

# New York State Department of Labor

## A-750 500 Series

A-750-501

Index No 725.9

NEW YORK STATE DEPARTMENT OF LABOR  
UNEMPLOYMENT INSURANCE DIVISION  
ADJUDICATION SERVICES OFFICE  
March 15, 1944

INTERPRETATION SERVICE-BENEFIT CLAIMS  
AVAILABILITY AND CAPABILITY  
Usual Occupation Inability to follow

Appeal Board Case No. 9745-43

CAPABILITY - PHYSICAL INABILITY TO PERFORM REGULAR WORK .

Physical inability to perform usual work as a machine presser did not disqualify a claimant who was ready, willing and able to perform sedentary work which reasonably was obtainable.

Referee's Decision: Initial determination suspending benefits for incapability is sustained.  
(7/31/43)

Appeal By: Claimant.

Findings of Fact: Prior to October 27, 1942, claimant, a veteran of the first World War, was employed as a machine presser. On the last mentioned date claimant suffered a heart attack, as a result of which he was hospitalized in the United States Veterans Hospital for eleven weeks. After his discharge on January 16, 1943 claimant was advised to rest for two months before seeking any employment. At the time of his discharge claimant's condition was described by the United States Veterans Hospital as follows: "Marked limitation of physical activity." "Ordinary physical activity markedly restricted." Claimant's heart condition has existed since 1931. On April 15, 1943 claimant filed an application for employment and for unemployment insurance benefits. At the time of the filing of the application for benefits, claimant's private physician advised him that he was capable of doing work of a sedentary nature. On May 19, 1943 the local office made an initial determination holding that claimant was incapable of employment and disqualified him as of the date of the filing of his application for benefits. Claimant contested the determination and demanded a hearing. The referee sustained the initial determination and the claimant appealed.

Appeal Board Opinion: The sole issue on this appeal is whether or not claimant was incapable of employment within the meaning of the law. The referee ruled the claimant was not capable. We do not agree with the referee's decision. We have said that capability of employment means the ability to perform work such as there may be a reasonable opportunity of obtaining. The referee predicated his decision on the grounds that claimant's limited ability and capacity for physical exertion made it impossible for him to obtain employment in the labor market. In his

statement on appeal claimant indicated his willingness to accept employment as a watchman. Obviously, such employment does not require a great physical exertion. Similarly, there appears to be no reason why claimant cannot be placed as a timekeeper, checker, or in work of a similar nature. On the whole, we believe the claimant is capable of performing some useful work for which there is a demand in the labor market.

Decision: Claimant was capable of employment within the meaning of the Unemployment Insurance Law. The initial determination of the local office is overruled. The decision of the referee is reversed. (10/25/43}

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NEW YORK STATE DEPARTMENT OF LABOR  
UNEMPLOYMENT INSURANCE DIVISION  
ADJUDICATION SERVICES OFFICE  
MARCH 15, 1944

INTERPRETATION SERVICE - BENEFIT CLAIMS  
REFUSAL OF EMPLOYMENT  
Wages

Appeal Board Case Number 9774-43

REFUSAL OF SUITABLE EMPLOYMENT - PIECE WORK RATE ESTABLISHED IN UNION  
SHOP  
(SECTION 506.1 OF LABOR LAW)

Where claimant, a piece-worker and member of the dressmakers' union, refused referral because rate of pay was not then settled, disqualification was proper since it was the custom in the industry, and the claimant was cognizant of it, that the rates were settled at the commencement of the season between the shop committee which represented the employees and a representative of the employer and that such rates were prevailing rates.

Referee's Decision: Initial determination disqualifying claimant for refusal to accept employment without good cause is sustained. (8/16/43)

Appealed By: Claimant.

Findings of Fact: Claimant is a dress operator and when employed works on dresses which sell wholesale at \$16.75. On May 26, 1943 claimant renewed his application for benefits, having previously filed in the same benefit year. He reported regularly thereafter to and including July 1, 1943. Claimant was reemployed thereafter. On June 17, 1943 claimant was offered a job with an employer manufacturing dresses selling wholesale at \$16.75, which is the claimant's usual line. Claimant reported to the employer and after an interview refused the job offer. A Report on Disqualifying Conditions was made by the United States Employment Service to the local office. Upon receipt of the report, the local office made an initial determination that claimant's refusal of the offer was without good cause. When interviewed with respect to the job offer, claimant stated the reason for his refusal was the fact that he was told that the price for the piecework was not settled and that negotiations were still pending between a shop committee and the employer.

Appeal Board Opinion: It is contended on behalf of the claimant that in view of the fact that at the time of the offer the piecework rates were not settled, claimant was justified in refusing the offer. It is argued on behalf of the claimant that he was entitled to know the basis of his remuneration. We believe the contentions of the claimant are without merit. Claimant is a member of the dressmakers' union. The job offered was with a union employer. Remuneration within the industry is usually based on piecework. In view of the fact that styles vary from season to season requiring, on occasion, more time in production, rates are usually settled at the commencement of the season between a committee representing the employees headed by the shop chairman and a representative of the employer. The result arrived at usually represents the average rate prevailing in the industry for the type of garment manufactured by the employer involved. While the claimant may not have known the exact sum which he was going to receive per garment, nevertheless he was cognizant of the fact that the shop committee which represented all of the employees, in accordance with the custom prevailing in the industry, would arrive at a rate commensurate with that prevailing in the industry for similar work.

Decision: Claimant, without good cause, refused an offer of employment for which he is reasonably fitted by training and experience. The initial determination of the local office is sustained. The decision of the referee is affirmed. (10/3/43)

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A750-509

Index No 720.1

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

April 26, 1944

INTERPRETATION SERVICE-BENEFIT CLAIMS  
AVAILABILITY AND CAPABILITY  
Evidence of

APPELLATE DIVISION DECISION

Maude May Smith Case

Appeal Board Case No. 8745-43

AVAILABILITY-INABILITY TO SECURE HOMEWORKER CERTIFICATE; NOT READY,  
WILLING AND ABLE TO ACCEPT EMPLOYMENT OUTSIDE OF HOME

A long experienced homemaker, validly unable to accept other than homework but ineligible for certificate in usual regulated industry, and ready, willing and able to accept homework in any other industry, even though employment possibilities in another industry were remote, was held available for employment.

The Findings of fact by the Appeal Board were as follows: Claimant filed application for employment and unemployment insurance benefits on August 19, 1942. She certified weekly thereafter to January 27, 1943. On December 9, 1943 claimant refused a referral to a factory job with a glove manufacturer on the ground that she had no transportation to the proprietor's place of employment. On the same day the local office issued an initial determination that claimant was unavailable for employment because she did not possess a homemaker's certificate and was not ready, willing and able to accept any employment outside of her home. Until May 1942 claimant had a homemaker's certificate which authorized her to receive work to

be done in her home. Her certificate was cancelled following the promulgation of "Homework Order No.4 Restricting Industrial Homework in the Glove Industry." An attempt to obtain a homemaker's certificate under the new regulations was unsuccessful. Claimant has at all times expressed a willingness to accept any work to be performed in her home. Opportunities to obtain homework in lines other than the glove industry were limited. For about thirty-five years claimant performed work at her home in the glove industry. She has never at any time worked in a factory, she is unable to leave her home to do outside work; she is the mother of five children the youngest of whom is seven years of age.

The Appeal Board in holding that claimant was available for employment stated: It is not disputed that claimant has at all times been willing, and able to accept work as a homemaker, nor that the lack of a homemaker's certificate is the only reason for her failure to obtain such work. Where it is shown, as in the present case, that a claimant is willing and able to accept employment as a homemaker and because of valid domestic or other circumstances cannot accept outside work, we hold to the principle that such a person is available for employment within the meaning of the Unemployment Insurance Law.

The Appellate Division unanimously affirmed the decision of the Appeal Board, stating:

"Claimant became unemployed through no fault of her own. How the State through the Industrial Commissioner with the one hand deprives her of the right to augment the family income through work which she can perform and compels her to be and remain unemployed and other hand would deprive her of the statutory benefits of being so unemployed. Claimant herself is able, ready and willing to accept employment at work which she has performed for some thirty-five years or at similar work. She is thus available for employment. Due to the State's refusal to permit industry to deliver work to her and to permit her to receive such work and the lack of similar work, she remains unemployed."

It will be noted that in this case the claimant, who had been a homemaker for thirty-five years, had never been employed outside of her home and that because of domestic responsibilities she was unable to accept employment outside of her home. Thus, while claimant's domestic responsibilities may not have entitled her to a homework certificate under the homework regulation, they nevertheless did constitute good cause for refusing employment outside the home. A different decision, however, might result where claimant had a work history not exclusively devoted to homework, or was in a position to accept employment outside of her home or was unwilling to accept other types of homework or limited her homework to a restricted industry for which she did not possess the required homework certificate.

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A-750-511

Index 1230-5

NEW YORK STATE DEPARTMENT OF LABOR  
UNEMPLOYMENT INSURANCE DIVISION  
ADJUDICATION SERVICES OFFICE  
APRIL 26, 1944

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

Appeal Board Case Number 10,179-43

REFUSAL OF OFFER OF EMPLOYMENT - HOME RESPONSIBILITIES (SECTION 506.1 OF LABOR LAW)

Unwillingness to call for and deliver homework to employer's establishment, because it interfered with domestic duties, was not good cause for refusing homework.

Referee's Decision: Claimant is held to be unavailable for employment and the initial determination that she refused, without good cause, to accept an offer of employment is sustained. (11/4/43)

Appealed By: Claimant.

Findings of Fact: Claimant worked as a homemaker on dresses for a manufacturer in this industry for one year prior to June 1943. She operated a sewing machine in connection with her work. This employer delivered the work to claimant's residence and called for the work, after its completion. Claimant's homework permit expired June 1943 and it was not renewed. The issuance of homework certificates in the dress industry was discontinued after the latter date. Claimant filed for benefits on July 6, 1943 and reported intermittently to November 15, 1943. On September 25, 1943 claimant was referred by the United States Employment Service to a job as a homemaker on utility kits for the Women's Army Corps. The piecework rate offered was fifty cents per dozen. The prospective employer was willing to accept any person experienced as a sewing-machine operator. The homemaker would be required to call for the work and to deliver the completed work to the employer's establishment at her own convenience. At the preliminary conference at the local office on October 5, 1943 claimant advanced these reasons for refusing to accept the referral: first, her work experience was confined to dresses and she could not do the work required; second, she never traveled in the city; and third, she could not call for and deliver the work to the employer's establishment because she had to remain at home to attend to her family. Claimant resides in Brooklyn. The employer's establishment was located in downtown Manhattan. The local office issued an initial determination holding that claimant refused, without good cause, to accept a referral to employment on September 26, 1943. Claimant is the mother of two children of the ages of three and eleven years, respectively. At the hearing, claimant professed a willingness to undertake the work if the prospective employer could arrange to deliver and call for the work at her residence.

Appeal Board Opinion: The referee sustained the disqualification for refusal on the ground that claimant, by unreasonably restricting herself to the type of employment she would consider, rendered herself unavailable for employment. such decision is inconsistent on its face. The issue presented to the referee was whether or not claimant had good cause to refuse the job offer. Her availability for employment as a homemaker was not questioned by the local office. No basis is found herein for a holding of unavailability. With respect to the issue of refusal, the only ground advanced by claimant which merits consideration is that she could not arrange to call for and deliver the homework to the employer. No reason appears why it would create an unreasonable hardship for claimant to arrange for someone to take care of her children during the short periods she would be required to leave her home to obtain work. The fact that the conditions imposed by the employer do not suit claimant's personal convenience does not constitute good cause for her refusal.

Decision: Claimant refused, without good cause, to accept a referral to employment. The initial determination of the local office is upheld. The decision of the referee is modified. (2/24/44)

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

APRIL 26, 1944

INTERPRETATION SERVICE - BENEFIT CLAIMS

REFUSAL OF EMPLOYMENT

Other reasons for refusal

Safety and health

Appeal Board Case Number 10,019-43

REFUSAL TO ACCEPT REFERRAL TO EMPLOYMENT - PREJUDICE AGAINST  
PARTICULAR INDUSTRY (SECTION 506.1 OF LABOR LAW)

Prejudice against the garment industry was not good cause for refusing employment therein. Arbitrary belief that working conditions in prospective employer's establishment would adversely affect health was not good cause for refusing employment for which reasonably fitted by training and experience.

Referee's Decision: Initial determination disqualifying claimant for refusing without good cause to accept referral to employment is overruled. (9/22/43)

Appealed By: Industrial Commissioner.

Findings of Fact: Claimant had worked as a bookkeeper in the garment industry for six years prior to 1935. Subsequently and until 1941 claimant worked as a bookkeeper in various establishments not connected with the garment industry. For two years prior to June 26, 1943 claimant worked as a bookkeeper for a firm engaged in the fish business. Her starting wages in this employment were \$30 a week but were reduced to \$25 due to adverse business conditions. On July 5, 1943 claimant filed an application for benefits. On July 15, 1943 claimant was referred to a job as a bookkeeper for a manufacturer in the garment industry paying \$30 a week. Claimant refused to accept the referral, stating that she had worked in the garment industry eight years ago and that the working conditions prevailing there undermined her health. Claimant informed the interviewer that she would accept this job offer if it paid \$35 a week. In initial determination was issued that claimant, without good cause, refused to accept a referral to employment on July 15, 1943.

Appeal Board Opinion: Claimant's refusal to accept the referral in question was based on her experience as a bookkeeper in the garment industry some years ago. She expressed no other objections to the terms of the job offer. She testified at the hearing as follows:

"I feel that I am prejudiced towards this industry. I don't like working for the people that are in this industry."

The fact that conditions allegedly prevailing in a former employer's establishment in the garment industry had affected her health is insufficient reason to justify claimant's refusal to accept the referral in question. Her belief that similar conditions prevailed in the prospective employer's establishment was purely speculative and based on prejudice against the garment industry in general. We believe that claimant had a duty to report to this employer's establishment in order to ascertain whether the work would adversely affect her health. Having

failed in this respect, it must be held that claimant's refusal to accept the referral on July 15, 1943 was without good cause.

Decision: Claimant, without good cause, refused to accept a referral to employment. The initial determination is sustained. The decision of the referee is reversed. (12/13/43)

A-750-518

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NEW YORK STATE DEPARTMENT OF LABOR  
UNEMPLOYMENT INSURANCE DIVISION  
ADJUDICATION SERVICES OFFICE  
APRIL 28, 1944

INTERPRETATION SERVICE - BENEFIT CLAIMS  
REFUSAL OF EMPLOYMENT  
Experience and Training

Appeal Board Case Number 9361-43

REFUSAL TO ACCEPT REFERRAL TO EMPLOYMENT - QUALIFICATIONS ACCEPTABLE  
TO EMPLOYER (SECTION 506.1 OF THE LABOR LAW)

Having worked only seasonally for four years as fur worker and with preliminary training being capable of becoming sewer on jackets, good cause did not exist for claimant to refuse such latter employment at least during the off season.

Referee's Decision: Initial determination disqualifying claimant for refusing to accept a referral to employment is sustained. (5/25/43)

Appealed By: Claimant.

Findings of Fact: Claimant, a fur finisher, with twenty-nine years experience, terminated her last employment in December 1942. For the past four years she worked during the season which lasted six months, ending in December. In this four year period she did not work during the remaining months of each year. Her maximum earnings in this employment were \$27 a week. On January 4, 1943 claimant filed an application for employment and unemployment insurance benefits and reported to May 20, 1943. On April 14, 1943 claimant was referred by the U.S.E.S. to a job as hand sewer and baster on ladies' Army jackets on a piecework basis. It was estimated claimant could earn as high as \$35.00 a week. Claimant refused to accept this referral because she was not fitted by training and experience to do the work and because she was unwilling to accept employment other than in her usual occupation as a fur finisher and that she expects to be called back by her last employer in June. The local office issued an initial determination that claimant, without good cause, refused to accept a referral to employment on April 14, 1943. No jobs were available for claimant in the fur industry during the slack season. Claimant's work as a fur finisher required the use of a needle and thread in sewing linings on fur coats. After some preliminary training, she could have adjusted herself to do the work of a hand sewer on ladies' jackets. The employer was willing to teach the work to any person experienced in the needle trade. She could have returned to her former employer when the season again opened.

Appeal Board Opinion: The issue to be decided is whether claimant, with good cause, refused to accept a referral to employment. In Appeal Board, 8666-43 we were confronted with a

somewhat analogous situation. In the case cited we said:

"It is contended on behalf of claimant that she was justified in refusing to accept an offer of temporary employment during her layoff period on the ground that it would require a retraining period and that it did not measure up in all respects to her former employment. The record herein establishes that the job offered was in a line of work closely allied to claimant's usual occupation, and that it paid the union scale. It might be that claimant would be justified in rejecting the offer in question were it an offer of permanent employment. However, during periods of temporary unemployment claimants must be prepared to accept offers of employment which are not unreasonable and which meets the minimum tests of the statute. Judged by these standards, it cannot be said that claimant had good cause to refuse the offer."

The above reasoning applies equally to the instant case. Claimant has not worked during slack seasons for four years. It thus appears that employment opportunities in her industry are only available to her during the busy season. The job to which she was referred meets the minimum tests of the statute. As a matter of fact, after some preliminary training it might have been possible for claimant to earn higher wages than in her previous employment. It is therefore, held that claimant, without good cause, refused to accept a referral to employment.

Decision: Initial determination that claimant, without good cause, refused to accept a referral to employment is sustained. The decision of the referee is affirmed. (8/30/43)

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A-750-519

Index 1230-3

NEW YORK STATE DEPARTMENT OF LABOR  
UNEMPLOYMENT INSURANCE DIVISION  
ADJUDICATION SERVICES OFFICE  
APRIL 28, 1944

INTERPRETATION SERVICE - BENEFIT CLAIMS  
REFUSAL OF EMPLOYMENT  
Hours

Appeal Board Case Number 10,166-43

REFUSAL TO ACCEPT EMPLOYMENT - HOME OBLIGATIONS  
(SECTION 506.1 OF LABOR LAW)

Claimant, the mother of a fourteen-year-old child, was justified in refusing employment on a rotating day and night shift where acceptance of proffered employment would have necessitated leaving her child alone at night, her husband being also employed on a rotating day and night shift.

Referee's Decision: Initial determination disqualifying claimant for refusing an offer of employment without good cause is sustained. (10/13/43)

Appealed By: Claimant.

Findings of Fact: Claimant is married and resides with her husband who is employed by a public utility company in Westchester County. They have a fourteen-year-old son. Claimant's husband works shifts which at times keep him out of their home until midnight. For eighteen years prior to May 28, 1943 claimant was intermittently employed in Yonkers, NY. She was laid off on last

mentioned date because of curtailment of civilian production, at which time she was receiving \$30 per week, hours 8 a.m. to 4:45 p.m. Prior to her last year of employment, claimant worked different shifts, 6 a.m. to 1 p.m. - 1:30 p.m. to 10 p.m. On May 31, 1943 claimant filed for employment and unemployment insurance benefits. On June 10, 1943 claimant was offered employment in war contract department of her former employer at 56½ cents per hour - 40-hour week, no experience required. Claimant would be required to work in rotating shifts running from 8 a.m. to 4 p.m., 4 p.m. to midnight and from midnight to 8 a.m., shifts changing weekly. Claimant refused the offer on the ground that the work would keep her out nights and that she did not desire to leave her child unattended for the entire night, that it would interfere with her family life. Local office issued an initial determination holding claimant's refusal to be without good cause. Claimant is willing to accept employment including changing shifts but not later than 10 p.m. At the hearing claimant further indicated that she would be willing to accept employment at a substantial reduction from her former earnings. In view of the shifts claimant's husband is required to work, acceptance of the job offer by claimant would result in claimant's child remaining without parental care or supervision during most of the evening and night hours.

Appeal Board Opinion: It is the contention of the local office that the present war emergency and the urgent need for manpower justifies the disqualification imposed on the claimant. We believe that this position is untenable. The Unemployment Insurance Law has not been amended so as to provide for a change of basis standards during the war period.

"While we can understand the patriotic motive that prompted these expressions, the commission was without legal authority to place the decisive factor in this case on this basis. Its only source of authority is in the statute." (Industrial Commission of the State of Colorado v. George Lazar, 137 P. (2d) 405).

Furthermore the policy of the War Manpower Commission, of which the U.S.E.S. is a part, with respect to the recruitment, training and employment of women workers appears to be opposed to the position of the local office. In a Statement of Policy approved on October 17, 1942 (WMC Manual of Operations, Title III, section 2-4) the War Manpower Commission declared that in recruiting women workers every reasonable effort must be made to adjust assignments of shifts to women with young children in such manner as will cause the least disruption in their family life. This is a sound social policy intended to protect the family life. The growth of juvenile delinquency during this war emphasizes the need for following this policy.

The view of the N.C.U.C.C. on this subject is in accord with ours. That Commission said:

"In order to determine what is suitable work within the meaning of the Law all circumstances must be considered. This Law was not intended to place additional burdens on the institution of motherhood. Where a claimant, who is the mother of children, refuses work which would necessitate her being away from her children at night, the Law will take cognizance of the fact that whenever it is possible, a mother should be with her family at night and will not ordinarily consider such a refusal as a refusal of suitable work." (Unemployment Compensation Interpretation Service, Benefit Series, 7741-N.C.R.)

We do not agree with the referee who held that claimant should have shifted the care and custody of her child during nights to her aged and ailing parents. Claimant's insistence that it was her primary responsibility to care for her child at least during nights is entirely reasonable under the circumstances.

Decision: Initial determination disqualifying claimant for refusing to accept an offer of employment without good cause is overruled. Decision of the referee is reversed. (2/14/44)

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A-750-523

Index 1580B-4

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

APRIL 29, 1944

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

Misrepresentation or misstatement

Appellate Division Decision

Matter of Esther L. Roberts Case, 261 App Div 845

WILFUL MISREPRESENTATION - CONTINUOUS PERIOD OF UNEMPLOYMENT - TWO  
MISREPRESENTATIONS

(SECTION 507-a (1) OF LABOR LAW)

Where a wilful false statement was reiterated on two occasions during a continuous period of unemployment only one penalty was imposed as the two falsehoods comprised only one illegal act and design.

The Findings of Fact by the Appeal Board were as follows: Claimant, a bookkeeper and office manager, filed an application for unemployment insurance benefits on September 1, 1942 and gave as the reason for her unemployment the fact that there was a "lack of work" at her last employer's place of business. As a matter of fact claimant left her employment voluntarily after having given her employer several days' notice and there was ample work at the employer's establishment. Claimant, at the time she filed her application for benefits, was pregnant but did not disclose this condition to the local office. She gave birth on January 19, 1943 and registered for benefits on February 9, 1943. On this application she ascribed "business slow" as the reason for her loss of employment. She reported until April 20, 1943 and received \$360 in benefits. At an interview in the local office on April 27, 1943 claimant signed a statement in which she again attributed her loss of employment as follows: "I was discharged in August, 1942 because business was getting slow." The local office issued initial determinations on May 21, 1943 holding that claimant had voluntarily left her employment with good cause but withdrew from the labor market and that she made wilful false statements on September 1, 1942 and February 9, 1943. Demand for repayment of \$360 was made and claimant's benefit rights were suspended for a total of 11 weeks.

The Appeal Board found that claimant's conduct in deliberately concealing the fact that she was pregnant and that she voluntarily left her employment stating that she was laid off due to lack of work constituted wilful misrepresentation to obtain benefits. However, the wilful misrepresentation of February 9, 1943 was rescinded because it was part of the same offense which occurred on September 1, 1942 and only one penalty may be imposed.

The Appellate Division unanimously affirmed the decision of the Appeal Board on the ground that the two offenses comprised only one illegal act and design.

It will be noted that in this case the two misrepresentations were made during a continuous period of unemployment. A different decision might result in the event that the claimant had intervening employment between two wilful misrepresentations.

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Index 1290-A-7

NEW YORK STATE DEPARTMENT OF LABOR  
UNEMPLOYMENT INSURANCE DIVISION  
ADJUDICATION SERVICES OFFICE  
APRIL 29, 1944

INTERPRETATION SERVICE - BENEFIT CLAIMS  
REFUSAL OF EMPLOYMENT  
Wages

APPELLATE DIVISION DECISION

Matter of Dorothy Turitz, 267 APP DIV 846

REFUSAL OF OFFER OF EMPLOYMENT - PREFERENCE FOR HIGHER WAGES  
(SECTION 506.1 OF LABOR LAW)

Where claimant's refusal of referral to employment in usual occupation and paying prevailing wages was based on her desire for higher wages, the refusal was without good cause, even though the referral was made four days after the application for benefits.

The Findings of Fact by the Appeal Board was as follows: Claimant, a bookkeeper, filed a claim for unemployment insurance benefits on February 22, 1943. Her last job prior to the filing for benefits was as a bookkeeper from December 1942 to February 1943. Her wages were \$30 per week. Prior to 1942 she had been employed as a bookkeeper at \$25 a week. On February 26, 1943 claimant was referred to a job as a bookkeeper at \$30 a week, which she declined to accept. She stated that she would not take a position at a salary of less than \$40 per week. The proof shows that the prevailing wages for a person of her experience was from \$26 to \$30 per week.

The Appeal Board, in holding that claimant's refusal of referral was with good cause, stated:

"Claimant had no prior reporting experience and was not aware of the fact that she was required to accept a proper offer of employment or lose her right to unemployment insurance benefits. She honestly believed that she had a right to reject job offers which did not meet the standards she had set for herself. The United States Employment Service failed to advise the claimant that she did not have the wide freedom of choice. The claimant herein was not only willing, but very anxious, to accept employment. She made diligent efforts to obtain employment and succeeded, through her own efforts, in obtaining a position within thirty-six days after the filing of an application for benefits. The position which claimant finally secured carried a salary in excess of that offered by the placement interviewer. Had claimant been advised that her benefit rights were at stake, she would have undoubtedly accepted the offer that was made to her by the United States Employment Service. Furthermore, it appears that claimant was not advised of the essential details of the job offer. Had claimant been advised that the job offer was for a five-day week in war work the offer would have been acceptable to the claimant without qualifications." (Appeal Board, 7293-42)

The Appellate Division, by unanimous decision, reversed the appeal Board merely stating that on the evidence there was not basis for the finding that claimant refused the offer with good cause.

A-750-529

Index 1290-2

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

MAY 3, 1944

INTERPRETATION SERVICE - BENEFIT CLAIMS  
REFUSAL OF EMPLOYMENT  
Wages

APPELLATE DIVISION DECISION

Matter of Augusta F. Matthey, 267 App. Div. 845

REFUSAL OF REFERRAL TO EMPLOYMENT - PREFERENCE FOR HIGHER WAGES  
(SECTION 506.1 OF LABOR LAW)

Belief that experience and skill warranted a higher salary was not good cause for refusing referral to usual occupation at approximate wages previously earned, even though the referral was made the same day that claimant filed an original claim and within one month thereafter claimant obtained more remunerative employment.

The Findings of Fact by the Appeal Board were as follows: Claimant for thirteen years was a bookkeeping machine operator. Due to illness she voluntarily terminated this employment in February 1942, at which time her salary was \$26 per week. She filed an original application for unemployment insurance benefits on January 25, 1943. On the same day she was referred to a job as a bookkeeping machine operator at a salary of \$28 to \$30 per week. Claimant refused to accept the referral, stating that she was unwilling to work for less than \$35 per week. Claimant is married and her husband was to be inducted in the Army in April 1943. She was desirous of maintaining her home in the event that her husband left for military duty. Because of the increased cost of living she wanted a reasonable opportunity after the filing of her application for benefits to obtain more remunerative employment. About the end of February 1943 she obtained employment as a bookkeeper starting at a salary of \$30 per week, which a month later was increased to \$32 a week. Additional increase to \$35 was promised after two months' service.

The Appeal Board in holding that claimant's refusal of referral was with good cause stated:

"The job offer in question was made to claimant on the same day that she filed her application for benefits. Her refusal was based on her belief that her experience and skill as a bookkeeping machine operator warranted a higher salary in the present labor market than that offered and that her economic situation made it imperative that she obtain more remunerative employment. She desired a reasonable opportunity after her filing within which to seek such employment. About a month later, through her own efforts, she secured employment paying a higher scale with good promotional opportunities."

RIDER:

The Appellate Division unanimously reversed the decision of the Appeal Board without opinion.

COMMENT

It will be noted that in this case the referral was in claimant's usual occupation and although made on the very day that she filed her application for benefits, the Appellate Division, nevertheless, reversed the Appeal Board, which decided that claimant was entitled to a longer period of time within which to seek more remunerative employment. Care should be exercised to distinguish this type of case from those cases where conversion jobs are involved. This decision means that the time element between the filing of the claim and the date of referral is immaterial where a refusal is in claimant's usual occupation.

A-750-534

Index 865-A-5

NEW YORK STATE DEPARTMENT OF LABOR  
UNEMPLOYMENT INSURANCE DIVISION  
ADJUDICATION SERVICES OFFICE  
MAY 3, 1944

INTERPRETATION SERVICE - BENEFIT CLAIMS  
CLAIMS, REGISTRATION, REPORTING AND CERTIFYING  
Ignorance, Mistake, Forgetfulness

Appeal Board Case Number 10,420-44

FAILURE TO REPORT - IGNORANCE OF PERSONAL REPORTING REQUIREMENT WITHIN  
SIX MONTHS - REGULATION UI 18-41, SECTION 40  
(SECTION 510.3 OF LABOR LAW)

Failure to report in person until seven and one-half months had elapsed to request credit for a previous period of unemployment was excused when it was found that instructions to the claimant were deficient.

Referee's Decision: Initial determination which denied claimant's request to be credited with the week of total unemployment ending March 28, 1943 on the ground that he did not report properly is sustained. (1/14/44)

Appealed By: Claimant.

Findings of Fact: Claimant, a carpenter, filed an additional claim for benefits on February 27, 1943 and reported until March 22, 1943. He failed to report as instructed on his next regular reporting day, March 29, 1943. On April 3, 1943 the local office received a letter from claimant stating that he was totally unemployed the week ending March 28, 1943. Claimant returned to work on March 29, 1943 and worked until November 5, 1943. On November 15, 1943 claimant next visited the local office and requested credit for the week of unemployment ending March 28, 1943. The local office issued an initial determination denying claimant's request on the ground that he did not follow up this written notification of April 3, 1943, by a personal report at the local office within six months thereafter, in accordance with the Commissioner's Regulation U.I. 18-41, Section 4 (c). An identification booklet was furnished to claimant containing reporting instructions under the Day Base Plan. The instructions therein provided that claimant must

notify the local office within six days following the date on which he failed to report, stating the days of total unemployment. No mention was made in the printed instructions that claimant was to follow up this written notification by a personal report within six months. The additional requirement with respect to reporting in person was first incorporated in the succeeding identification booklet issued June 1943. Claimant relied on the instructions as set forth in the booklet issued to him and had no knowledge of personal reporting requirements. He testified that had he been informed of this requirement he would have complied therewith.

Opinion: Claimant acted in good faith and had a right to believe that he met all the reporting requirements when he notified the local office of this return to employment within the six-day period. In so doing, claimant had complied with the Commissioner's Regulation as it was set forth in the identification booklet issued to him. Since no mention was made in the booklet of the additional requirement of the regulation and it was not contended that the claimant was orally instructed by the local office with respect thereto, claimant's failure to report in person within the six-month period should have been excused (Appeal Board, 10,076-43). In the interests of justice and in fairness to claimant he should be credited with the week of total unemployment in question.

Decision: Claimant should be credited with the week of total unemployment ending March 28, 1943. The initial determination of the local office is overruled. The decision of the referee is reversed. (2/28/44)

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A-750-535

Index No. 740.7

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

May 23, 1944

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

Appeal Board Case No. 10,150-43

AVAILABILITY – UNWILLINGNESS TO JEOPARDIZE SOCIAL SECURITY BENEFITS AND PENSION

Unwillingness to accept employment at prevailing wages because it would entail the loss of claimant's social security benefits and might jeopardize pension payments from former employer indicated claimant's unavailability.

Referee's Decision: Initial determination suspending benefit rights for unavailability from on and after July 31, 1943 is sustained. (10/29/43)

Appeal By: Claimant.

Findings of Fact: Claimant was employed for over twenty-five years as a foreman of building construction at \$50 a week. He was retired by his employer on a pension on November 15, 1940. Thereafter claimant worked for about six months ending February 19, 1943 as a construction inspector at a United States Naval Depot at \$65 per week. Subsequently he

obtained employment for three days per week at a ration board for which he received \$19.37 weekly. In June 1943 claimant, having reached the age of sixty-five, filed application for Old Age Insurance benefits under the Social Security Act. He was awarded benefits of \$33.26 monthly on such application. Since his earnings with the ration board are not included under the definition of wages under the Social Security Act, he has been currently receiving his monthly benefits. On July 31, 1943 claimant filed an application for employment and unemployment insurance benefits and has since certified weekly to four days of total unemployment in each successive week, excluding his three days of work each week, with the ration board. For employment purposes he was classified by the United States Employment Service as a foreman of building construction. On August 5, 1943 claimant was referred to a job as a checker at a war plant paying 72 cents per hour plus overtime, or \$37.44 for a forty-eight hour week. Claimant refused the referral on the ground that it was not his type of work and because he felt that with his experience he was entitled to \$50 per week. Claimant further pointed out that acceptance of referral would entail forfeiture of his Old Age benefits and his ration board earnings so that he would not better himself financially in any substantial manner by accepting the referral.

Appeal Board Opinion: The referee held that claimant was unavailable for employment from the date of his filing. He did not rule on the issue of refusal of employment on the ground that it was academic. We believe that the referee properly disposed of the issues in the case. The claimant rests his case solely on the ground that it would be poor business for him to accept any employment paying less than \$50 per week and which would entail the loss of his Social Security benefits. In a communication addressed to this Board the claimant also expresses the fear that acceptance of employment might jeopardize his pension payments. Whether or not this is so is beside the point. It is indicative of the claimant's state of mind. Without in any way questioning the claimant's sound business judgment, we believe that these circumstances make claimant unavailable for employment within the meaning of the Unemployment Insurance Law.

Decision: Claimant was unavailable for employment within the meaning of the Law. The decision of the referee is affirmed. (1/10/44)

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A-750-536

Index 795.9

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

MAY 1944

INTERPRETATION SERVICE - BENEFIT CLAIMS  
AVAILABILITY AND CAPABILITY  
Evidence of

AVAILABILITY - UNCONTROVERTED EVIDENCE

The mere signing of a mimeographed statement by claimant that he would not accept employment while waiting for his usual employer to recall him, was insufficient in itself to support a finding of unavailability when the uncontroverted evidence showed that claimant was willing to accept work, and actually did work, for other employers on a temporary basis.

A.B. 9961-43

Referee's Decision: The initial determination suspending claimant's benefit rights for unavailability is sustained. (9/14/43)

Appealed By: Claimant.

Findings of Fact: Claimant for forty-eight years was an operator of women's garments. For the last three and one-half years he worked for a single employer for the usual seasonal periods. His claim for unemployment insurance benefits became a transition claim on May 24, 1943. He worked two days for his usual employer in the week ending May 9, 1943 and two days in the week ending May 16, 1943. In May 28, 1943 claimant was interviewed in the United States Employment Service office, at which time he signed a mimeographed statement to the effect that he expected to return to his own job within a short time and did not intend to take any other job in the meantime. On June 1, 1943 claimant signed another similar statement at the local insurance office. The local office thereupon suspended claimant's benefit rights for unavailability. It appears that claimant worked three days during the week ending June 1, 1943. He also worked for other employers beginning with the week of June 8, 1943 on a temporary basis. Prior to the hearing before the referee, claimant became employed as a regular worker with an employer other than his former employer.

Appeal Board Opinion: The referee ruled that claimant's statements to the effect that he would not accept employment with anyone but his former employer were declarations of a temporary withdrawal from the labor market. The record in this case fails to support such a decision. No offer of employment was made to claimant by the United States Employment Service or by the local office. Claimant's record of employment after he signed the prepared statements is uncontrovertible evidence that he was available for work, and would accept other work despite the statements. The mere signing of prepared statements that he would not accept a job while waiting for his usual employer to recall him is not a sufficient basis to support the initial determination. Whatever value the statements had was destroyed by claimant's course of conduct.

Decision: The initial determination suspending claimant's benefit rights for unavailability is overruled. The decision of the referee is reversed. (12/28/43)

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A-750-545

Index 1280-9

NEW YORK STATE DEPARTMENT OF LABOR  
UNEMPLOYMENT INSURANCE DIVISION  
ADJUDICATION SERVICES OFFICE  
MAY 25, 1944

INTERPRETATION SERVICE - BENEFIT CLAIMS  
REFUSAL OF EMPLOYMENT  
Distance

Appeal Board Case Number 9705-43

REFUSAL OF REFERRAL TO EMPLOYMENT - DISTANCE - COST OF TRANSPORTATION  
(SECTION 506.1 OF LABOR LAW)

Where the proffered employment required more than two hours' travel each way and cost of transportation was substantially greater than in last employment, good cause for refusal existed irrespective of period of unemployment.

Referee's Decision: Initial determination disqualifying claimant for refusing, without good cause, referral to employment is sustained. (/8/9/43)

Appealed By: Claimant.

Findings of Fact: Claimant is forty years of age, unmarried and resides with her sister in the Borough of Manhattan, New York City. She has been a model for a wholesaler of evening gowns in midtown Manhattan for sixteen years. Her last salary was \$50 a week. Her usual hours of employment were forty per week or less. She was unemployed from September 1942 up to at least the date of the hearing before the referee on July 30, 1943. She has actively sought employment since she lost her job. Claimant registered for employment and for unemployment insurance benefits on June 10, 1943. On June 11, 1943, she was referred by the United States Employment Service to an electrical manufacturer in Kearney, New Jersey, as an assembler. She would be required to work forty-eight hours a week at \$28.60 per week, with a raise of five cents per hour monthly for an unstated period. No prior experience was required. Claimant refused to accept the referral on three grounds: first, that the wage offered was not commensurate with her former earnings; second, that the job was at an unreasonable distance from her home; and third, that travel to and from the place of employment would involve an expense substantially greater than that required in her former employment. Claimant expressed a desire for work in New York City. The local office disqualified claimant from receiving any benefits by reason of her refusal.

Appeal Board Opinion: The referee predicated his decision on three grounds: first, that claimant had been unemployed for a long period of time; second, no prior experience was required to qualify for the proffered employment; and third, that the salary offered was the prevailing wage for the type of work involved. These factors are entitled to careful consideration in determining cases of this kind. However, they are insufficient in the instant case, to overcome other factors favorable to claimant's contentions. Claimant has had no other work experience except as a model. She has never worked in a factory, nor has she worked in any occupation where dexterity in the use of her fingers was essential. In the offered employment she would require a long course of training with questionable results. The salary offered was substantially less than her earnings in her usual employment. The place of employment would require upwards of two hours of travel each way. The cost of transportation would involve substantially greater expense than in her last employment. In addition, the record does not disclose a complete lack of job opportunities in employment more closely related to claimant's usual employment. While it is true claimant had been unemployed for a protracted period of time, we are convinced from the entire record that she honestly desired to work and that she actively made efforts to obtain employment.

Decision: Claimant did not, without good cause, refuse to accept an offer of employment for which she is reasonably fitted by training and experience. The local office determination is overruled. The decision of the referee is reversed. (10/18/43)

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A-750-548

Index 875-2

NEW YORK STATE DEPARTMENT OF LABOR  
UNEMPLOYMENT INSURANCE DIVISION  
ADJUDICATION SERVICES OFFICE  
MAY 25, 1944

INTERPRETATION SERVICE - BENEFIT CLAIMS  
CLAIMS, REGISTRATION, REPORTING AND CERTIFICATION  
Employment

Appeal Board Case Number 9272-43

FAILURE TO REPORT TO INSURANCE - SEARCH FOR EMPLOYMENT - EXTENUATING  
CIRCUMSTANCES (SECTION 510 OF LABOR LAW)

Reporting one day late was excused when uncontroverted evidence showed that the lateness was due to claimant's search for employment in a different state.

Referee's Decision: Initial determination which denies claimant's request to be credited with an effective day of unemployment on March 15, 1943 is sustained. (3/15/43)

Appealed By: Claimant.

Findings of Fact: Claimant filed an application for employment and for unemployment insurance benefits on January 4, 1943. Claimant received instructions relative to reporting under the Day-Base Plan on the same date. On March 15, 1943 at 8:30 A.M. claimant left New York City for Lakewood, New Jersey to be interviewed for a job as manager of a chicken farm owned by a friend. Claimant intended to return at an early hour the same day to enable him to meet his reporting date at the local office. When claimant arrived in Lakewood the friend had left for another farm which he owned to answer a business call. Because of these circumstances, claimant's trip home on the same day was delayed so that he could not meet his reporting date of March 15, 1943. Claimant visited the local office on March 16, 1943 at which time he was credited with a reporting on the latter date. Claimant requests that he be credited with a reporting on March 15, 1943. This was his first application for benefits. He was not familiar with reporting procedure at the local office. He was under the impression that he could report on March 16, 1943 and receive credit for March 15, 1943. The local office denied claimant's request to be credited with an effective day of unemployment on March 15, 1943.

Appeal Board Opinion: The evidence discloses that claimant left New York City at an early hour on March 15, 1943 in search of a job and in anticipation of his timely return on the same day to enable him to report at the local office. Due to conditions beyond his control he was unable to do so. This was claimant's first experience as a claimant for benefits. We find in this case extenuating circumstances sufficient to warrant excusing claimant's failure to report on March 15, 1943.

Decision: Claimant is credited with an effective day of unemployment on March 15, 1943. The initial determination of the local office is overruled. The decision of the referee is reversed. (8/9/43)

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A-750-549

Index No 720.3

NEW YORK STATE DEPARTMENT OF LABOR  
UNEMPLOYMENT INSURANCE DIVISION  
ADJUDICATION SERVICES OFFICE  
May 27, 1944

INTERPRETATION SERVICE-BENEFIT CLAIMS  
AVAILABILITY AND CAPABILITY

Appeal Board Case No. 10,283-43

## AVAILABILITY -HOME WORKER- NO EFFORT TO OBTAIN HOMEWORK

Homeworker, whose employment was terminated because her last employer discontinued giving out homework and who made no efforts to look for homework with other employers or in other industries where homework was available, but remained unemployed for more than a year, held to be unavailable for employment.

Decision: Initial determination holding that claimant was unavailable for employment is sustained. (12/3/43)

Appeal By: Claimant.

Finding of Fact: Claimant is married and resides with her husband who is gainfully employed. She has eight children, five of whom reside with the claimant. Three of the claimant's children are also gainfully employed. For a number of years prior to July 1942 claimant had been employed as a homeworker. Claimant's employment was terminated because her last employer discontinued giving out homework. Claimant made no effort to look for homework with other employers or in other industries where homework was available. She has remained unemployed since July 1942. Claimant filed an application for benefits during the 1942-43 benefit year and exhausted her benefit rights. She filed an application in the new benefit year on September 13, 1943 and reported continuously thereafter. On October 4, 1943 claimant was interviewed at the local office with reference to her availability for employment. As a result of the interview an initial determination has been made by the local office holding that claimant was unavailable for employment. Claimant contested the determination and demanded a hearing. The referee sustained the determination and claimant appealed..

Appeal Board Opinion.: The evidence clearly discloses that claimant did not desire to obtain homework although such work was available in the City of New York. Claimant desired to exhaust her benefit rights before seeking work. Under the circumstances the determination of the local office holding that claimant was unavailable for employment is amply sustained by the record.

Decision: Claimant was unavailable for employment. The initial determination of the local office is sustained. The decision of the referee is affirmed. (3/14/44)

A-750-550

Index No. 845-3

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

May 27, 1944

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

Due Diligence

Extenuating circumstances

Appeal Board Case No. 10,076-43

CLAIMS, REGISTRATION, REPORTING – HONEST MISUNDERSTANDING DUE TO  
CHANGED PROCEDURE  
(SECTION 510.1 OF LABOR LAW)

Where Industrial Commissioner's special reporting procedure covering garment workers was modified by a new procedure requiring such claimants to appear in person at the local office on the first day of unemployment, a claimant who was unaware of changed procedure and reported in accordance with the old procedure was excused.

Referee's Decision: Initial determination denying claimant credit for the statutory week ending September 5, 1943 is overruled. (10/5/43)

Appeal By: Industrial Commissioner.

Findings of Fact: Claimant, a garment worker, was intermittently employed. Prior to August 9, 1943 the Industrial Commissioner had established procedures directing claimants in the garment industry in the City of Rochester not to renew their applications for unemployment insurance benefits in person upon termination of intermittent employment but to report to their respective local offices on their usual reporting days, at which time they would receive credit for effective days of unemployment accumulated prior to their reporting dates. On August 9, 1943 the above-mentioned procedure was abrogated by the Industrial Commissioner because of the possibility of placing unemployed garment workers in temporary jobs in the canning industry. Steps were taken by the Industrial Commissioner to advise claimants of the change in procedure, requesting that claimants appear in person at the local office on the first day of unemployment. In accordance with the old procedures claimant appeared at the local office on August 16, 1943 and certified for the statutory week ending August 15, 1943. Although the local office interviewers were directed to inform claimants who appeared on their reporting days as to change in procedure, claimant denied that she received instructions of the change. The local office representative had no independent recollection as to whether specific instructions were given to claimant, but relied on a notation that was placed on claimant's insurance record indicating that information of the changed procedure was given to claimant. After August 16, 1943 claimant returned to employment and was continuously employed to August 27, 1943. Claimant lost her employment on August 28, 1943 and was continuously unemployed during the statutory week ending September 5, 1943. Under the old procedure claimant would have been required to appear on her usual reporting day, which was Monday, September 6. Because that was a legal holiday, claimant appeared on September 7 and requested credit for the statutory week of unemployment ending September 5. The local office made an initial determination refusing to excuse claimant's failure to appear in person and denied claimant credit for the statutory week in question. This determination was based on the changed procedure requiring claimant's personal appearance on the first day of claimant's unemployment.

Appeal Board Opinion: The issue on this appeal is whether or not claimant is entitled to be credited with the statutory week of unemployment ending September 5, 1943. This in turn depends on whether or not claimant's failure to appear in person on the first day of her unemployment in order to renew her application for benefits was excusable. We find that for a long period prior to August 9, 1943 claimant was directed by the procedures of the Industrial Commissioner not to report on the first day of her unemployment, but on her next regular reporting day. Claimant consistently complied with these directions. When the procedures were changed by the Commissioner, it is possible that some effort was made to advise the claimant, but we are satisfied that the attempts, if any, did not register in claimant's mind and that she was wholly unaware of the change and was honestly of the belief that the old procedures were still in force. She was totally unemployed during the week ending September 5, 1943. She

reported to the local office in accordance with the procedures she believed were then in force. The denial of benefits to the claimant under such circumstances would be an injustice and violate the spirit of the Unemployment Insurance Law. We conclude that claimant's failure to report in person on the first day of her unemployment is excusable.

Decision: Claimant is entitled to be credited with the statutory week of unemployment ending September 5, 1943. The initial determination of the local office is overruled. The decision of the referee is affirmed. (12/28/43)

A-750-551

Index No. 1245-1

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

May 27, 1944

INTERPRETATION SERVICE – BENEFIT CLAIMS  
REFUSAL OF EMPLOYMENT  
Safety and Health  
Working Conditions

Appeal Board Case No. 10,152-43

REFUSAL TO ACCEPT OFFER OF EMPLOYMENT – WORKING CONDITIONS – HEALTH  
ENDANGERED  
(SECTION 506.1 OF LABOR LAW)

Belief, supported by the facts, that work would endanger health was good cause for refusing referral.

Referee's Decision: Initial determination disqualifying claimant for refusing, without good cause, to accept an offer of employment is sustained. (11/3/43)

Appeal By: Claimant

Findings of Fact: Claimant is fifty-nine years of age. For the past forty years he has been a steam fitter. For a period of approximately twenty-five years he has acted as a working foreman in this trade. The regular wage scale for a steam fitter is \$2 per hour. Having lost his position in his regular field because of the completion of the governmental project where he was employed, claimant registered for employment and for unemployment insurance benefits on September 7, 1943. On the same day he was interviewed by the United States Employment Service and was offered a position as a pipe fitter in a shipyard in New Jersey. The pay was at the rate of \$1.09 an hour for a forty-eight hour, six-day week. Claimant refused to accept the job, contending that it would entail working on a scaffold, which he was physically unable to do. He testified that for a period of about ten years prior to the referral, he found that he became dizzy if compelled to work on a scaffold. His entire working history called for ground or underground work. He has never been a pipe fitter nor has he ever worked in a shipyard. Having been notified by the United States Employment Service of claimant's refusal to accept the offer of employment, the local office issued an initial determination on September 24, 1943 disqualifying claimant as of September 7, 1943 for refusing, without good cause, to accept an offer of employment for which he is reasonably fitted by training and experience. Since this disqualification, and on November 10, 1943, the United States Employment Service referred

claimant to positions in his own field as a steam fitter or steam fitter foreman. He was not successful in obtaining either job, inasmuch as they had been filled when he arrived at the office of the prospective employers. The United States Employment Service, through a division which concerns itself with claimants who are physically or mentally handicapped, forwarded to claimant's physician a questionnaire directing that he furnish the former with information relating to claimant's physical condition. This physician has certified that claimant suffers from acrophobia, which is defined as "morbid fear of high places." Under the heading "Physical Limitations" contained in the said questionnaire, is the following: "No work at high places, . . ." A representative of the United States Employment service testified that the referral necessitated working on a scaffold from a height, at times as much as fifteen feet. Said representative further testified that several persons of claimant's age, when referred to a shipyard to perform the type of work to which this claimant had been referred, were unable to perform the work satisfactorily.

Appeal Board Opinion: The record in this case clearly establishes claimant's contention that his physical condition does not permit him to undertake the type of work offered. Claimant's disability and physical incapacity was real and substantial. The offer entailed a change of occupation and the assumption of hazards substantially greater than those to which he had been accustomed. Claimant has shown that because of his physical state acceptance of the referral would have endangered his health.

Decision: The initial determination disqualifying the claimant from receiving any benefits effective September 7, 1943 on the ground that, without good cause, he refused an offer of employment is hereby overruled. The decision of the referee is reversed. (3/7/44)

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A-750-552

Index No. 1660B-1

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

May 27, 1944

INTERPRETATION SERVICE – BENEFIT CLAIMS  
VOLUNTARY LEAVING OF EMPLOYMENT

Overtime

Appeal Board Case No. 9964-43

VOLUNTARY LEAVING OF EMPLOYMENT – INCREASED WORKING HOURS  
(SECTION 506.2 OF LABOR LAW)

Good cause was found to exit for voluntary leaving of employment where the evidence disclosed that claimant's normal working hours were increased without a corresponding increase in compensation.

Referee's Decision: Initial determination disqualifying claimant for voluntary leaving of employment without good cause is sustained. (3/23/43)

Appeal By: Claimant

Findings of Fact: On July 24, 1942 claimant became employed as an assistant cutter of field jackets. His wages were \$35 for a forty-hour, five-day week. On various occasions, due to insufficient personnel or the pressure of business, claimant was directed by his employer to

work over and above his regular fixed working hours. In addition, claimant was compelled to work on Saturdays, which was not a usual working day. For this he did not receive any additional remuneration other than his customary wages. The claimant requested added compensation from the employer for the extra work he performed but the latter denied his request. In making demand for additional payment, claimant testified that he asked for a "raise." Seeing his demands go unheeded, claimant after giving the employer a week's notice of his intention to leave, terminated his employment on January 21, 1943. Subsequent to the decision of the referee, the Wage and Hour Division of the United States Department of Labor made an award, pursuant to the provisions of the Federal Fair Labor Standards Act of 1938, holding that the claimant was entitled to receive from the employer additional remuneration in the sum of \$25.60 for the overtime work performed by him.

Appeal Board Opinion: The record in this case reveals that the real cause of the claimant's separation from his employment was the failure and refusal of the employer to compensate him for work performed over and above his regular fixed working hours. This is substantiated by a communication from the Wage and Hour Division of the United States Department of Labor to the effect that the sum of \$25.60 was due claimant from the employer as unpaid overtime compensation. While claimant's demands for added remuneration were termed by him as a "raise," in truth and fact it constituted a demand for payment for services rendered and work performed by him over and above the regular work week and fixed working hours. The evidence discloses that claimant's normal working hours were increased without a corresponding increase in compensation. This drastic change in terms and conditions of employment constitutes sufficient justification for claimant's voluntary leaving. (Appeal Board, 6896-42)

Decision: Initial determination disqualifying claimant for voluntary leaving of employment without good cause is overruled. The decision of the referee is reversed. (12/30/43)

#### COMMENTS

In Appeal Board Case 6896-42 cited above claimant was hired at \$25 per week by a real estate firm as secretary for one of its officers. Two years later she was placed in charge of the rent collections of the employer corporation. In 1935 claimant's salary was increased to \$35 per week but in October 1938 it was reduced to \$25 per week. In 1939 after insistent demands by claimant the corporation restored \$5 of the former cut, promising to restore the remainder on January 1, 1940. This the employer failed to do. In addition, claimant, during the summer of 1941, because of personnel changes in her employer's establishment, was compelled to work longer hours every day for many months. On August 15, 1941 the employer called a conference of its employees and advised them that they would all have to assume additional duties and work later in order to clear up a situation in the bookkeeping department. At the time of the conference, claimant had already been working until about 6:30 p.m. and the assumption of additional duties would have compelled claimant to work beyond those hours. Because of claimant's dissatisfaction due to the failure of the employer to restore her salary cut and because she was required to assume additional duties and devote additional time without extra compensation, claimant resigned her position, giving the employer two weeks' notice. Reversing the referee, which upheld the initial determination disqualifying claimant for voluntary leaving of employment without good cause, the Appeal Board stated: "The evidence clearly shows that for months claimant was compelled to work longer hours and perform additional duties without extra compensation. On August 15, 1941 claimant was requested to assume additional burdens in spite of the heavy load she was already carrying. The imposition of these additional duties without extra compensation and the breach of the employer's promise to restore claimant's salary cut were sufficient justification for the claimant's leaving." (See also Appeal Board Case No. 6592-41, Serial No. A-750-324)

NEW YORK STATE DEPARTMENT OF LABOR  
UNEMPLOYMENT INSURANCE DIVISION  
ADJUDICATION SERVICE OFFICE  
June 17, 1944

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

Appeal Board Case No. 9933-43

AVAILABILITY - NO EFFORT TO FIND EMPLOYMENT

Failure of claimant to avail himself of his union's rotating list, which was designed to share available work at the trade among all members, plus lack of other effort to obtain employment, evinced unavailability.

Referee's Decision: Initial determination disqualifying claimant for refusing to accept referral to employment without good cause is overruled. (8/31/43)

Appeal by: Industrial Commissioner.

Findings of Fact: Claimant's last employment as a bricklayer was in 1942. He had been engaged in this trade for thirty years. He is a member of the bricklayer's union. He has had little or no employment since November 1942. He had no employment in 1943. He has made no efforts to obtain employment, although he testified that his name is on the rotating list at his union. This rotating list is designed to divide the available work among the members of the union. He has visited his union headquarters every three or four months for the purpose of paying his dues to the union. Claimant was disqualified for benefits on July 13, 1943 by reason of his refusal to accept an offer of employment as a helper in a shipyard at Port Newark, Kearney, New Jersey. Claimant's reported earnings in 1940 amounted to \$1754.65; in 1941 \$223.75; in 1942 \$467.12.

Appeal Board Opinion: The evidence adduced upon the hearing for the purpose of passing upon the Industrial Commissioner's application for a reconsideration and reopening of the decision formerly rendered in this matter seems conclusive that for all practical purposes claimant had abandoned his trade as a bricklayer. His failure to avail himself of his union's rotating list which is designed to share available work at the trade among all its members, plus his lack of earnings, convince us of this fact. The record now indicates that he has withdrawn from the labor market. We fix the date of his withdrawal as of July 13, 1943, which was the first time that there was evidence in the case of claimant's unavailability for employment.

Decision: Claimant was unavailable for employment as of July 13, 1943. The local office initial determination is modified accordingly. The decision of the referee is modified in like manner. (3/27/44)

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

June 17, 1944

INTERPRETATION SERVICE-BENEFIT CLAIMS  
AVAILABILITY AND CAPABILITY  
Willingness to work  
TOTAL OR PARTIAL UNEMPLOYMENT  
Corporation Officer

Appeal Board Case No. 9672-43

AVAILABILITY -TOTAL UNEMPLOYMENT CORPORATE OFFICER SLACK SEASON

Nominal officer of corporation, not owning stock therein and performing only manual labor therefor, was found totally unemployed and available during slack periods where the evidence established that during the slack periods he received no wages from the corporation and was ready, willing and able to take other work.

Referee's Decision: Initial determination holding that claimant was not available for employment and was not totally unemployed is sustained. (7/21/43)

Appeal by: Claimant

Finding of Fact: Claimant is an assistant treasurer of a corporation which is engaged in the processing, sale and distribution of sand and gravel. In connection with its business the corporation operates two sand and gravel plants. Claimant filed an application for unemployment insurance benefits on December 24, 1942 and reported to March 31, 1943. On February 11, 1943 the local office issued an initial determination that claimant was neither available for employment nor totally unemployed. Claimant was charged with an overpayment of \$36 in benefit checks. Claimant's duties consisted of operating a power shovel and repairing trucks and other equipment maintained by the corporation. The services which he performed, for the corporation were exclusively manual labor. He did not perform any duties as an officer and he exercised no voice in the management of the corporate affairs. He was designated as an officer of the corporation for the sole purpose of eliminating the expense of worker's compensation insurance. In lieu thereof, a private accident policy was taken on his behalf. Claimant did not own any stock in the corporation. The stock was owned by members of his family. The slack season in the corporation's business begins January and usually ends in March. Claimant was associated with the corporation for seventeen years. For a period of eight months during 1942 he earned about \$2900 for services performed as a welder for various other employers. For a period of six weeks in 1943 claimant operated a loading machine for the Town of Mount Hope. Prior to 1942 claimant worked exclusively for the corporation in question.

Appeal Board Opinion: The first issue to be decided is whether or not claimant was totally unemployed within the meaning of the Law. Claimant was a nominal officer of the corporation. He had no stock interest therein. He did not perform any official duties for the corporation, nor did he exercise any voice in the management of its fiscal affairs. The work which he performed for the corporation consisted exclusively of manual labor. Claimant's status with respect to the corporation was in reality no different from that of an ordinary workingman employed by it. His status is clearly distinguishable from that of an officer who by virtue of his controlling interest in the corporation can manipulate its fiscal affairs to such an extent that he drew no salary during

the slack periods in order to qualify for unemployment insurance benefits. The referee found that claimant did draw earnings from the corporation during slack periods. This finding lacks support in the record. The only testimony on this point was that given by the bookkeeper to the effect that officers were permitted to draw sums during slack periods to be applied only against back wages due them. Since claimant's right to draw sums during slack seasons was limited to this extent, and in view of all other circumstances, it is held that he was totally unemployed during his reporting period at the local office. The local office determination of unavailability was based solely on claimant's association with the corporation. This, in and of itself, is insufficient to sustain such determination in light of the fact that he had substantial earnings as a welder with several other employers during 1942 and 1943. No offer of employment was made to this claimant during his reporting period. Claimant was ready, willing and able to work had he been given an offer of employment. The corporation did not require claimant's services during its slack seasons. Claimant testified that the only reason he did not work as a welder in 1943 was that his eyes will not now stand the strain of such work. The record supports a finding that claimant was available for employment.

Decision: Claimant was available for employment and was totally unemployed. The initial determination of the local office is overruled. The decision of the referee is reversed. (11/29/43)

Appeal Board Case No. 9675-43

Referee's Decision: Initial determination holding that claimant was not available for employment and was not totally unemployed is sustained. (7/21/43)

Appeal By: Claimant

Finding of Facts: Claimant is an assistant secretary of a corporation which is engaged in the processing, sale and distribution of sand and gravel. In connection with its business the corporation operates two sand and gravel plants. Claimant filed an application for unemployment insurance benefits on December 13, 1942 and reported until April 1, 1943. On February 11, 1943 the local office issued an initial determination holding that claimant was neither available for employment nor totally unemployed. Claimant was charged with an overpayment of \$54 in benefit checks. Claimant's duties consisted of operating the switchboard which controls the starting and stopping of the stone crushers and other machinery, as well as operating the stone crushers. The services which he performs are exclusively manual labor. He was compensated on the basis of seventy-five cents an hour and averaged \$1300 in earnings from year to year. He does not perform any duties as an officer. He was designated as an officer of the corporation for the sole purpose of eliminating the expense of Workmen's Compensation Insurance. Claimant does not own any stock in the corporation. The stock is owned by the members of his family. The slack season in the corporation's business begins in January and ends in March. Claimant has been associated with the corporation since 1932. During the period in question claimant made efforts to find employment with several railroad companies.

Appeal Board Opinion: The facts in this case, insofar as they affect claimant's status as an officer of the corporation, are analogous to those found Appeal Board 9672-43, digested above, which involved the filing of a claim for unemployment insurance benefits by another nominal officer against the same employer. In the case cited we ruled that the status of the officer involved was no different from that of an ordinary workman employed by the corporation. We reach the same conclusion with respect to the instant claimant. The referee found that claimant drew earnings from the corporation during slack periods. This finding lacks support in the record. The only testimony on this point is that given by the bookkeeper to the effect that the sole drawings by claimant during slack periods were those which were applied against back

wages due him. Since claimant's right to draw sums during slack seasons is limited to this extent, and in view of all the other circumstances, it is held that he was totally unemployed during his reporting period at the local office. The same observation was made by us in treating this phase of the case in Appeal Board 9672-43. The local office determination of unavailability was based solely on claimant's association with the corporation. This, in and of itself, is insufficient to sustain such determination. No offer of employment was made to this claimant during his reporting period. Claimant was ready, willing and able to work had he been given an offer of employment. The corporation did not require claimant's services during its slack seasons. It is therefore held that claimant was available for employment.

Decision: Claimant was available for employment and was totally unemployed. The initial determination of the local office is overruled. The decision of referee is reversed. (4/10/44)

A-750-565

Index 770.5

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

INTERPRETATION SERVICE - BENEFIT CLAIMS  
AVAILABILITY AND CAPABILITY  
Evidence of

AVAILABILITY - SUMMER WORKER - FILING OF CLAIM DELAYED

Claimant who worked in a summer resort area exclusively for a partnership, of which her husband was a member, only during the 1942 summer season and one week in June 1943, and although unemployed during the summer months delayed filing her claim until opportunities for employment become non-existent, was properly denied benefits for unavailability.

A.B. 10,836-44

Referee's Decision: The initial determination suspending claimant's benefit rights for unavailability is sustained. (4/11/44)

Appealed By: Claimant.

Findings of Fact: Claimant worked from June 15 to September 15, 1942 and one week in June 1943 as a chicken plucker in a retail meat and poultry market located in Parksville, New York. This business was conducted by a partnership consisting of claimant's husband and two other persons. Parksville is an isolated rural community located in the heart of a summer resort area. There are practically no employment opportunities in this locality after the summer season. Claimant filed an application for benefits on September 22, 1943 and reported to December 15, 1943. After an absence of two weeks, due to illness, she refiled on January 5, 1944 and reported currently. On September 22, 1943 the local office issued an initial determination holding that claimant was unavailable for employment effective that day. Claimant's earnings during 1942 were \$377. She did not have any other employment history except with the partnership. She did not make any serious effort to seek other employment. Claimant is the mother of twins, fifteen years of age, who attend high school. She testified that other chicken pluckers worked with her in 1942 and that she assisted in her husband's enterprise in 1943

because, due to a scarcity of poultry, there was not sufficient business to warrant hiring outside chicken pluckers. Such persons were hired in 1943 after claimant's separation.

Appeal Board Opinion: Claimant's attachment to the labor market was sporadic in nature and was confined exclusively to the summer season of 1942 and one week in June 1943 when she assisted in her husband's enterprise. She did not have any other employment history. It is significant that although claimant became separated from her alleged employment in June 1943, when there was an active labor market in her locality, she deferred the filing of her application until the summer season ended. We believe that this was done intentionally by claimant to forestall any possible offer of employment which might be made during the busy season. A consideration of the nature and extent of claimant's past work record, the lack of employment opportunities in the locality during her reporting period and her domestic circumstances compel the conclusion that claimant was not genuinely in the labor market. The initial determination holding that claimant was unavailable was proper and should be sustained.

Decision: The initial determination that claimant was unavailable for employment is sustained. The decision of the referee is affirmed. (6/19/44)

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A-750-566

Index No. 845-6

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

September 27, 1944

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

Ignorance, Mistake, Forgetfulness

Appeal Board Case No. 10,608-44

FAILURE TO REPORT – LACK OF DUE DILIGENCE – REGULATION UI 18-41 SECTION 4 (c)  
(SECTION 597.1 OF LABOR)

Failure to report in person within six months to request credit for a previous period of unemployment was not excused, where it was established claimant failed to read printed instructions or make inquiry of the local office as to his rights and obligations.

Referee's Decision: Initial determination denying claimant credit for the week of unemployment beginning June 21, 1945 is overruled. (2/24/44)

Appeal By: Industrial Commissioner

Findings of Fact: Claimant, a bricklayer, filed application for benefits on June 11, 1943 and reported regularly until June 25, 1943. He failed to report on his next due date, July 2, 1943, because he had returned to work. Within six days thereafter he sent due notice to the local office explaining his reason for not reporting. He next appeared at the local office on January 22, 1944, at which time he requested credit for the week of total unemployment ending June 2, 1943. This request was denied on the ground that claimant had failed to appear in person within six months after July 2, 1943, the last day on which he was due to report. Claimant had been handed a booklet which contained instructions, including the following:

"6. If you do not report at the Insurance Office as directed, you cannot get credit for days of total unemployment in the statutory week preceding such failure to report unless you (a) notify the Insurance Office in writing or in person of the dates of such days of total unemployment within six days following the day on which you failed to report, and, in addition, (b) report in person within six months and show that you had good cause for not reporting on the date appointed."

Claimant did not communicate with or make any effort to contact the local office after his return to work on June 26, 1945 until he appeared there personally on January 22, 1944. During that period he was steadily employed as an electrical helper in the shipyards, working every day with the exception of three Sundays and two holidays. He did not consult the instruction booklet and stated that he did not know of the six-month requirement.

Appeal Board Opinion: The initial determination denying claimant the credit requested was based upon his failure to comply with Section 4 of the Industrial Commissioner's Regulation UI 18-41 (since revised), which reads as follows:

"If a claimant fails to report as required following the statutory week in which he suffered more than three days of total unemployment, such days shall not be registered as days of total unemployment, unless he

"(a) notifies the filed office in which the claim is on file, in writing or in person, within six days following the date on which he failed to report, stating the dates of such days of total unemployment, and

"(b) satisfies the Commissioner that he had good cause for not having reported on the date appointed for this purpose, and

"(c) follows up a notification made in writing by a personal report within six months." (underscoring ours)

The instruction to report in person within six months was contained in the printed booklet given to claimant at the insurance office. It is contended that claimant was negligent or lacking in due diligence because he failed to familiarize himself with this requirement and made no effort to comply. We believe that there is merit to the Commissioner's argument. Had claimant notified the local office of his inability to report in person, it would have been possible for them to make the necessary arrangements to enable him to obtain his benefit check. It must be held that the loss of his benefit check is attributable to claimant's failure to read the instructions and to act within the six-month period allotted him under the Regulation. We are of the opinion that upon the facts in this case claimant's excuse for his failure to comply with the regulation was properly rejected by the local office.

Decision: Claimant's request to be excused for his failure to report in person at the local office within six months after July 2, 1943 was properly denied. The initial determination is sustained. The decision of the referee is reversed. (6/29/44)

ADJUDICATION SERVICES OFFICE

September 27, 1944

INTERPRETATION SERVICE – BENEFIT CLAIMS

VOLUNTARY LEAVING OF EMPLOYMENT

Night Work

Appeal Board Case No. 10,324-44

VOLUNTARY LEAVING OF EMPLOYMENT – NIGHT WORK – TRANSFER TO DAY SHIFT  
(SECTION 593.1 OF LABOR LAW)

Where night work affected claimant's health, unwillingness to accept transfer to same work on day shift at prevailing wages resulted in disqualification for voluntary leaving of employment without good cause and not for refusal of employment.

Referee's Decision: Initial determination disqualifying claimant for refusing without good cause to accept an offer of employment is overruled. (12/24/43)

Appeal By: Industrial Commissioner

Findings of Fact: Claimant worked from May 8, 1943 to June 26, 1943 as a machinist for a machine company in Los Angeles, California. He worked on the night shift and received seventy-five cents an hour. The night work adversely affected his health and acting upon the advice of his physician, he notified the employer that he could no longer work nights. When claimant informed the employer of this situation the employer thereupon offered to transfer him to the same job in the same establishment on the day shift paying seventy cents an hour. This was the prevailing rate of wage for that work on the day shift. He refused to continue with this employer at the reduced rate of wage and resigned. Claimant was denied a certificate of availability as a result of his refusal to continue working with this employer at the reduced rate. On July 6, 1943 claimant filed an application for benefits in California against New York as the liable state. In response to an inquiry from the Out-of-State Resident Unit, the California Employment service certified that claimant refused to accept a job with his former employer on June 26, 1943 the following date of his separation. On the claims form taken on July 18, 1943 the following notation was made: "Claimant has been denied an availability certificate and will not return to former employer. Therefore, War Manpower Commission stabilization regulations will not permit referring him to other employers." The Out-of-State Resident Unit determined that claimant's voluntary leaving was with good cause. However, on July 17, 1943 an initial determination was issued disqualifying claimant for refusal, without good cause, to accept an offer of employment made by his former employer, effective as of July 6, 1943, the date of his application. Thereafter, the California Employment service periodically reported on the claims forms taken from claimant that he still had no certificate of availability. On August 19, 1943 the Out-of-State Resident Unit issued an initial determination which added the alternative determination that claimant was unavailable for employment because of lack of a certificate of availability. Claimant requested a hearing on the issue. Claimant continued to report weekly to an including the week ending August 28, 1943, during which time he certified to eight statutory weeks of total unemployment.

Appeal Board Opinion: The first issue to be decided is the validity of the disqualification for refusal. This determination was based on claimant's unwillingness to accept a transfer from the night to the day shift. At that time claimant was not unemployed, nor was he an applicant for benefits. The question here raised was considered by us in appeal Board, 5743-41. In interpreting former Section 503 (now Section 593) of the Labor Law we said:

"It is inherent in this section, that before a disqualification for benefits may be imposed against an employee who refuses to accept an offer of employment, that benefit rights exist from which he might be disqualified. Similarly, it must be noted, that before an employee may be the subject of a disqualification pursuant to Section 506, the following prerequisites must exist: (1) That said individual is unemployed and (2) is a claimant for unemployment insurance benefits. (Labor Law, Section 510; Regulation UI 1-39)"

Accordingly, the disqualification for benefits on the ground that claimant refused to accept the employer's offer of day work on June 26, 1943 must be overruled. The proper determination was that claimant had voluntarily left his employment without good cause. Claimant's notice to the employer that he would not continue night work and the employer's counter offer of day work must be regarded as a single transaction. The ultimate result was that claimant voluntarily left the employ of this employer. Since he confined himself to day work, it cannot be said that he was justified in his refusal to consider working at the prevailing rate of wage for such work. It must be held, therefore, that he did not have good cause for voluntarily leaving his employment. During the benefit year now passed, claimant certified to eight weeks of unemployment, six weeks of which represents the disqualification period for his voluntary leaving without good cause. If he is entitled to credit for the two remaining weeks, the most he can acquire is waiting period. Since in no even would claimant be entitled to benefit checks, the issue of claimant's availability during any portion of his reporting period is rendered academic.

Decision: Claimant did not refuse an offer of employment. Claimant voluntarily left his employment without good cause. He is not entitled to any benefits in the benefit year ending June 4, 1944. The determination of the Out-of-State Resident Unit is modified accordingly. The decision of the referee is reversed. (6/12/44)

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A-750-573

Index No. 1650C-3

NEW YORK STATE DEPARTMENT OF LABOR  
UNEMPLOYMENT INSURANCE DIVISION  
ADJUDICATION SERVICES OFFICE  
September 27, 1944

INTERPRETATION SERVICE – BENEFIT CLAIMS  
VOLUNTARY LEAVING OF EMPLOYMENT  
Disciplinary Action – Reprimand

Appeal Board Case No. 10,713-44

VOLUNTARY LEAVING OF EMPLOYMENT – DISCIPLINARY ACTION – REPRIMAND FOR  
ABSENTEEISM  
(SECTION 593.2 OF LABOR LAW)

Resentment because of deserved reprimand for repeated absences from work 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. (3/29/44)

Appeal By: Industrial Commissioner

Findings of Fact: Claimant worked for about seven years prior to January 15, 1944 as a switchboard operator, clerk and receptionist for a public utility. She always resided in New Rochelle. Prior to June 1943 claimant was stationed at the main office of the company located at Mt. Vernon. Subsequent to June 1943 claimant was transferred to the employer's branch office at Pelham. Claimant used her husband's automobile to travel to her place of employment at Pelham, which was located about four or five miles from her residence. About ten minutes' time was consumed in traveling to the establishment. At the time of her voluntary separation on January 15, 1944 claimant earned \$31.32 a week. Claimant filed an application for benefits on January 18, 1944 and reported to March 14, 1944. When claimant filed her claim she gave as the reasons for her separation "inconvenience and dampness." The employer certified to the local office that claimant "resigned – dissatisfied with working conditions." Claimant was called in for an interview at the local office on February 2, 1944 relative to the reasons for her voluntary leaving. At this conference claimant signed a statement that she left her employment because the dampness and gas odors in the employer's establishment at Pelham caused her to have constant colds and to be sick during the winter and because of the inconvenience of traveling to the place of employment. She also stated that she had received medical treatment on several occasions from the company's doctor and her personal physicians for colds and that the doctor in the plant directed her to remain home until she recovered. On February 3, 1944 the local office mailed a letter to the company's physician requesting information relative to the working conditions in the establishment and whether they adversely affected claimant's health. The personnel director of the employer, in writing, informed the local office on February 9, 1944 that the working conditions in the plant were not injurious to claimant's health, that claimant had consulted the company's physician on only one occasion in November 1943 when claimant was suffering from the grippe and that claimant stayed out of work about five days due to such illness. On February 8, 1944 the local office issued an initial determination holding that claimant voluntarily left her employment without good cause. The employer's records disclose that claimant absented herself from work due to colds and minor ailments for seventeen days subsequent to her transfer to the Pelham office. It was the policy of the employer to review from time to time the attendance records of employees showing frequent absences with the view of counseling them to improve their punctuality. On January 9, 1944 claimant was called in for a conference by the personnel manager relative to her frequent absences from work. On this occasion claimant was advised to improve her attendance record and was admonished that a continued unsatisfactory record in this respect might result in her release. Claimant resented such treatment from the personnel manager. She considered the latter's statements as a severe reprimand coupled with an invitation to resign. On January 10, 1944 claimant submitted a letter of resignation to the employer. In this letter claimant set forth as the reasons for her voluntary leaving that the establishment was in a very inconvenient location, that her supervisor denied her request to take a half hour for lunch on Wednesday, that he was discourteous to her when she took time off to attend her grandmother's funeral, that he discriminated against her and that the dampness in the plant adversely affected her health. Claimant's primary reason for her voluntary separation can be gleaned from her testimony as follows:

"Q. So you say that summing the whole thing up, you left because Mr. M. spoke to you and complained about your frequent absences and told you if you didn't improve you would be forced to resign, and you felt the absences were not your fault, and you had no control over it and felt that was an invitation to quit. Is that what you say?

That's right. The different times I had been out, I thought I should resign. I was thinking it over. Then I was determined when Mr. M. spoke to me and told me I would more or less be forced to resign.

All these other things were just incidental, but they weren't compelling reasons?

Absolutely not." (S.M. 27)

On January 31, 1944 claimant was referred by the United States Employment Service to a job as switchboard operator and clerk. Claimant reported to the prospective employer but she was not hired because she did not have enough experience. On February 2, 1944 claimant was referred to a job as a typist paying from \$20 to \$25 a week depending on the skill of the applicant in an accountant's office in New Rochelle. Claimant refused the referral because she lacked a sufficient amount of experience as a typist. On February 16, 1944 claimant was referred to a job as a switchboard operator paying from \$22 to \$24 a week at a country club in New Rochelle. Claimant refused to accept this referral because she is too nervous to work at a switchboard. On February 23, 1944 claimant was referred to a job as general clerk paying \$100 a month in an establishment at Tuckahoe. Claimant refused to accept this referral because she was unwilling to work outside of New Rochelle and because the climate in Mt. Vernon is damp. She admitted she was seeking employment in Pelham and was awaiting word momentarily relative to an application for a job there. On February 18, 1944 the local office issued an initial determination holding that claimant voluntarily left her employment without good cause and under circumstances indicating a withdrawal from the labor market. On the same date it issued another determination holding that claimant, without good cause, refused to accept a referral to employment on February 16, 1944. On March 6, 1944 the local office issued another determination holding that claimant, without good cause, refused to accept two referrals to employment on February 23, 1944.

Appeal Board Opinion: The referee held that claimant's voluntary leaving was with good cause because claimant's testimony that her health was adversely affected by the unfavorable working conditions in the plant is entitled to credence. The referee's conclusion that this was the primary cause of claimant's leaving lacks support in the record. Claimant's testimony is that she resented the statements made by the personnel manager relative to her frequent absences from the plant and that she resigned because she felt that the treatment received from him was unwarranted. Upon her own admission this was the primary cause of her voluntary leaving and the other reasons enumerated by her were merely incidental thereto. Even if we accepted claimant's primary reason for leaving that the personnel manager's reprimand was unwarranted, it will not avail this claimant. We dealt with a somewhat similar situation in Appeal Board, 7464-42 in which we said:

"The general principles applicable to the instant facts are very aptly summarized in a paper entitled 'Issues Involved in Decisions of Disputed Claims for Unemployment Benefits,' reprinted from the Social Security Year Book, 1940, prepared by the Social Security Board of the Federal Security Agency:

' \* \* \* A claimant who leaves because of a reprimand is usually considered not to have good cause for so doing, especially if the reprimand is deserved and reasonable; however, when the reprimand is extreme or unwarranted, good cause is often found. Thus, a New Jersey case (Benefit Series, 3042-N.J.A.) held that a claimant who left because he became discouraged by adverse comments of the employer had good cause for leaving when the criticism was not constructive. On the other hand, in a Rhode Island case (Benefit Series, 1812-R.I.A.) a claimant was found not to have good cause for leaving when, although the employer was hard to get along with and did not use the best language in delivering his frequent reprimands, the claimant's trouble was due to her own conduct and failure to meet the requirements of the job.'"

The personnel manager's admonition to claimant to improve her attendance record cannot be regarded either as a reprimand or as an invitation to resign. The personnel manager merely

carried out the established policy of the company in dealing with employees who absented themselves frequently from work. The direct cause of claimant's voluntary leaving was her own arbitrary act and did not constitute good cause within the meaning of the Law.

Decision: Initial determination disqualifying claimant for voluntary leaving of employment without good cause is sustained. The decision of the referee is reversed. (7/31/44)

A-750-577

Index No. 1280-1

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

January 22, 1945

INTERPRETATION SERVICE – BENEFIT CLAIMS

REFUSAL OF EMPLOYMENT

Distance; Wages

Appeal Board Case No. 10,890-44

REFUSAL OF REFERRAL TO EMPLOYMENT – DESIRE FOR HIGHER WAGE –  
UNREASONABLE DISTANCE  
(SECTION 593.2 OF LABOR LAW)

Refusal of employment was without good cause where proffered employment paid the prevailing wage and a contention of unreasonable distance was refuted by the fact that thousands of other workers in the metropolitan area traveled to the same locality.

Referee's Decision: Initial determination disqualifying claimant for refusing, without good cause, referral to employment is sustained. (5/19/44)

Appeal By: Claimant

Findings of Fact: Claimant, a former bricklayer's helper, who had more recently been employed as a general laborer, reinstated his claim on February 2, 1944, and reported to the local office certifying to continuous unemployment to March 13, 1944. Claimant had been employed as a general laborer at the Edgewater, New Jersey plant of the Aluminum Company of America. He had started at a salary of 84 cents per hour and was receiving 87 cents when he left. On March 3, 1944 the United States Employment service referred claimant to a job as a helper at the Federal Shipyards located at Kearny and Port Newark, New Jersey. The rate of pay was 81 cents per hour for a 48-hour week with time and a half for overtime over 40 hours. His earnings would have averaged \$42.12. Claimant, for a number of years had suffered from a slight hernia. He could do moderately light work. The Federal Shipyards was one of the few shipyards in the metropolitan area which would even accept referrals of persons so handicapped. Whether claimant would have been accepted by this employer would have depended upon the results of the medical examination given by the employer's doctors. Claimant refused the referral because of excessive travel time and insufficient salary. It would have taken claimant approximately one hour and five minutes or one hour and ten minutes to reach the employer's establishment from his home. Work in the Federal Shipyards is considered employment in the metropolitan New York area. Many persons who work there live in New York City and spend considerably more time in traveling to and from work. Thousands of persons living in New York City spend this or greater amounts of time in traveling to work in New Jersey. Many persons in

New Jersey, likewise spend this amount of time or more, in connection with employment in New York City. The rate of pay involved was one fixed by a wage stabilization agreement, parties to which were representatives of industry, government and labor. The customary entrance rates for laborers varied from 80 cents to 85 cents per hour. Opportunities for increased earnings through upgrading existed. On April 7, 1944 claimant returned to work for his former employer as a general helper in a different departments in the same plant at a basic rate of pay of 83 cents per hour. The local office disqualified claimant from receiving benefits as of March 3 for refusing employment without good cause.

Appeal Board Opinion: The referee, having made proper findings of fact and conclusions of law, the Board adopts said finding of fact and conclusions of law as the findings of fact and conclusions of law of the Board. By all the tests of the statute the job referral was employment for which claimant was reasonably fitted by training and experience. It was at customary wages for the type of work involved. It was the same sort of work that claimant had previously been performing. It paid substantially the same rate. As a matter of fact, when claimant returned to work with his former employer, it was at only a two cents per hour higher rate than the one offered. While the travel time might have, in fact, been longer than was required under claimant's former employment, it was not unreasonable nor more than was required by thousands of other workers in the metropolitan area.

Decision: Claimant, without good cause, refused an offer of employment for which he was reasonably fitted by training and experience. The decision of the referee is affirmed. (8/23/44)

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A-750-578

Index 770.7

NEW YORK STATE DEPARTMENT OF LABOR  
UNEMPLOYMENT INSURANCE DIVISION  
ADJUDICATION SERVICES OFFICE  
JANUARY 1945

INTERPRETATION SERVICE - BENEFIT CLAIMS  
AVAILABILITY AND CAPABILITY  
Work History - Seasonal Employment

AVAILABILITY - WORK HISTORY AS EVIDENCE OF UNAVAILABILITY - INTEREST IN  
SEASONAL EMPLOYMENT ONLY

Where claimant, a cook, had a long work history which was restricted to summer season hotel work and claimant's entire course of conduct indicated she was interested only in such summer employment, it was held that she was unavailable for employment outside the summer season.

A.B. 10-224-43

Referee's Decision: The initial determination of the local office that claimant was not available for employment on and after October 4, 1943 is overruled. (11/12/43)

Appealed By: Industrial Commissioner.

Findings of Fact: Claimant is a cook. During the last twenty years she has limited her periods of employment to the summer months at hotel resorts. Her employment history fails to disclose any substantial efforts to obtain employment during any other time of the year. During the winter season 1943-44, cooks were in demand for employment in resort hotels in Lakewood, New

Jersey. Claimant was registered with the A.J. Agency, a private employment agency, for summer employment only. On February 21, 1944 the aforementioned agency offered claimant a job as a cook in a small hotel in Lakewood, New Jersey at a salary of \$300 per month, plus board and lodging which she refused. Claimant admittedly never worked in Lakewood. On September 9, 1943 claimant filed an original application for benefits and reported thereafter. In a local office interview held on September 21, 1943 to determine claimant's availability, claimant on that occasion, among other things, stated:

"I last worked for \_\_\_\_\_ Hotel, Loch Sheldrake, N.Y. as a cook for 15 weeks until September 7, 1943. I stopped working because the season ended. I have worked as a cook in summer in hotels for 20 years. I never worked in the winter. I am a summer season worker. I work four months a year and that is enough for the whole year. The work is hard and the hours are long. Therefore I have to rest up the other months of the year. I made \$1000.00 in cash this summer. Last year I made over \$1100.00 in the summer. I always get my jobs through A.J. Agency. If I am offered a job in the city, I will take it. I have not done anything to look for work since I came back to New York City. I need a rest after I come back to New York City. About two weeks from now, I will be ready, willing and able to take a job."

Based on the interview, the local office made an initial determination holding that claimant was not available for employment. This initial determination was made effective as of September 9, 1943. Thereafter and on October 4, 1943, claimant was permitted to reinstate her claim but the local office again determined that claimant was unavailable for employment. She contested the determination and demanded a hearing. The referee modified the initial determination holding that claimant was unavailable for employment until her refiling on October 4, 1943, but that she was available for employment after that date.

Appeal Board Opinion: The referee's modification of the initial determination was grounded on the fact that claimant was registered with a private employment agency and expected employment as a cook in Lakewood, New Jersey during the winter season. It is the contention of the Industrial Commissioner that claimant's unrepudiated statement at the local office, coupled with her course of conduct during the period of her pending claim when viewed in the light of her long work history of employment restricted to summer season hotel work, indicates that she was not available in fact for employment during the period in issue. Ordinarily, where a claimant has had no work during off-seasons, it is not sufficient of itself to support a determination of unavailability (A.B 9155-43). However, the record herein discloses that the claimant considered herself a "summer season worker" and admittedly never did work during any other season of the year. Her registration with the private employment agency was restricted to summer job offers; her refusal of the agency's offer of winter employment as a cook and her lack of any employment during the greater part of each year for twenty years is indicative of her lack of desire for work after each summer season. Claimant's entire course of conduct leads to the conclusion that she had limited her periods of availability for employment to the summer months with no intention to work at any other time of the year.

Decision: The initial determination that claimant was unavailable for employment on an after October 4, 1943 is sustained. The decision of the referee is modified accordingly. (6/5/44)

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

January 22, 1945

INTERPRETATION SERVICE – BENEFIT CLAIMS  
REFUSAL OF EMPLOYMENT

Offer, What Constitutes

Appeal Board Case No. 10,261-43

REFUSAL OF OFFER OF EMPLOYMENT – NON-DISCLOSURE OF JOB DETAILS  
(SECTION 593 OF LABOR LAW)

Assertion that he would not consider work of less skill than required in previous work did not constitute refusal of a referral in the absence of an actual offer of a referral.

Referee's Decision: Initial determination disqualifying claimant for refusal of employment is overruled. (11/23/43)

Appeal By: Industrial Commissioner

Findings of Fact: Claimant has had twenty-five years experience as a sewing machine dress operator. For a period of about six years prior to May 27, 1943 he worked on a \$16.75 line of dresses for a dress manufacturer. He was temporarily laid off from this employment on the latter date because the employer's factory was being repainted. Claimant filed an application for benefits on May 28, 1943. At a conference at the placement section on June 1, 1943, employment at a cheaper line of work was discussed and claimant stated that he was unwilling to accept a temporary job in a cheaper line during his layoff period. The interviewer at that time had a job order with a dress manufacturer located at West 35<sup>th</sup> Street on \$10.75 and \$12.75 lines of dresses, but did not disclose this information to the claimant. No job offer was actually made to claimant. The interviewer did not give claimant any further information. On the basis of claimant's unwillingness to consider work on a cheaper line, the interviewer reported to the local office that claimant had refused an offer of employment with the 35<sup>th</sup> Street firm. The local office thereupon issued an initial determination holding that claimant, without good cause, refused to accept an offer of employment. It issued another determination holding that claimant was unavailable for employment. Claimant would have accepted the referral in question had he known that the placement had such a job order in the \$10.75 and \$12.75 lines. The practice prevailing in those lines was similar to his own line inasmuch as the work was handed out in single garments and claimant could complete the garment in the event that he was called back by his employer. In lines which are cheaper than \$10.75 and \$12.75 the customary procedure is to hand the work out in bundles and after part of the processing is completed by the operator the work is turned over to pleaters and other workers for further processing and then is returned a week or so later to the operator for finishing. Claimant objected to this line of work because there was a possibility that he might have to abandon the uncompleted bundles of work and forfeit the value of the work already done should he be called back by his employer. He also stated that he was not accustomed to this line and it would take him some time to adapt himself to the work. During his reporting period claimant was ready, willing and able to accept temporary work in the \$10.75 and \$12.75 lines and in his own line. During his layoff period he kept in touch with his employer to ascertain the situation prevailing in the plant. He returned to steady employment with his employer on June 12, 1943.

Appeal Board Opinion: Section 506.1 of the Labor Law reads in part as follows:

"DISQUALIFICATION FOR BENEFITS.

No benefits shall be payable to any employee who without good cause refuses to accept an offer of employment for which he is reasonably fitted by training and experience, including employment not subject to this article. \*\*\*\*" (Underscoring ours)

The language of the statute is clear and unequivocal that unless an offer of employment was actually made to a claimant, the disqualifying provisions of the Act cannot be invoked. Where, as in the instant case, a claimant's benefit rights are affected, it was the duty of the interviewer to go into sufficient detail to apprise claimant of the complete facts concerning the job offer. Job offers and directions to apply for work must be so definite and specific as to leave no doubt in claimant's mind as to his rights and liabilities. Here no information of any nature was given to claimant by the interviewer with respect to the job order in question, nor was he offered a referral or directed to apply for work. In the absence of a bona fide offer of employment, claimant may not be subjected to a disqualification for refusal. Claimant expressed a willingness to accept temporary work in the \$10.75 and \$12.75 lines and in his own line of dresses during his layoff period. The record is devoid of proof to support a finding that he was unavailable for employment.

Decision: Claimant was available for employment and he did not refuse an offer of employment. The initial determination of the local office is overruled. The decision of the referee is affirmed. (3/14/44)

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A-750-583

Index No. 1040-1

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

January 22, 1945

INTERPRETATION SERVICE – BENEFIT CLAIMS  
HEARINGS AND APPEALS

Limitation of Jurisdiction

Appeal Board Case No. 10,939-44

HEARINGS AND APPEALS – ISSUE NOT RAISED PRIOR TO OR AT HEARING  
(SECTION 620 OF LABOR LAW)

Referee had no jurisdiction to rule on a determination of the local office which the claimant did not contest.

Referee's Decision: Initial determination disqualifying claimant for refusal of employment is overruled. Claimant is credited with registration as of February 1. (5/16/44)

Appealed By: Industrial Commissioner

Findings of Fact: Claimant was employed in midtown New York City from June 1941 to December 31, 1943 as a receptionist, telephone and dictaphone operator. In this employment she earned \$25 a week. She gave birth to a child on January 6, 1944. She filed an application for benefits on February 1, 1944 and reported to March 16, 1944. The local office pursuant to Section 148 of the Labor Law postdated claimant's application to February 3, 1944, which was

four weeks subsequent to the birth of her child. Claimant did not object to the action taken by the local office in this respect nor did she request a hearing relative to such determination. In her application filed with the United States Employment Service claimant specified a minimum salary of \$35 a week. On February 25, 1944 claimant was referred to three jobs by the United States Employment service. The first referral was to a job paying \$30 a week as dictaphone operator for a firm located at West 27<sup>th</sup> Street and 11<sup>th</sup> Avenue in Manhattan. Claimant resided in Brooklyn. At the interview at the employment office claimant advanced as the reason for her refusal that the wages offered were inadequate. She insisted on a salary of \$35 a week. At the hearing claimant offered as additional reasons for her refusing the job referral that it was inconvenient for her to travel to the prospective employer's establishment. She stated that she would have accepted a job paying \$30 a week if the employment was in a more convenient location. The second referral was to a job paying eighty-five cents an hour plus time and half for overtime as dictaphone operator at a defense plant on Varick Street in Manhattan. Claimant refused to consider this referral because it paid a basic wage of less than \$35 a week. The hours of work were from 4:00 p.m. to 11:00 p.m. Claimant objected to such employment because the hours of work interfered with her domestic duties. The local office issued an initial determination holding that claimant, without good cause, refused to accept an offer of employment for which she was reasonably fitted by training and experience. Claimant was charged with an overpayment of \$14 for the statutory week ending February 26, 1944.

Appeal Board Opinion: The referee held that claimant was entitled to be credited with the filing of an application effective February 1, 1944 on the ground that Section 148 of the Labor Law applies only to employment in a factory or in a mercantile establishment. In ruling on the merits of this determination issued by the local office the referee exceeded his authority. Claimant did not interpose any objection to such action taken by the local office nor did she request a hearing relative thereto. The referee was without jurisdiction to pass on this question and his ruling thereon must be treated as a nullity. With respect to the first referral of February 25, 1944, the referee held that claimant's refusal was with good cause on the ground that she was entitled to additional compensation because of the inconvenience of travel involved. We disagree with the referee's reasoning and the conclusion reached by him. The proffered employment was in claimant's customary occupation and paid \$5 a week in excess of her previous earnings. She rejected the offer because she wanted a salary of \$35 per week. Her later objections on the grounds of inconvenience of travel appear to be an afterthought. Since the job offer met the statutory requirements in all respects, we hold that claimant was not justified in refusing to accept it. The initial determination disqualifying claimant for the refusal was proper and is sustained.

Decision: That portion of the referee's decision holding that claimant's application should be predated to February 1, 1944 is rescinded. Claimant, without good cause, refused to accept a referral to employment. The initial determination of the local office is sustained. The decision of the referee is reversed. (8/14/44)

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A-750-586

Index No. 1295-3

NEW YORK STATE DEPARTMENT OF LABOR  
UNEMPLOYMENT INSURANCE DIVISION  
ADJUDICATION SERVICES OFFICE  
January 22, 1945

INTERPRETATION SERVICE – BENEFIT CLAIMS  
REFUSAL OF EMPLOYMENT  
Domestic and Personal Reasons

Appeal Board Case #11,043-44

REFUSAL OF EMPLOYMENT – PHYSICAL EXAMINATION  
(SECTION 593 OF LABOR LAW)

Where claimant refused to submit to a physical examination required by his prospective employer, it was held that claimant refused an offer of employment without good cause.

Referee's Decision: Initial determination disqualifying claimant for refusal of employment without good cause is sustained. (7/5/44)

Appeal By: Claimant

Findings of Fact: Claimant, a clerical worker, fifty-eight years of age, filed an additional claim for benefits on March 20, 1944. On May 15 the United States Employment service offered claimant a job as a checker. The rate of pay was \$27.50 for a forty-hour week, hours from 8 a.m. to 5 p.m. The prospective employer required that claimant submit to a physical examination. All the terms of the offer were acceptable to the claimant. He does not dispute that he was fitted by training and experience for the offered job. Claimant nevertheless refused the offer of employment because he objected to taking the required physical examination. The reason for his objection was that "if there is anything physically wrong with me I don't want to find out about it as it may cause me to worry. I feel all right and I may have passed the examination. There is nothing physically wrong with me that I know of." On May 22, 1944 the local office made an initial determination disqualifying claimant from receiving benefits as of May 15, 1944, because he refused the offer of employment without good cause. Claimant objected thereto and requested a hearing. From the referee's decision sustaining the initial determination claimant appeals.

Appeal Board Opinion: The sole question in this case is whether or not claimant's refusal to submit to a physical examination by a prospective employer constitutes a justifiable refusal of an offer of employment. We believe that the prospective employer's requirement that an applicant for employment submit to a physical examination was a reasonable one. Claimant advances no good reason why he should not have submitted to such an examination. Although claimant professed his willingness to accept the offer of employment, he nevertheless attached a condition to his acceptance which he realized the prospective employer would not accept. This amounted to a refusal of the offer of employment for which he was fitted by training and experience.

Decision: Claimant's refusal of the offer of employment was without good cause. The initial determination of the local office is sustained. The decision of the referee is affirmed. (9/11/44)

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A-750-589

Index No. 1210A-1

NEW YORK STATE DEPARTMENT OF LABOR  
UNEMPLOYMENT INSURANCE DIVISION  
ADJUDICATION SERVICES OFFICE  
January 22, 1945

INTERPRETATION SERVICE – BENEFIT CLAIMS  
REFUSAL OF EMPLOYMENT  
Offer, What Constitutes

Appeal Board Case No. 10,280-43

REFUSAL OF EMPLOYMENT – LACK OF ACTUAL REFERRAL  
(SECTION 593 OF LABOR LAW)

General discussion between claimant and employment interviewer as to willingness of claimant to accept a position as a trainee in a war industry without an actual offer of referral to such work did not constitute an offer of employment, and even though claimant expressed an unwillingness to accept such work, no disqualification for refusal can be sustained.

Referee's Decision: Initial determination disqualifying claimant for refusal of employment without good cause is sustained. (12/1/43)

Appeal By: Claimant

Findings of Fact: Claimant is married and resides with her husband who is gainfully employed. For a period of one and one-half years prior to February 1938 claimant was employed as a salesgirl of millinery. While working as a millinery sales clerk, claimant studied merchandising and trained herself to become a buyer of millinery. From February 1938 to May 1, 1943 claimant was employed by M.H. as manager of the millinery department and buyer of millinery for his establishment. During the last year of this employment claimant averaged about \$65 per week. Early in May 1943 M.H. sold the business to the B. Specialty shop. Claimant continued to work as manager of the millinery department and as buyer of millinery to the successor of M.H. until May 21, 1943, and she was paid at the rate of \$75 per week. On or about May 22, 1943 claimant resigned from her position because of her dissatisfaction with the hours of work prevailing in the establishment. About the time of her resignation claimant negotiated with another firm for a position as millinery buyer. After claimant was accepted by the prospective employer she discovered that the position would require her to leave her home in the City of New York. Claimant thereupon refused the offer of employment. Claimant continued diligently to search for employment until June 14, 1943. On that date claimant filed an application for unemployment insurance and for employment. Because the local office deemed claimant's leaving of her last employment to be without good cause, she was disqualified for benefits under Section 506.1(c) of the Labor Law. After serving the period of disqualification, claimant's application for benefits was reinstated on July 26, 1943 and she reported continuously thereafter. During the period of her unemployment claimant made numerous efforts to find employment as a buyer in the millinery field and in related fields. She inserted advertisements in the Women's Wear, a trade newspaper, and she was in communication with many individual firms and persons who were in a position to offer her employment. Although the millinery industry has prospered under war conditions, claimant's efforts to obtain employment remained unsuccessful until December 15, 1943 when she finally succeeded in obtaining employment through her own efforts as a buyer in a related field. On October 11, 1943, while reporting to the commercial office of the United States Employment Service, claimant was directed to an employment interviewer to discuss the possibility of converting her skill to war industry. The interviewer to whom claimant was directed had no job orders for war work. Job orders for war work were held by a different unit of the United States Employment Service located at a different address in the City of New York. During the interview claimant was advised that there were opportunities for employment in war industries as assembler trainee at the rate of \$26 per week for a forty-eight hour week. Claimant indicated her reluctance to accept factory work and expressed a preference for work in her own line or in related lines. Thereupon the interview was terminated without a specific job offer being made to the claimant. Claimant was not directed to

go to the unit of the United States Employment Service which had job orders for war industries. No details of any job of any job were given to the claimant except for a general discussion of jobs as assembler trainee. Thereafter a Report of Disqualifying Conditions was sent to the local office by the United States Employment Service. Based on the report from the United States Employment Service and an interview had with the claimant, the local office made an initial determination that claimant had refused an offer of employment for which she is reasonably fitted by training and experience. Claimant contested the determination and demanded a hearing. The referee sustained the initial determination and claimant appealed. Claimant has been continuously employed sine December 15, 1943 as a buyer of handbags, veils and similar articles in a ladies shop. She commenced this employment at the rate of \$40 per week and was promised an increase of \$10 to \$15 per week in the near future.

Appeal Board Opinion: The issue on this appeal is whether or not claimant refused an offer of employment for which she is reasonably fitted by training and experience. It is elementary that before a disqualification for refusal can be made it must be established that an offer of employment was made to the claimant. The record clearly indicates that no offer was made to the claimant on October 11, 1943. The United States Employment Service interviewer who discussed the possibility of converting claimant's skill to the war effort had no specific job order in his possession. There was merely a general discussion as to the willingness of claimant to accept a position as trainee in a war industry. There was no positive offer of a job. The interview was terminated after the general discussion between the claimant and the interviewer, without any direction to the claimant to report to the unit of the United States Employment Service which had job orders for war industries. On the issue was to whether or not an offer of employment was made to the claimant, the views of the Indiana Review Board are in accord with ours:

"The Review Board is of the opinion that before a benefit claimant should be penalized for refusing without good cause either to apply for available suitable work when so directed by the Division or to accept suitable work when found for and offered to him by the Division or by an employing unit, it must first find that the claimant has been directed to apply for or has been offered suitable work and the claimant has refused to follow the direction or to accept the offer.

"In order that there may be a fair, just, and proper determination of this question, the evidence should show conclusively that a bona fide offer of an existing job has been made; that the Division representative, in this instance the United States Employment Service, directing the claimant to apply for or offering the claimant the job, was possessed of pertinent information relating to the job, such as the wages, hours, and other conditions of employment so that the claimant would have the necessary information on which to base his decision as to whether he would accept or refuse the job. The Division's representative should have a general knowledge of the conditions of the prospective employer's establishment which would permit him to answer reasonable questions by the claimant in regard to the effect of the job on the claimant's health, safety or morals. The Division's representative should also be informed as to the claimant's physical fitness for the job. He should be informed as to whether the job is permanent or temporary. He should know and be able to advise the claimant whether prior training or experience is required, and if it is required, should satisfy himself that the claimant has such prior training and experience. He should be informed as to the location of the prospective employer's establishment and the transportation facilities available to the claimant." (Interstate Benefit Series, 8232-Ind. R.)

Tested by the above standards we believe that no offer was made to the claimant. And further we are of the opinion that the job which was the subject of discussion between claimant and the representative of the United States Employment Service was not one for which she was reasonably fitted by training and experience.

Decision: Claimant did not refuse an offer of employment for which she is reasonably fitted by training and experience. The decision of the referee is reversed. (3/27/44)

A-750-592

INDEX 755 C.3

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

February 1, 1945

INTERPRETATION SERVICE-BENEFIT CLAIMS  
AVAILABILITY AND CAPABILITY  
Restrictions of employment

AVAILABILITY - DAYS, HOURS

Where claimant was unwilling because of domestic circumstances to work every third week, it was held that she was unavailable during such weeks.

A.B. 10,822-44

Referee's Decision: Claimant was available for employment on off-weeks. (4/18/44)

Appealed by: Industrial Commissioner.

Findings of Fact: Claimant resides with her husband and her seventeen year old daughter in St. Albans, Queens, New York. Her son is in the armed forces. Her husband is regularly employed in a gainful occupation. For about twenty years prior to 1940 claimant was out of the labor market. She remained at home and attended to her functions as a housewife and mother. In April 1940, claimant procured part-time employment as a general clerical worker with a Manhattan cosmetic firm. She worked full days, on Monday, Tuesday, and Wednesday and one-half day on Thursday for two successive weeks and performed no work during the third successive week. Claimant has been thus employed for the same employer up to the present time. Her earnings during her weeks of employment range from about \$17 to \$20 per week. During the last three months of each year, claimant worked during the third week, which during the other nine months of the year constituted her "off" week. After working for about a year, in April 1941, claimant filed an application for unemployment insurance benefits and reported thereafter during every third "off" week. By virtue of this reporting, she received sixteen benefit checks in the benefit year 1941-42. In the next benefit year 1942-43, claimant reported in like fashion and received ten benefit checks. In the succeeding benefit year, 1943-44, she fled again and reported in a similar way, receiving seven benefit checks up to February 11, 1944, the effective date of the disqualification in question herein. In 1942, claimant's employer offered to give her regular full-time employment but claimant refused. On June 21, 1943 and on January 21, 1944 claimant was offered full-time employment by the United States Employment Service in jobs appropriate to her training and experience. On each occasion, claimant refused the offer and each time claimant was disqualified by the local office for refusal, without good cause, to accept an offer of employment. Claimant did not request a hearing with respect to

either of these two disqualifications. The only result of each initial determination was to disqualify claimant for the particular week in question because, each time, the disqualification terminated by reason of her intervening employment. On February 11, 1944, the local office made the instant initial determination suspending claimant's benefit rights as of February 11, 1944 on the ground that:

"You are deemed not available and/or capable of work during unemployed periods while working part-time and refusing to accept an offer of suitable employment for which you are fitted by training and experience."

No overpayment was charged against the claimant. She objected to the initial determination and requested a hearing. Claimant continued to report to the local office every third week in her usual fashion until May 29, 1944. In February 1944, full-time employment was available for the claimant at her employer's establishment and had claimant desired such work she could have secured it. In a signed statement, the supervisor of claimant's department stated that claimant "refused full-time employment in 1942, because the part-time that she had at that time gave her more opportunity to take care of her home." At the time of the hearing before the Board, in October 1944, claimant, in addition to her usual two weeks of employment, was working during the succeeding third week. When so employed she earned from \$26 to \$30 per week.

Appeal Board Opinion: The sole issue before us is whether or not claimant was available for employment on and after February 11, 1944 during each of her third "off" weeks. From all of the facts in the record, it appears that had claimant been willing to work during each of her "off" weeks she could have obtained such employment with her own employer. Furthermore, with the type of experience which she had, if claimant had been truly desirous of working full-time, she could have easily obtained such employment with other employers. She voluntarily chose her periods of employment as two weeks "on" and one week "off" to suit her own personal convenience. This working pattern afforded claimant an opportunity to augment the family income during her weeks of employment and at the same time enabled her to attend to her family and home obligations during her "off" week. We believe that claimant was not in the labor market during her third "off" week. We therefore hold that claimant was not available for employment within the meaning of the Unemployment Insurance Law on and after February 11, 1944.

Decision: The initial determination made by the local office suspending claimant's benefit rights as of February 11, 1944 on the ground that she was unavailable for employment during each of her "off" weeks is hereby sustained. The decision of the referee is reversed. (11/13/44)

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A-750-594

Index No. 805-2

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

February 1, 1945

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

Improper Certification

Appeal Board Case No. 11,351-44

FAULTY CERTIFICATION – FORGED SIGNATURES OF WITNESSES  
(SECTION 590 AND 597 OF THE LABOR LAW)

Where a claimant had forged the signatures of witnesses on mail certification forms, it was held that such certifications were null and void and claimant was overpaid for the weeks involved.

Referee's Decision: Claimant's forging of the signatures of witnesses was excused. (10/19/44)

Appeal By: Industrial Commissioner

Findings of Fact: Claimant is a homemaker. She resides in a rural community near Gloversville. She filed an application for benefits on June 1, 1943. Claimant was given permission by the local office to certify to her effective days of unemployment by mail. She was furnished with the necessary forms of mail certification by the local office. On these forms are printed the days of each calendar week. Under each day of the week there is a blank space which is to be filled out by the claimant indicating whether or not he was employed on each specific day. The form contains on the reverse side a number of "Instructions to Claimants on Preparation of Mail Certification Form," among which is the following:

"5. Have the form signed by two witnesses who are over twenty-one years of age and not members of your family."

Above the space provided on the face of the form for the signatures of the witnesses appears the following:

"WITNESS' CERTIFICATION"

"I HEREBY CERTIFY that I am over twenty-one years of age and not a member of the claimant's family and that the person whose signature appears above is known to me."

During the period beginning June 13, 1943 and ending June 4, 1944 claimant submitted thirty-two certification forms to the local office in which she certified by mail to effective days of unemployment accumulated in each specific calendar week. All of these forms were improperly executed by claimant in that she personally signed the names of the persons appearing thereon as subscribing witnesses. This fact was discovered by the local office in the early part of August 1944. Claimant was called into the local office for a conference relative to this matter on August 10, 1944. On August 25, 1944 the local office issued an initial determination holding that the effective days to which claimant had certified by mail were null and void on the ground that claimant had failed to observe the requirements relating to certification by mail. As a result of this determination claimant was charged with an overpayment of \$150 in benefits. In her request for a hearing claimant stated: "I did not understand the instructions on the forms." The privilege of mail certification is granted to claimants under certain circumstances in accordance with the Industrial Commissioner's U.I. Regulation 41b, which reads as follows:

"Such reports shall be made in person unless the privilege of mail certification has been granted upon application to a claimant who resides at a point which is so removed from the nearest field office or point of itinerant service that the fare for a round trip by any common conveyance is 50 cents or more or which is not served by any common conveyance. Such claimant shall, however, report in person at the field office where his claim for benefits is on file at such days and hours as may be required by such office and shall observe all reporting requirements pertaining to mail certification."

Claimant is 55 years of age. She lives alone. One of the persons whose name appears as a witness is claimant's first cousin and the other is the wife of another cousin, both residing in her locality. Claimant testified that she did favors for these relatives who were of advanced age and that they would have consented to sign as witnesses upon claimant's request. Claimant does not deny that she signed the names of the subscribing witnesses. Claimant read the mail certification forms. She states that she did not understand the significance thereof. There were several neighbors residing within a block of claimant's residence who were not her relatives. Claimant's alleged reason for not asking the latter persons to sign as witnesses was that they worked in the daytime and she did not want to disturb them at night. Claimant's availability for employment and her certified days of total unemployment were not disputed by the local office.

Appeal Board Opinion: Claimant was granted the privilege of certifying to her total unemployment by mail in lieu of personal reporting at the local office. The regulation of the Industrial Commissioner authorizing the granting of such privilege provides further that such claimants "shall observe all reporting requirements pertaining to mail certifications." Those requirements provide that the mail certification form include the signatures of two subscribing witnesses who are over twenty-one years of age and not members of the claimant's family. Instructions to that effect are clearly set forth on the forms. The initial determination declares the mail certifications in question to be null and void because of claimant's failure to observe such requirements. We have repeatedly said that reasonable reporting requirements established by the Commissioner are essential for the proper administration of the Unemployment Insurance Law and cannot be wilfully disregarded by claimants. The efficacy of the requirement in question is apparent. In the case of mail reporting the local office foregoes the opportunity of questioning the claimant personally regarding his availability, capability and total unemployment. It is entirely reasonable that safeguards be provided to assure the local office as to the identity of the claimant and the genuineness of his signature. Claimant does not deny that she failed to comply with the requirement and the instructions pertaining to the preparation of mail certification forms. On thirty-two occasions she personally signed the names of the subscribing witnesses. She has advanced no acceptable reason to excuse her acts. Under the circumstances we must regard the defects in the mail certification forms submitted by claimant as more than mere irregularities. We find no reason to warrant our disturbing the initial determination of the local office.

Decision: The initial determination holding that claimant failed to observe the requirements pertaining to mail certification is sustained. The decision of the referee is reversed. (11/30/44)

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A-750-597

Index No. 1290A-10

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

February 1, 1945

INTERPRETATION SERVICE – BENEFIT CLAIMS  
REFUSAL OF EMPLOYMENT  
Wages

COURT OF APPEALS DECISION

Joseph Groner Case

REFUSAL OF REFERRAL TO EMPLOYMENT – PREFERENCE FOR HIGHER WAGES  
(SECTION 593 OF THE LABOR LAW)

An art director who had commanded a salary of \$10,000 to \$15,000 per year, was held to have refused with good cause an offer of employment as art director at \$4,500 annually, made to him two months after his registration, on the grounds that in order to obtain a job, commensurate with his previous earnings and experience, required more time to negotiate and that taking a \$4,500 job would cause the claimant to lose prestige.

Referee's Decision: Initial determination disqualifying claimant for refusal of employment is sustained. (10/11/43)

Appeal By: Claimant

Appeal Board Findings of Fact: Claimant is an art director with fifteen years of experience. For eleven years to December 31, 1942 claimant was employed as art director by a single concern. This employment was terminated by liquidation of the business. At the time of the termination of this employment, claimant was being paid at the rate of \$15,000 per year. Some time during April of 1943 claimant became re-employed as art director with a different concern at a salary of \$10,000 per year. This employment was terminated on June 17, 1943 because of loss of business. On June 18, 1943 claimant filed an application for employment and unemployment insurance benefits and reported regularly thereafter. On August 16, 1943 claimant was offered a position as art director at a salary of \$90 per week by the United States Employment Service. Claimant refused to accept the referral on the ground that the salary was insufficient. A report of Disqualifying Conditions was made by the United States Employment Service to the local office as a result of which the local office made an initial determination that claimant, without good cause, refused an offer of employment for which he is reasonably fitted by training and experience. Claimant contested the initial determination and demanded a hearing. The referee sustained the determination and claimant appealed.

Appeal Board Opinion: The sole issue on this appeal is whether or not claimant's refusal of the offer of employment was with good cause. The referee's decision sustaining the disqualification of the claimant is predicated on two grounds: first, that claimant was qualified by training and experience to perform the duties of the position which was offered to him, and second, that in view of the fact that claimant had been unemployed for a long period of time, he had no reasonable ground to insist upon the remuneration formerly received by him. Unquestionably, claimant was qualified to perform the services demanded in the offer of employment. However, we disagree with the referee's conclusion that his period of unemployment was so long that he could have been compelled to accept an offer of employment at less than half of the remuneration formerly received by him. Claimant has fifteen years of experience in a highly skilled profession. Because of his exceptional skill in his profession, claimant is able to command a considerable salary. Positions of that type are not as easily obtainable as those in standard trades and occupations. Because of the importance of the position and the great skill required, a long period of investigation and negotiation is normally required. At the time the position was offered to the claimant, he was out of work for less than two months. We believe this is not an unreasonable long period in which to find a position for which claimant is qualified (Appeal Board, 9957-43). We have repeatedly held that before a refusal to accept employment may be made the basis of a disqualification it must appear that the employment offer bears some reasonable relation to the claimant's last employment, both as to the type of work involved and as to remuneration (Appeal Board, 7370-42). Under the circumstances of this case claimant was amply justified in refusing the offer of employment.

Appeal Board Decision: Claimant's refusal of the offer of employment was with good cause. The initial determination of the local office is overruled. The decision of the referee is reversed. (1/21/44)

Appellate Division Decision: Upon appeal by the Industrial Commissioner, the Appellate Division unanimously affirmed the decision of the Appeal Board without opinion.

Court of Appeals Decision: Upon appeal by the Industrial Commissioner, the Court of Appeals unanimously affirmed the decision of the appellate Division without opinion.

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A-750-598

Index No 710.2

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

February 14, 1945

INTERPRETATION SERVICE-BENEFIT CLAIMS  
AVAILABILITY AND CAPABILITY  
Evidence of

APPELLATE DIVISION DECISION Benjamin Leshner Case  
Appeal Board Case No.9,802-43

AVAILABILITY -CORPORATE OFFICER

Where it was inferable from claimant's substantial interest in a summer resort hotel that his remuneration was dependent to some extent on "some supervisory, managerial or caretaking service throughout the part of the year the hotel is closed" and where his efforts to find employment were desultory or half-hearted, it was held that his unemployment was voluntary, that he was not genuinely in the labor market, and therefor unavailable for employment.

Appeal Board Decision: Claimant was unavailable for employment.

Appeal By: Claimant

Appellate Division Opinion: Claimant is the owner of 50% of the capital stock of a business corporation which wholly owns a summer resort hotel and its 70 acres of site in the Catskills. He also owns 25% of the capital stock of another corporation which operates the hotel during the resort season on lease from the owner at annual rental of \$12,000. During the summer season claimant is.. employed as manager of the hotel and receives \$2200 for his services. His wife and children are then also employed there, the wife receiving \$500 for her services. The hotel operates for about four months. It. is closed the rest of the year. Claimant also receives \$150 from the owner corporation for services to it from April 1st to May 15<sup>th</sup> on which latter date the hotel customarily opens for business. Upon the closing of the hotel around September 15, claimant and his family dwell in the village of Monticello, four miles away, and his children there attend public school. During the cessation of the active business of the hotel, claimant has testified he is unable to find any employment for which he is reasonably fitted he thus claims he becomes unemployed within the meaning of the Act, (Labor Law, Art.18), and entitled to the unemployment benefits for which he has applied. The Board has found that he has no sources of income than as stated above. His additional returns if any, on account of half ownership of the Owner Corporation, which has at least a gross income of \$12,000 per year, does not appear. The evidence clearly establishes that in his status as an employee of his corporate

enterprises claimant is in fact a seasonal worker in an occupation of a seasonal nature. However, the provisions of the statute respecting seasonal workers may not bar his application since there is no evidence of determinations by the commissioner requisite to put them in force. (Labor Law, formerly Sec. 508, now 595) While there is no express requirement in the statute of a dependence upon wages of employment as a condition for the receipt of unemployment benefits, it is significant that "economic insecurity" is mentioned as the sine qua non for its enactment. Therein the declaration of public policy pronounces that it was " involuntary unemployment," which, having become a subject of general interest and concern, called the statute forth in order to "prevent its spread and to lighten its burden which now so often falls with crushing force upon the unemployed worker and his family" and that, it was considered that the statutory plan of compulsory unemployment insurance could better solve the problem than as "now handled by the barren actualities of poor relief assistance backed by compulsory contribution through taxation." To attain this end "for the public good and the well-being of the wage earners" the statutory machinery was set up "for the compulsory setting aside of financial reserves for the benefit of persons unemployed through no fault of their own." (Labor Law, formerly Sec. 500, now 501) From what is shown as to claimant's ownership, influence in, and connection with his aforesaid corporate enterprises, during the past 13 years, it is at least fairly inferable that such was the cause of his seasonable employment. Thus there is an element of voluntariness on his part in the precipitation of the predicament of his unemployed periods. This element produces a reaction which seems beyond the intended reach of the statute in the light of the evidence presented, or at least it was within the province of the Board to so conclude. From all that appears it is also inferable that his remuneration is, to some extent at least, referable to some supervisory; managerial or caretaking service throughout the part of the year the hotel is closed. Up to five years ago claimant resided in New York City while the hotel was closed and there he obtained some work. Since 1938, when unemployment insurance benefits first became payable, he and his family have dwelt in Monticello and during the vacant hotel period has done no other work. During these periods the evidence indicates that his efforts to obtain work in the city were desultory and seemingly half hearted. To qualify as one whom the act was designed to assist, in countering the public evil of economic insecurity, it was incumbent upon claimant to show that, for the period he claims the benefits, he was totally unemployed in that he had met with a total lack of any employment, including that not subject to the statute, together with a total lack of all compensation (of over 3.00 per week); and all this came upon him through no fault or intended act of his own and that it was in truth and in fact the result of his inability to obtain any appropriate employment notwithstanding that he was capable and available therefor. (Labor Law formerly Sec. 502, subd. 10, now Sec. 522) The Board has round upon all the evidence that claimant has failed to establish these qualifications; that during the period for which he has filed for benefits he was "not genuinely in the labor market." Substantial evidence supports the finding, and the decision appealed from should be affirmed, with costs to the Industrial Commissioner.

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