF EMPLOYMENT  
Distance  
Transportation facilities - lack of

Appeal Board Case No.9431-43

AVAILABILITY - NON-EXISTENCE OF PLACEMENT OPPORTUNITIES  
REFUSAL OF REFERRAL TO EMPLOYMENT- TRANSPORTATION FACILITIES

Where a claimant, having a family permanently residing in his own house in a community where no placement opportunities presently exist, and no transportation facilities to offered work are available, it was decided that claimant had good cause for refusing employment and was available for employment.

Referee's Decision: Initial determination disqualifying claimant refusing to accept an offer of employment is modified to hold that claimant was unavailable for employment. (6/7/43)

Appeal By: Claimant

Findings of Fact: Claimant a construction laborer, filed an application for employment and for unemployment insurance benefits on December 1, 1942 in the Ithaca local office and reported to April 28, 1943. Claimant resides in Ludlowville, which is ten miles from Ithaca. On April 9, 1943 claimant was referred by the United States Employment Service to a job as a construction laborer at a government project at Horseheads, New York. The prospective employer furnished facilities to transport its employees from Ithaca to the plant, at a distance of twenty-seven miles. Claimant refused the referral on the ground that no facilities were available to transport him from his residence in Ludlowville to Ithaca in time to make connections with the employer's truck. On April 22, 1943 the local office issued an initial determination, effective April 9, 1943, holding that claimant, without good cause, refused to accept referral to employment. Claimant is the father of four children. He owns his own home in Ludlowville. Prior to filing his claim for benefits he worked in nearby localities. He arranged transportation by sharing a ride with a worker who commuted daily from Ludlowville. This means of transportation was no longer available to claimant after November 1, 1942, when claimant became separated from his employment. No employment opportunities exist in Ludlowville. Claimant is unwilling to live away from his home in Ludlowville. On April 27, 1943 claimant was referred by the United States Employment Services to a job as a laborer at a tool factory in Ithaca. Claimant accepted the referral and reported to the employer's establishment. He was willing to accept the job providing transportation to the employer's plant was made available to him. He could not accept employment due to lack of transportation facilities.

Appeal Board opinion: The referee ruled that claimant had good cause to refuse the offer of employment on the ground that no means of transportation was available to claimant to reach the employer's establishment. He also ruled that claimant was unavailable for employment. We agree with the referee's conclusion that claimant had good cause to refuse the offer of employment because of no means of transportation was available to claimant to reach the proposed employer's place of business. We do not agree with the referee's conclusion that

claimant rendered himself unavailable for employment by continuing to live in Ludlowville where no opportunities for employment exist for him.

If he had good cause to refuse the job offer because of lack of transportation, then he may not be held unavailable for employment for the identical reason. Claimant has made efforts to secure employment within walking distance of his home, without avail. It is not questioned that he desires work. In disposing of an analogous case in Appeal Board 7222-42 we said:

"The referee ruled claimant to be unavailable because there are no opportunities in the place of her residence and she is without means of transportation to any place of possible employment. It is not questioned that claimant is willing to work or that she has been and is making an honest effort to solve her transportation problem. Claimant's inability to secure work is not due to her unavailability but rather due to the fact that work was not available because of conditions over which she had no control.

"Under these circumstances, it would be a harsh rule that would deny to the claimant her benefits, at least pending the solution of her difficulties. We believe that the suspension of claimant's benefits rights was improper."

The same reasoning applies in the instant case.

Decision: Claimant with good cause, refused to accept a referral to employment. Claimant was available for employment. The initial determination of the local office is overruled. The decision of the referee is reversed. (9/21/43)

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A-750-476

Index No. 780A.2

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

December 27, 1943

INTERPRETATION SERVICE – BENEFIT CLAIMS  
DETERMINATION OF BENEFITS  
AVAILABILITY AND CAPABILITY  
Evidence of

Appellate Division Decision

Marie Salavarria Case

AVAILABILITY – DATE OF SUSPENSION

In the absence of proof of claimant's unavailability prior to her refusal of employment, suspension for unavailability was sustained as of the date of such refusal.

Appeal Board Decision Case No. 7831-42: Claimant was unavailable for employment on and after April 19, 1942. Initial determination is modified accordingly. The decision of the referee is reversed. (12/7/42)

Appeal By: Industrial Commissioner

Findings of Fact: Claimant, a homemaker operator of embroidery machines, filed an application for benefits at a local office in New York City on June 21, 1941. She refiled in the same office on December 26, 1941 and reported to March 23, 1942. On March 28, 1942 claimant filed a claim through the United States Employment Office in Washington, D.C. against New York as the liable state. She certified to weeks of total unemployment until about April 19, 1942. On April 21, 1942 claimant was referred to a job as a sewing machine operator in an establishment in Washington. The prospective employer offered to train claimant for this type of work. Claimant refused to accept the referral on the grounds that she had always worked at home, that she had to take care of her ten-year-old child and could not accept employment outside of her home. For four years prior to June 21, 1941 claimant had worked as an embroidery machine operator at home for an undergarment company located in New York City. Her earnings averaged about \$25 a week. She resided with her husband in New York City prior to March 28, 1942. The family moved to Washington, D.C. so that the husband might seek more remunerative employment. He has since been employed there, earning about \$45 a week. When claimant filed her inter-state claim she registered as a homemaker. The Employment Service at Washington, D.C. does not employ homemakers. Claimant attempted to find homework in Washington but her efforts have been unsuccessful. On May 25 the Out-of-State Resident Unit issued an initial determination holding that claimant was unavailable for employment as of March 28, 1942 and had withdrawn from her labor market on that date. Claimant requested a hearing on this issue. The referee overruled the initial determination, from which an appeal was taken to the Appeal Board by the Industrial Commissioner. The Appeal Board reversed the referee and modified the initial determination, stating as follows:

"As a result of the determination by the Out-of-State Resident Unit, fixing the date of her unavailability as March 28, 1942, claimant was deemed overpaid in the amount of \$30, representing three checks of \$10 each which she received for the period subsequent thereto. It cannot be said in this case that claimant committed any false representation or that she withheld any information from the employment office. The information upon which the determination of May 25, 1942 was based was available and ascertainable at all times after claimant's removal to Washington and the filing of her claim there. We believe, therefore, that it would be unfair to ask the claimant to return the benefit checks, which are charged as overpayments. We accordingly fix the date of her unavailability as April 19, 1942. The determination is modified to the extent that there is no overpayment of benefits to claimant."

The Industrial Commissioner appealed from so much of the decision of the Appeal Board as fixed the date of claimant's unavailability for employment as of April 19, 1942.

Appellate Division Opinion: On April 21, 1942 the Washington employment office certified to the New York Unemployment insurance office that claimant had refused a job to which she had been referred. It was impossible to obtain employment in Washington as a homemaker since that city is not a manufacturing city as there are only a few factories and the employment service received no call for homemakers. April 21, 1942 was the first time that there was any evidence in the case, which showed that the claimant was not available for employment. The Board, therefore, had to report it had evidence of claimant's unavailability as of April 21, 1942.

Appellate Division Decision: Decision of the Appeal Board affirmed. (9/22/43)

**Note:** It will be noted that the Appellate Division in this case fixed the date of claimant's unavailability as of the date "that there was any evidence in the case which showed that the claimant was not available for employment." It emphasizes the importance of promptly

procuring all pertinent information pertaining to an application for benefits in order to assure adequate protection of the Fund.

A-750-481

Index 1245.4

NEW YORK STATE DEPARTMENT OF LABOR  
UNEMPLOYMENT INSURANCE DIVISION  
ADJUDICATION SERVICES OFFICE  
JANUARY 8, 1944

INTERPRETATION SERVICE - BENEFIT CLAIMS  
REFUSAL OF EMPLOYMENT  
Safety and health

Appeal Board Case Number 9718-43

THE REFUSAL OF AN OFFER OF EMPLOYMENT - ADVERSE EFFECT ON HEALTH -  
(SECTION 506.1 OF LABOR LAW)

Refusal of employment on an alternating day and night basis, which basis might have adversely affected claimant's health, was with good cause.

Referee's Decision: Initial determination disqualifying claimant for refusing, without good cause, a referral to employment is sustained. (8/12/43)

Appealed By: Claimant.

Findings of Fact: Claimant is single and lives with her parents. For the past fourteen years and up to April 11, 1943 she was employed as an information telephone operator. Her salary was \$34 per week. She left her employment upon the advice of her physician because the work affected her health. Claimant registered for employment and unemployment insurance benefits on April 26, 1943. On May 28, 1943 she was referred to a job as telephone operator in a large hotel. The employment called for alternating day and night work, six days a week, at a weekly salary of \$22.50. Claimant refused the referral on the grounds that the salary was insufficient, that she would not work nights and that she would not work for less than \$30 a week. On the same day she was referred to a job in a retail store as a salesclerk, hours nine to six, five and one-half days a week, at a weekly salary of \$18. Claimant refused to accept this referral on the ground that the salary was insufficient. From the date of her registration on April 26, 1943, claimant made independent efforts to secure employment. Her physician advised her that she was capable of working except at her old position. She visited factories in Long Island soliciting work as a telephone operator, which she was unable to secure. She registered for a training course in war production work and secured a position with an airline company as a mechanic's helper. Her starting salary was \$26 for a week of forty hours, with overtime for all hours in excess of forty. She works forty-eight hours a week.

Appeal Board Opinion: The sole issue in this case is whether claimant's refusal to accept the referral as a telephone operator in a hotel was without good cause. Claimant had been compelled because of her health to resign from her position. She recovered and was able to work. The salary in the job offered to her was substantially less than she had formerly received. It involved day and night work. Claimant's reluctance to accept such a referral is understandable, not only because of the salary, but also because of the possibility that alternating days and night work might adversely affect her health. Claimant's desire to work

cannot be questioned. She took a war-training course. She secured a job as a mechanic's helper with an airline company at a salary more commensurate with her former salary. Under such circumstances we believe that claimant had good cause to refuse the referral in question.

Decision: Initial determination disqualifying claimant for refusal, without good cause, referral to employment, is overruled. Decision of the referee is reversed. (10/25/43)

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A-750-482

Index 1710-2

NEW YORK STATE DEPARTMENT OF LABOR  
UNEMPLOYMENT INSURANCE DIVISION  
ADJUDICATION SERVICES OFFICE  
JANUARY 8, 1944

INTERPRETATION SERVICE - BENEFIT CLAIMS  
VOLUNTARY LEAVING OF EMPLOYMENT

Risk of injury  
Transfer to other work not desired

Appeal Board Case Number 571-43

VOLUNTARY LEAVING OF EMPLOYMENT - RISK OF PERSONAL INJURY  
(SECTION 506.2 OF LABOR LAW)

Voluntary leaving of employment rather than accept work as a jig learner was with good cause where the offered work was hazardous in nature and claimant's past experience did not fit him for it.

Referee's Decision: Initial determination disqualifying claimant for voluntary leaving of employment without good cause is sustained. (6/28/43)

Appealed By: Claimant.

Findings of Fact: Claimant is forty-one years of age, six feet tall and weighs 220 pounds. He was graduated from high school and completed a two-year college course in aeronautical engineering. In addition he attended business school for one year. From 1929 to 1942 claimant was continually employed as a traveling salesman of food products, selling to wholesale and retail grocers. On November 16, 1942 claimant obtained a position as planning clerk with a manufacturing firm engaged in war work. About two weeks thereafter he was transferred to the inspection department of the firm to perform inspection work. Because of some personal difference between claimant and the foreman of this department claimant was transferred to the jig building department as a jig learner. Claimant did not desire to work at jig building because he felt he was not suited for it. He so informed the personnel director of the firm. Claimant was advised that he could either transfer to the jig building department or leave his position as an inspector. Two days later claimant left his position. On January 14, 1943 claimant refiled an application for employment and unemployment insurance benefits and reported to February 3, 1943. On February 22, 1943 he obtained a position as inspector in a different war plant situated in the same locality. Upon being informed that claimant had voluntarily left his employment, the local office issued an initial determination disqualifying the claimant. At the hearing before the referee claimant testified that in jig building there was considerable climbing to do and that because of his weight, climbing made him dizzy.

Appeal Board Opinion: Claimant was not fitted by reason of his past training and experience and by reason of his physical stature for the offered job of jig builder. That he is fitted for work as an inspector is substantiated by the fact that within one month after leaving the employment in question he obtained such work in a war plant and continued in that employment.

Decision: Initial determination disqualifying claimant for voluntary leaving of employment without good cause is overruled. The decision of the referee is reversed. (9/7/43)

A-750-492

Index 770.6

NEW YORK STATE DEPARTMENT OF LABOR  
UNEMPLOYMENT INSURANCE DIVISION  
ADJUDICATION SERVICES OFFICE  
MARCH 1944

INTERPRETATION SERVICE - BENEFIT CLAIMS  
AVAILABILITY AND CAPABILITY  
Evidence of

AVAILABILITY - WORK HISTORY AS EVIDENCE OF AVAILABILITY

Where claimant for ten years worked as a bartender only during summers, the balance of each year living with his daughter in Long Island and in the South, and did not seek employment outside the summer season, or consider employment not in close proximity to his home, where no employment opportunities existed, benefit rights were properly suspended for unavailability.

A.B. 9388-43

Referee's Decision: The initial determination suspending claimant's benefit rights for unavailability is sustained. (5/19/43)

Appealed By: Claimant.

Findings of Fact: Claimant is sixty years of age. For ten years past he has resided at his own home in Paradox Lake, N.Y. which is a summer resort and was employed as a bartender in either of two establishments at Paradox Lake and Schroon Lake. The latter locality is a summer resort seven miles from claimant's residence. Claimant's employment was seasonal and commenced on Decoration Day and ended about Labor Day. As a bartender, claimant earned about \$20 a week plus meals and tips. There are no employment opportunities in Paradox Lake and the vicinity after the summer season. Claimant did not work after the closing of the summer season. After his seasonal employment ended, claimant and his wife would leave Paradox Lake to visit their daughter at Lindenhurst, L.I. where they made their home for the winter season. During some years claimant and his wife would spend the winter in the South. In the Spring they would return to their home in Paradox Lake. Claimant made no effort to obtain employment while visiting with his daughter. On September 17, 1942 claimant filed for benefits and reported to October 28, 1942. He then refiled on November 10, 1942 and reported to January 20, 1943 at which time he received his thirteenth check. He refiled on April 1, 1943 and reported to May 26, 1943. On April 1, 1943 claimant was referred by the U.S.E.S. to a job as laborer in a mill engaged in defense work located at Chestertown, N.Y., a distance of about thirty miles from claimant's residence in Paradox Lake. Claimant refused to accept this referral because of the distance, stating that he was unwilling to accept employment more than seven and one-half miles from his home; that he was not physically able to do the work due to an

asthmatic condition and a hernia and that he preferred a salary of \$45 a week. On April 2, 1943 an initial determination was issued holding that claimant, without good cause, refused to accept a referral to employment and was unavailable for employment.

Appeal Board Opinion: During the last ten years claimant's only employment was that of a bartender during the summer season. During the remaining months of the year he would either take a trip South or make his home with his daughter in Long Island. He made no attempt to seek employment after the close of the summer season. He refuses to consider employment which is not in close proximity to his home in Paradox Lake. No employment opportunities are available in the latter locality after the summer season. Claimant's entire course of conduct indicates that he was not available for employment on and after April 1, 1943. In view of the conclusion reached by us it is unnecessary to pass on the question whether claimant's refusal to accept the referral to employment was with good cause.

Decision: The initial determination suspending claimant's benefit rights for unavailability as of April 1, 1943 is sustained. The decision of the referee is modified accordingly. (9/1/43)

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A-750-493

Index 805-7

NEW YORK STATE DEPARTMENT OF LABOR  
UNEMPLOYMENT INSURANCE DIVISION  
ADJUDICATION SERVICES OFFICE  
MARCH 7, 1944

INTERPRETATION SERVICE - BENEFIT CLAIMS  
CLAIMS, REGISTRATION, REPORTING AND CERTIFICATION  
Filing and Certifying Requirements

Appeal Board Case Number 9384-43

REPORTING - FAILURE TO REPORT TO PLACEMENT OFFICE AS DIRECTED  
(SECTION 510 OF LABOR LAW)

Deliberate disregard of specific direction to report daily to the employment office resulted in suspension of benefit rights.

Referee's Decision: Initial determination suspending claimant's benefit rights for failure to report to placement office is sustained. (6/3/43)

Appealed By: Claimant.

Findings of Fact: Claimant, a legal secretary, stenographer and bookkeeper of twenty years' experience, received \$40 a week in her last employment, which terminated on March 6, 1943. She filed an application for benefits on March 8, 1943. During an interview at the secretarial section of the placement office claimant stated she believed she was entitled to receive \$40-\$45 per week. Claimant was advised the prevailing rate of wage was \$30-\$35 per week. On April 28, 1943 claimant reported to the placement office and was placed on a daily reporting basis and instructed to return on April 29. Claimant did not do so. On April 30 she advised the claims examiner that she had deliberately failed to report to placement on the preceding day and that she would refuse to report there in the future. Claimant's benefit rights were suspended. She continued to report to insurance but refused to report to placement. At the hearing claimant sought to establish that her past training and experience justified her demand

for \$40 per week minimum salary. She sought also to establish that the requirement that she report daily to placement was unreasonable in view of the fact that they had no job offers for her and that it interfered with her search for employment through private agencies and newspaper advertisements. In support of her contention, claimant submitted names of fifteen private employment agencies with which she had registered specializing in placement at higher wage scales. She also listed twenty-seven interviews with prospective employers in connection with applications made for employment in her line at \$40-\$50 per week.

Appeal Board Opinion: The issue before the referee was whether or not the local office had properly suspended claimant's benefit rights for failure to report to the placement office. The local office determination was based on claimant's refusal to report in accordance with the prescribed procedure. There is no question that she failed to so report. The local office properly warned claimant that her continued refusal to report to placement would result in a suspension of her benefits. It cannot be said that the local office action was improper.

Decision: The local office determination suspending claimant's benefit rights for failure to report to placement is hereby sustained. The decision of the referee is affirmed. (9/21/43)

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A-750-497

Index 1295-8

NEW YORK STATE DEPARTMENT OF LABOR  
UNEMPLOYMENT INSURANCE DIVISION  
ADJUDICATION SERVICES OFFICE  
MARCH 7, 1944

INTERPRETATION SERVICE - BENEFIT CLAIMS  
REFUSAL OF EMPLOYMENT  
Other reasons for refusal

Appeal Board Case Number 9541-43

REFUSAL TO ACCEPT REFERRAL TO EMPLOYMENT - UNWILLINGNESS TO REMOVE  
UNIFORM  
(SECTION 506.1 OF THE LABOR LAW)

The fact that claimant, a member of the enlisted reserve of the United States Army, was subject to duty on twenty-four hours' call, did not justify refusal of employment for which he was reasonably fitted by training and experience.

Referee's Decision: Initial determination disqualifying claimant for refusing, without good cause to accept referral to employment and suspending claimant's benefit rights for unavailability is overruled. (6/29/43)

Appealed By: Industrial Commissioner.

Findings of Fact: Claimant, a mason's helper during the last three years, was referred to a job as a stock handler or laborer in a machine shop engaged exclusively in war work. He refused to accept the referral on the grounds that he was a member of the enlisted reserve of the United States Army and was subject to report for duty on twenty-four hours' call; that he refused to remove his uniform and that the job in question was not one for which he was reasonably fitted by training and experience. An initial determination was issued that claimant, without good cause, refused to accept a referral to employment and that he was unavailable for employment.

At the date of the hearing claimant expected to be called to active duty in two weeks. Under army regulations the wearing of a uniform by reserve members is optional.

Appeal Board Opinion: It is not compulsory for a reserve member of the United States Army to wear a uniform. Considering claimant's past work history, the job to which he was referred meets the statutory test. The fact that claimant might have been subject to twenty-four hour call does not justify his refusal. At the date of the hearing he expected to be called to active duty in two weeks. The reasons advanced by claimant for his refusal cannot be accepted as constituting good cause within the meaning of the law. The question of whether or not claimant was unavailable is academic.

Decision: Claimant, without good cause, refused to accept a referral to employment. The initial determination is modified accordingly. The decision of the referee is reversed.

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A-750-498

Index 1245-5

NEW YORK STATE DEPARTMENT OF LABOR  
UNEMPLOYMENT INSURANCE DIVISION  
ADJUDICATION SERVICES OFFICE  
MARCH 7, 1944

INTERPRETATION SERVICE - BENEFIT CLAIMS  
REFUSAL OF MEPLYMENT  
Safety and Health

Appeal Board Case Number 9282-43

REFUSAL TO ACCEPT REFERRAL - BASEMENT WORK - HEALTH ADVERSELY AFFECTED  
(SECTION 506.1 OF LABOR LAW)

Arthritic claimant justified in refusing to accept referral to job in basement on the uncontroverted ground that the dampness there would adversely affect her health.

Referee's Decision: Initial determination disqualifying claimant for refusing, without good cause, to accept referral to employment is sustained. (4/1/43)

Appealed By: Claimant.

Findings of Fact: Claimant filed an application for employment and unemployment insurance benefits on November 4, 1942. On November 25, 1942 she was referred to a job as a sales clerk in a basement of a department store. She refused this referral on the ground that working in a basement would aggravate her ailment. Claimant is afflicted with arthritis in the back. Prior to May 18, 1942 claimant was employed as a sales clerk in the basement of a department store. She left this employment on the latter date because the dampness in the basement caused her discomfort and headaches and adversely affected her physical condition.

Appeal Board Opinion: Claimant bases her contention that working in a basement would aggravate her ailment on her previous experience while working under similar conditions. Claimant should not be compelled to accept a job which adversely affects her health.

Decision: Initial determination disqualifying claimant for refusal to accept the referral is overruled. The decision of the referee is reversed. (6/30/43)

