

New York State Department of Labor

A-750 800 Series

A-750-805

Index No. 1320D-4

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

September 22, 1947

INTERPRETATION SERVICE – BENEFIT CLAIMS
STRIKE OR OTHER INDUSTRIAL
CONTROVERSY

Unemployment due to

Appeal Board Case No. 14,881-47

UNEMPLOYMENT DUE TO STRIKE, QUESTION OF

Loss of employment because of a strike occurred when claimant was laid off with the rest of the office staff because of a strike by the truck drivers in the establishment even though the employer stated that there was some work for the claimant but he was laid off to avoid discrimination.

Referee's Decision: The initial determination of the local office, which disqualified claimant because he lost his employment as a result of an industrial controversy in the establishment in which he was employed, is overruled. (3/25/47)

Appealed By: Industrial Commissioner

Findings of Fact: Claimant filed a claim for benefits on October 14, 1946. The employer certified to the local office that claimant was "laid off due to the truck strike." The local office issued an initial determination disqualifying him on the ground that he lost his employment due to an industrial controversy in the establishment in which he was employed and charging him with an overpayment of \$21. He protested and requested a hearing. Claimant worked as a credit manager in the office of a trucking company. His duties consisted of handling credits, collection of delinquent accounts, examining complaints and accident reports and other related work. On September 3, 1946 the truck drivers working for the employer went out on strike. As a result thereof, the volume of office work decreased. On October 11, 1946 the employer laid off all of its office employees, including claimant. At that time there was work available for claimant to keep him occupied for at least one month. Rather than discriminate against the group for whom there was no work, the employer decided to close his entire office. Claimant was not involved in any labor dispute with his employer. He returned to work on October 28, 1946 following the settlement of the strike.

Appeal Board Opinion: The referee ruled that claimant's loss of employment resulted not from the strike or industrial controversy between the employer and its truck drivers, but from the employer's action in closing its office to avoid discrimination among its office employees. We are unable to agree with his conclusion. The closing of the entire office and claimant's layoff resulting therefrom were directly attributable to the strike by the truck drivers. The fact that some work was available for claimant at the time of the layoff has no bearing on the issue before us in the instant case. Consequently, claimant lost his employment because of a strike in the establishment in which he was employed within the meaning of the Unemployment Insurance Law.

Appeal Board Decision: The initial determination of the local office that claimant lost his employment as a result of an industrial controversy in the establishment in which he was employed is sustained. The decision of the referee is reversed. (6/30/47)

A-750-807

Index No. 1215A-4
Index No. 1250F-1

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

September 25, 1947

INTERPRETATION SERVICE – BENEFIT CLAIMS
REFUSAL OF EMPLOYMENT
Hours – Personal convenience
Offer – What Constitutes

Appeal Board Case No. 14,920-47

REFUSAL: HOURS – PART TIME WORKER
OFFER – WHAT CONSTITUTES; REQUEST TO VISIT EMPLOYER DENIED

Index No. 1215A-4

Refusal of referral to employment occurred where the employment office withheld referral because claimant wished to contact the prospective employer to negotiate for hours different from those stated by the employer and described in the job order, and the employment office had knowledge that no other hours would be considered.

Index No. 1250F-1

A part-time worker must be ready and willing to accept work during hours of the day as normally prevail for such part-time work, regardless of convenience or preference for other hours.

Referee's Decision: The initial determination of the local office disqualifying claimant on the ground that, without good cause, she refused employment for which she is reasonably fitted by training and experience, and that claimant had been overpaid the sum of \$20 in benefits, is overruled. (3/17/47)

Appealed By: Industrial Commissioner

Finding of Fact: Claimant is married and resides with her husband and two children, 12 and 14 years old. Her husband is gainfully employed. Claimant is a typist and general office worker

with 15 years experience. During the last five years of her employment, she worked part time. Her usual hours of employment were from 9 a.m. to 1 p.m. or from 10 a.m. to 2 p.m. Her last spell of employment lasted from January 1945 to April 2, 1946. She was employed from 9:30 a.m. to 1:30 p.m. she commenced this employment at 80 cents per hour and at the time of the termination thereof, she was paid at the rate of \$1.25 per hour. Claimant filed an application for benefits on May 27, 1946 and reinstated her claim on August 19, 1946, reporting regularly thereafter. On October 28, 1946 claimant was offered part-time employment as a clerk-typist at 75 cents per hour. Her hours of employment were to be from 1 p.m. to 5:30 p.m. Claimant refused this employment because of the rate of pay and because she refused to work later than 3 p.m. She desired a minimum of \$1 per hour. The remuneration offered to the claimant was prevailing for similar services in the locality. At the time of the job offer to the claimant, she had been unemployed for a period of six months and had collected 19 benefit checks. On the day of the hearing before the referee, January 13, 1947, the claimant was still unemployed. On November 12, 1946, upon report from the employment service and after an interview with the claimant, the local office issued an initial determination holding that the claimant's refusal of the employment was, without good cause, and that she had been overpaid the sum of \$20 in benefits. This sum was arrived at by the local office on the erroneous assumption that the job offer was made to the claimant on October 24, 1946 instead of October 28, 1946. Claimant contested the determination and requested the hearing. The referee overruled the determination and the Industrial Commissioner appealed.

Appeal Board Opinion: The referee, in overruling the initial determination of the local office predicated his decision on the fact that claimant was refused the opportunity to visit the prospective employer in order to induce him to change her hours of employment. Since the employment service had definite information that the employer was unwilling to deviate from the hours of employment as described in the job order, the refusal by the employment service to permit claimant to visit the prospective employer was not unreasonable. Claimant conceded that her domestic circumstances would not prevent her from working the hours required by the prospective employer. She insisted on earlier hours as a mere matter of convenience. Undoubtedly, claimant under the provisions of Section 597.3 of the Unemployment Insurance Law, may for reasons of convenience or necessity work less than the usual full-time hours prevailing in her place of employment. However, claimant may not as a matter of right limit her employment to particular hours of the day unless dictated by necessity. A part-time worker under the provisions of the above section must be ready and willing to accept part-time work during such periods of the day as normally prevail in the labor market. Mere reasons of convenience will not justify a refusal of part-time employment at prevailing rates because of claimant's preference for other hours. The initial determination of the local office disqualifying claimant for a job refusal is completely justified in this case, except that the day of disqualification is hereby fixed as of October 28, 1946. Accordingly, the amount of overpayment is fixed at the sum of \$10.

Appeal Board Decision: Claimant's refusal of employment was without good cause. She was overpaid the sum of \$10 in benefits. The initial determination of the local office is modified accordingly. The decision of the referee is reversed. (7/7/47)

ADJUDICATION SERVICES OFFICE

September 25, 1947

INTERPRETATION SERVICE - BENEFIT CLAIMS

REFUSAL OF EMPLOYMENT

Wages – Prevailing

Appeal Board Case No. 14,541-47

REFUSAL OF REFERRAL AT QUOTED WAGE OF "\$30 TO \$35" WHEN PREVAILING WAS
\$35

Refusal of referral to employment at a salary of "\$30 to \$35" weekly in claimant's usual occupation was without good cause because the prospective employer upon interview might have paid \$35 per week, which was the prevailing wage and the claimant was not justified in assuming that she would receive the lower figure.

Referee's Decision: The initial determination of the local office disqualifying claimant from receiving benefits upon the ground that she refused employment without good cause, is overruled. (2/4/47)

Appealed By: Industrial Commissioner

Findings of Fact: From 1931 to 1946 claimant was employed by a public utility as an accounting department assistant. Her final rate of pay was \$47.03 per week. Claimant's duties were to do posting in the company's records and to check the correctness of its bills. In this connection, claimant operated a comptometer to a limited extent. She is not a fully qualified comptometer operator. Claimant voluntarily left this employment rather than consent to a transfer. She accepted the company's offer of severance pay in accordance with its agreement with the labor union with which it had contractual relations. Claimant was disqualified for 42 days following her original filing for benefits upon the ground that she voluntarily left her employment without good cause. This determination by the local office was not contested by the claimant. Claimant was classified as a bookkeeping clerk. This was the correct classification on the basis of her previous experience and useable skills. On September 26, 1946 claimant was offered a job as bookkeeping clerk. The hours of employment were 9:30 a.m. to 5:30 p.m., five days a week and alternate Saturdays until noon. The salary involved was quoted at \$30 to \$35 weekly. Claimant refused the proffered employment, contending that a salary of \$30 a week was insufficient. She assumed this would be the figure she would receive if she accepted the job. Claimant preferred work at \$40 per week but would have been interested in employment at \$35 weekly. The prevailing rate paid in claimant's area to persons possessing comparable skill was \$35 at the time of the job offer in question. On October 11, 1946 claimant was offered employment as a general office clerk at \$30 a week. She refused this offer maintaining that the working conditions were unsatisfactory. At the hearing before the referee the initial determination of the local office was amended to include the issue raised by claimant's refusal of this job offer. Based upon claimant's refusal of employment on September 26, 1946, the local office made an initial determination disqualifying claimant from receiving benefits upon the ground that such refusal was without good cause. Claimant requested a hearing and the referee overruled the amended initial determination of the local office. Thereupon, the Industrial Commissioner appealed.

Appeal Board Opinion: We do not agree with the conclusion reached by the referee that the claimant was justified in refusing the offer of employment. The job offer of September 26, 1946 indicated that the prospective employer was willing to pay up to \$35 per week for a bookkeeping clerk. This was in line with the rate prevailing in claimant's community for similar work. The fact that the salary was quoted at \$30 to \$35 weekly did not justify claimant in

assuming she would receive the lower figure. Instead of refusing the job summarily, claimant should have accepted the referral so long as the possibility existed of obtaining \$35 per week. After becoming fully apprised of claimant's qualifications the prospective employer might have been induced to pay claimant the maximum figure quoted. Under these circumstances we are not convinced that the offer of employment was at a rate of pay substantially less favorable to claimant than that prevailing for similar work in the locality. In view of this conclusion it becomes unnecessary for us to pass upon the second disqualification, effective October 11, 1946. Upon all the facts and circumstances herein we believe claimant, on September 26, 1946 refused employment without good cause.

Appeal Board Decision: The initial determination of the local office disqualifying claimant from receiving benefits, effective September 26, 1946, upon the ground that she refused employment without good cause, is sustained. The decision of the referee is reversed. (7/7/47)

A-750-811

Index No. 1685-A1

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

September 29, 1947

INTERPRETATION SERVICE – BENEFIT CLAIMS
VOLUNTARY LEAVING OF EMPLOYMENT
Person Affairs

Appeal Board Case No. 15,080-47

VOLUNTARY LEAVING TO SECURE DIVORCE IN ANOTHER STATE

Leaving employment voluntarily for the purpose of securing a divorce in another state was without good cause. Claimant was unavailable during her absence from New York since she was not interested in seeking employment and remained continuously unemployed until she returned.

Referee's Decision; Appealed By:

These are cross appeals by claimant and the Industrial Commissioner from the decision of the referee dated April 18, 1947. Claimant appeals from that portion holding that she was unavailable for employment from November 24, 1946 to December 30, 1946. The Industrial Commissioner appeals from that portion holding that claimant voluntarily left her employment with good cause, and from the referee's failure to rule on claimant's availability during the period from December 30, 1946 to January 20, 1947. (4/18/47)

Findings of Fact: Claimant has a child of school age, whom she supports. She lived apart from her husband prior to her divorce. She worked from June 1942 to September 6, 1946 as a billing machine operator in New York City, earning \$50 a week. Shortly prior to her separation she made plans to obtain a divorce from her husband. She had no grounds for divorce in New York State. She was advised by her local counsel to go to Las Vegas, Nevada to establish a residence there for the purpose of securing a divorce against her husband. She left her employment for that reason. Claimant arrived in Las Vegas, Nevada on September 12, 1946. On October 14, 1946 she filed a claim for benefits in Nevada against New York as the liable state and reported there until January 14, 1947. She obtained her final decree of divorce on January 11, 1947. During her absence her mother in New York City, took care of her child. She

exerted no efforts to obtain work and remained unemployed during her entire stay in Nevada. She returned to New York City on January 21, 1947. On January 25, 1947 she obtained employment in her line, paying \$50 a week. The local office issued an initial determination disqualifying claimant for 42 days, ending November 24, 1946 on the ground that she voluntarily left her employment without good cause. On February 4, 1947 it issued another determination that claimant was unavailable for employment from December 30, 1946 to January 20, 1947. On February 17, 1947 it issued an alternate determination that she was unavailable from October 14, 1946 to November 24, 1946. At the hearing, claimant contended that she was compelled to give up her job because the work became too onerous for her. She never complained to the employer with respect to working conditions. The Out-of-State Resident Unit obtained information from the employer that claimant left her employment to establish a residence in Nevada. She also stated that her child suffers from a sinus condition and that she was advised to take her out of New York City to a dry climate. She further testified that if she had obtained employment in Nevada, which has such a climate, she would have established her permanent residence in that locality and would have arranged for her daughter to join her later.

Appeal Board Opinion: The referee correctly found that claimant voluntarily left her employment for the purpose of securing a divorce in another jurisdiction. He ruled, however, that since leaving of employment to get married constitutes good cause within the meaning of the Unemployment Insurance Law, the same principle applies to a situation where a person terminates the employment for the purpose of obtaining a divorce. We are unable to agree with the conclusion reached by the referee. We believe that claimant's leaving to obtain a divorce in another jurisdiction was without good cause within the meaning of the Unemployment Insurance Law. The next issue to be decided is whether or not claimant was available for employment during her absence from the jurisdiction from December 30, 1946 to January 20, 1947. She was not interested in seeking employment during her stay in Nevada. She remained continuously unemployed until she returned to New York City. She was unavailable for employment from December 30, 1946 to January 20, 1947. The referee was not required to rule on the period from November 24, 1946 to December 30, 1946.

Appeal Board Decision: The initial determinations of the Out-of-State Resident Unit that claimant voluntarily left her employment, without good cause, and that she was unavailable for employment from December 30, 1946 to January 20, 1947 are sustained. The referee's ruling of unavailability for the period November 24, 1946 to December 30, 1946 is overruled. The decision of the referee is modified accordingly. (7/25/47)

A-750-813

Index No. 1205E-5

NEW YORK STATE DEPARTMENT OF LABOR
UNEMPLOYMENT INSURANCE DIVISION
ADJUDICATION SERVICES OFFICE
September 30, 1947

INTERPRETATION SERVICE – BENEFIT CLAIMS
REFUSAL OF EMPLOYMENT
Other Reasons
Disqualification Period

Appeal Board Case No. 14,725-47

REFUSAL – SUDDEN DECISION TO BECOME ENGAGED IN SELF-EMPLOYMENT;
REFUSAL DISQUALIFICATION AT TIME OF ALLEGED UNAVAILABILITY

A decision to engage in self-employment was not good cause for refusing employment by failing to report for work which claimant, upon referral, had accepted. Nor could claimant, by merely failing to meet his next regular reporting day, escape the consequence of this refusal on the ground that the refusal occurred at a time when he had ceased to be a claimant.

Referee's Decision: The initial determination of the local office which disqualified claimant for refusal of employment without good cause and charging him with an overpayment of \$42, is overruled. (2/21/47)

Appealed By: Industrial Commissioner

Findings of Fact: Claimant, a sewing machine operator, filed a claim for benefits on September 6, 1945 and reported intermittently thereafter. He filed an additional claim on April 18, 1946 and on the same day was referred to employment in his regular occupation at union scale. He accepted the offer and was to report for work on Monday, April 22, 1946. During the intervening weekend he decided to engage in the sale of novelties in Philadelphia on his own account together with a friend. He did not report to the employer, but left for Philadelphia. Claimant next appeared at the local office on June 10, 1946 when he filed another claim for benefits. On July 30, 1946 the local office issued an initial determination disqualifying claimant from benefits effective April 22, 1946 for refusal of employment without good cause.

Appeal Board Opinion: While expressing the view that the offer of employment in question appeared to be a suitable one, the referee ruled in claimant's favor on the ground that the refusal occurred at a time when he had ceased to be a claimant. He further held that the claim of June 10, 1946 was a valid one because of claimant's intervening self-employment. The Commissioner's objections to the decision are well founded. Firstly, claimant cannot be permitted the escape the consequence of his refusal by merely failing to meet his next regular reporting day. The employment which he refused was in all respects suitable and claimant's sudden decision to embark on an independent venture in another city is not, in our opinion, sufficient to justify his failure to report for work. Nor can his subsequent self-employment service to terminate the disqualification. We have held that this result can follow only upon subsequent employment which consists of services performed under a contract of hire. (Appeal Board 14,087-46)

Appeal Board Decision: The initial determination of the local office disqualifying claimant for refusal of employment without good cause, effective April 22, 1946, is hereby sustained. The decision of the referee is reversed. (7/18/47)

A-750-814

Index No. 1215B-3

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

September 30, 1947

INTERPRETATION SERVICE – BENEFIT CLAIMS
REFUSAL OF EMPLOYMENT

Evidence of – Attitude and Conduct

REFUSAL – REQUESTING A WAGE FROM EMPLOYER ABOVE THAT OFFERED AT TIME
OF REFERRAL

Claimant who accepted referral in her regular occupation at \$30 to \$35 per week, the prevailing wage being \$25 to \$35 per week, but when asked by the employer, stated she wanted \$37 per week, whereupon the employer refused her the job, in effect refused employment without good cause. It is not necessary that specific words of refusal be used.

Findings of Fact: A hearing was held at which claimant and representatives of the employer and of the Industrial Commissioner appeared and testified. Claimant has had about five years' experience as an operator of a business machine. She filed for benefits on November 5, 1946. She was disqualified for refusal of employment by initial determination effective December 11. In the alternative, she was ruled ineligible because of unavailability from December 11 to January 3, 1947. On December 9 the employment office referred claimant to a business machine company which in turn referred her to an employer. There she was offered a position in her regular occupation and was told that the salary was "a possible \$30 to \$35 a week." When claimant was asked what she wanted, she stated she would like \$37 a week. The employer's representative thereupon informed her that he did not think he could hire her at that rate. Accordingly to the employment office, the prevailing wages in claimant's occupation were \$25 to \$35 a week. Claimant has been employed since March 5, 1947, by the same employer to which she was referred in December. Her salary is \$35 a week.

Referee's Opinion and Decision: The job in question was offered to claimant at a salary range of \$30 to \$35 a week, which was in line with the prevailing wages paid in her occupation. By her statement that she wanted \$37 a week, claimant in effect refused this job offer. It is not necessary that specific words of refusal be used; claimant's failure to accept the job was tantamount to refusal thereof. She thereby rendered herself subject to disqualification under section 593.2 of the Unemployment Insurance Law. This job was in her regular occupation and the salary range was in line with the prevailing rates. In view of this decision it is not necessary to rule on the issue of availability. The initial determination of refusal is sustained.

Appealed By: Claimant

Appeal Board Opinion: The Board is of the opinion that the referee made proper findings of fact and correctly determined the issue involved in this case.

Appeal Board Decision: The decision of the referee is affirmed. (7/16/47)

A-750-818

Index No. 1415-2

NEW YORK STATE DEPARTMENT OF LABOR
UNEMPLOYMENT INSURANCE DIVISION
ADJUDICATION SERVICES OFFICE
December 5, 1947

INTERPRETATION SERVICE – BENEFIT CLAIMS
TOTAL OR PARTIAL UNEMPLOYMENT
Other Employments

JANITORIAL SERVICES BY CLAIMANT AND HIS WIFE

Where claimant and his wife undertook janitorial duties in connection with a fifteen family apartment building at a compensation of \$40 per month plus a three room apartment, with the understanding that such duties were not to interfere with the husband's employability elsewhere, claimant was held to be totally unemployed since the janitorial services were rendered almost exclusively by his wife, except for not in excess of one hour of work a day which did or would not interfere with other employment. The Board held that the wife was the employee and the husband's work was the result of the family relationship.

Referee's Decision: The initial determination of the local office holding claimant ineligible to receive benefits upon the ground that he was not totally unemployed, is sustained. (5/9/47)

Appealed By: Claimant

Findings of Fact: Claimant had been employed as a gas station attendant for several months during 1946. This employment terminated on January 8, 1947. Prior thereto claimant had worked as a chauffeur. Starting February 10, 1947, claimant and his wife undertook the janitorial duties in connection with a 15-family apartment building. Before then they had lived with the wife's mother, but they were forced to obtain other quarters because of lack of room in the latter's apartment. Claimant testified that the only reason for taking on this janitorial work was because it provided living quarters. The compensation is \$40 a month, plus a three room apartment in which they reside. The duties were accepted upon the express condition that claimant would be free to seek and accept work in his customary occupation. The premises in question require cleaning once each week. Claimant's wife attends to this. The owner of the building independently takes care of all repairs, including those of a minor nature. The garbage is removed from the various apartments by the individual tenants themselves. Claimant's wife tends the furnace. Claimant's sole activity at the building consists in removing the ashes. This he is able to do at night within a period of time not exceeding one hour. The semi-monthly checks for remuneration are made to claimant's order and his social security account is credited with earnings in the amounts thereof. A statement before the Board indicates that claimant has secured full-time employment. Claimant reported the nature of the duties and the conditions under which they were accepted, to the local insurance office, without delay. Based upon such report, the local office made an initial determination ruling claimant ineligible for benefits upon the ground that he was unavailable for employment and upon the additional ground that he was not totally unemployed. Claimant requested a hearing. The referee overruled that portion of the initial determination which held claimant unavailable for work. He sustained that portion of the initial determination which charged that claimant was not totally unemployed. Claimant appealed from this latter portion of the referee's decision.

Appeal Board Opinion: The referee held that claimant's janitorial duties did not interfere with his acceptance of full-time employment and that consequently he was available for work. With this view we are in accord. No appeal has been taken from this portion of the referee's decision. However, the referee decided that claimant was not totally unemployed and therefore not eligible to receive benefits. We do not subscribe to this conclusion. The Unemployment Insurance Law is in the nature of social legislation, and is designed to provide a small income for those who are unemployed, through no fault of their own. Consequently, it should be construed in a manner to accomplish the purpose intended. It cannot be said that Section 522 of the Law, which defines total unemployment, was designed to preclude from benefits a person, who because of present living conditions, was required to enter into an arrangement such as we find herein. The claimant's wife was in fact the employee who was hired, but for reasons of convenience to the employer the claimant was listed as the nominal employee. The janitorial services contracted for by the owner of the premises in question are rendered almost

exclusively by claimant's wife. At the time of the hiring, it was clearly understood that she was to do whatever janitorial work was necessary in and about the premises. The building was small and did not require the services of two persons. Any services rendered by the claimant are the result of the family relationship existing between himself and his wife. It does not appear that claimant's services were a consideration in entering into the contract of hire. On the contrary, it was stipulated that he was at liberty to accept full-time employment and he did not secure regular outside employment. Upon all the facts and circumstances in this case, we believe claimant was totally unemployed within the meaning of the Law.

Appeal Board Decision: The initial determination of the local office ruling claimant ineligible for benefits upon the ground that he was not totally unemployed, is overruled. The decision of the referee is modified accordingly. (10/6/47)

A-750-836

Index No. 1320A-3

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

July 16, 1948

INTERPRETATION SERVICE – BENEFIT CLAIMS
STRIKE, LOCKOUT OR OTHER INDUSTRIAL
CONTROVERSY

Unemployment due to

APPELLATE DIVISION DECISION

Mary Echevarria

273 App. Div. 1046

Appeal Board Case No. 16,034-47

LOSS OF EMPLOYMENT BECAUSE OF INDUSTRIAL CONTROVERSY OR LACK OF
WORK, QUESTION OF

Failure to report for work on April 7, 1947 because a strike was in progress constituted loss of employment because of an industrial controversy even though notice was given on April 4th that services would be terminated because of lack of work, on April 11th.

Referee's Decision: The initial determination of the local office suspending claimant's benefit rights for loss of employment as a result of an industrial controversy, is overruled. (9/8/47)

Appealed By: Industrial Commissioner

Appeal Board Findings of Fact: Claimant filed a claim for benefits on April 14, 1947. The local office issued an initial determination effective April 7, 1947 suspending her benefit rights for seven weeks on the ground that she lost her employment as a result of an industrial controversy. She contested and requested a hearing. Claimant had worked from January 1, 1944 up to April 7, 1947, for a large manufacturer of electric equipment. On April 4, 1947 she was notified that her employment would terminate on April 11, 1947. It was customary for the employer to give employees one-week's notice in the event of a permanent layoff. On April 7, 1947 a strike took place in the plant and picket lines were placed around it. Work was available

for claimant on April 7, 1947. However, she did not return to work on April 7, 1947, because of the strike.

Appeal Board Opinion: There is no dispute as to the facts in this case. On April 4, 1947, claimant was notified of her dismissal from her employment, effective April 11, 1947, because of lack of work. On April 7, 1947 a strike occurred at the employer's plant and, although work was available for her, claimant would not cross the picket line. She did not thereafter return to work. On April 14, 1947, while the strike was still in progress, claimant filed a claim for benefits. The question before us is whether claimant is subject to the seven weeks suspension period provided in Section 592.1 of the Labor Law, as follows:

"Industrial controversy. The accumulation of benefit rights by a claimant shall be suspended during a period of seven consecutive weeks beginning with the day after he lost his employment because of a strike, lockout or other industrial controversy in the establishment in which he was employed, except that benefit rights may be accumulated before the expiration of such seven weeks beginning with the day after such strike, lockout or other industrial controversy was terminated."

Concededly, claimant's unemployment from April 7 to April 11, was occasioned by the strike and her subsequent unemployment would have occurred without relation to and independent of the strike. So far as she is concerned, the strike "was terminated" on April 11. The Commissioner contends that the law is concerned only with the reason for claimant's separation from her last employment on April 7 and not with the reasons for her being out of work at any later date. Since the disqualifying conditions provided in Section 592.1 are found to be present, it is argued that the claimant is subject to the suspension of her benefits for seven consecutive weeks beginning with April 8. We cannot agree that such a result was ever intended by the framers of the Law. The claimant contends that since her discharge was final as of April 11, the strike, which intervened between the time of her notice of discharge and the time of her actual layoff, had no effect on that layoff. Rather, she argues that her unemployment after April 11 was not due to the strike, but to her discharge, which action was decided upon irrevocably before the strike occurred. We believe that claimant's position is more in keeping with the statute and that it must prevail. The Courts of this state have had occasion to interpret former Section 504.2 of the Labor Law which preceded the present statute, and read:

"An employee shall not be entitled to benefits except for unemployment which continues subsequent to a waiting period of ten weeks:

* * *

(b) if he has lost his employment because of a strike, lockout or other industrial controversy in the establishment in which he was employed; . . ."

In a case under that statute involving a strike which occurred during the period of an employee's temporary layoff and before her scheduled return to work, the Court decided that the employee had lost her employment because of a strike. The Court said:

"The language used in the statute which we are construing is clear and unambiguous. Under this Statute it is immaterial whether claimant was an actual striker or whether she was unable to work 'because of a strike.' She was deprived

of her employment because of the strike and consequently not eligible for benefits until the elapse of the ten-week waiting period.

"The statute makes a distinction between those who are deprived of employment because of lack of work and those deprived of employment because of a strike. In the one case there is a waiting period of three weeks before the employee is entitled to the statutory benefits; in the other the waiting period is ten weeks. In order to adopt appellant's view we would be required to hold that employees who lose their employment because of lack of work and those without employment by reason of the existence of a strike are entitled to identical benefits; The answer to that argument is that the statute makes a clear distinction between the two classes." (Matter of Sadowski, 257 App. Div. 529)

With respect to the instant claimant, it is conceded that her lack of employment after April 11, 1947 was not "because of a strike." As of that date she was deprived of her employment because of lack of work. Bearing in mind the "clear distinction" which the Court found in the statute between "those who are deprived of employment because of lack of work and those deprived of employment because of a strike," it appears equally clear that the seven weeks suspension period was not intended to apply to the former class. If we were to adopt the view urged by the Commissioner, we would be confronted with the anomalous situation where a worker who was prevented by a strike from working on the day that his previous discharge (unrelated to the strike) took effect, would be subject to the suspension period provided in Section 592.1 of the Law.

Appeal Board Decision: The initial determination of the local office suspending claimant's benefit rights for seven consecutive weeks for loss of employment because of an industrial controversy is hereby overruled. The decision of the referee is affirmed. (12/8/47)

Appealed By: Industrial Commissioner

Appellate Division Opinion and Decision: When on April 14, 1946, claimant filed for unemployment insurance benefits the Commissioner applied the seven week suspension period provided by the statute (Unemployment Insurance Law, Sec. 592, subd. 1) upon the ground that she lost her employment because of a strike or industrial controversy. There is no dispute but that such, literally, was the fact. Claimant was in employment on April 7th on which day the strike was called and she ceased her work and did not return because thereof. The section of the statute cited, supra, requires the suspension of benefit rights "beginning with the day after" employment is lost because of a strike. The fact that claimant's employment was to have terminated by layoff on April 11th per direction of the employer given on April 4th, does not avoid the application of the aforesaid statutory provision. The amelioration afforded by the Appeal Board's construction is, we think, a matter only for legislative consideration. Decision of the Unemployment Insurance Appeal Board reversed on the law and the initial determination of the Industrial Commissioner confirmed, without costs. (5/12/48)

July 16, 1948

INTERPRETATION SERVICE – BENEFIT CLAIMS
DETERMINATION OF BENEFITS
AVAILABILITY AND CAPABILITY

Work History – Seasonal Employment

Appeal Board Case No. 16,871-48

UNAVAILABILITY – SUMMER RESORT COOK UNABLE TO ACCEPT WINTER RESORT
EMPLOYMENT

Where claimant's experience as a cook for over 20 years was limited to summer hotel work and was not useable in eating establishments in New York City, her inability to accept available winter resort work outside of the city, because of the necessity of caring for her ailing husband, evinced unavailability.

Referee's Findings of Fact: a hearing was held at which claimant, an interpreter for claimant, and representatives of the Industrial Commissioner appeared. Testimony was taken. Claimant, a first cook, kosher, filed for benefits on September 22, 1947. An initial determination was issued disqualifying her as of November 12, for refusal of employment without good cause and for withdrawal from the labor market. Claimant is 57 years old. Her only paid work experience has been as a cook. For about 20 years until 1941 she had her own resort establishment. Her only paid employment of any consequence was during the summer of 1945 and 1946. In about the latter part of 1946, claimant's husband underwent a serious operation and he still suffers from extreme nervousness, depression, and often has attacks of indigestion. There are no children in the household, but claimant must frequently minister to him. On November 12, 1947, the employment office offered claimant a position as first cook in a kosher resort hotel at Lakewood, New Jersey, for a five-and-a-half month period. The salary was \$400 per month, plus room and board, and was in accordance with the prevailing rate for such work in the area. Claimant testified that she refused it only because she could not leave her husband alone. She testified, further, however, that she was available for work in New York City, which would not require her to absent herself from her home at night. Claimant declared that she sought employment in various catering and similar establishments in Manhattan and the Bronx. She named about six of these, but was able to identify only one was a place where she had left her name and address, to be notified in the event her services were needed. The others, she said, told her that they had no opening. The testimony did not indicate that claimant had been employed since the end of the 1946 summer season.

Referee's Opinion and Decision: From my observation of the claimant and upon a consideration of the manner and substance of her testimony, I conclude that since November 12, 1947, at least, she has not made any serious effort to secure employment and was not truly available for work. Her limited work history and the indefiniteness of her testimony in response to questions designed to elicit information susceptible of verification with respect to her efforts to find employment, as well as her domestic situation, cause me to conclude that she has not been genuinely in the labor market since November 12, 1947, at least. The initial determination is sustained. (2/4/48)

Appealed By: Claimant

Appeal Board Decision: After a careful review of the record, testimony and evidence adduced before the referee, and due deliberation having been had thereon, and having found that the referee's findings of fact and conclusions of law are fully supported by the evidence in this case, and that no errors of fact or law appear to have been made, the Board adopts the findings of fact

and the conclusions of law made by the referee as the findings of fact and conclusions of law of this Board, except as follows:

Claimant has a specialized experience as a cook in summer resorts. Her skill is useable in eating establishments in the City of New York. Claimant's experience as a cook for over 20 years was limited to work in resort hotels during the summer. Work was available to the claimant during the winter in resorts outside the city, but because of her need to care for her ailing husband, claimant is unable to accept employment outside of the city during the winter. These conditions rendered claimant unavailable for employment. Claimant refused a job offer as a cook at a winter resort at Lakewood, New Jersey, because she was unable to leave her ailing husband unattended during nights. Her refusal, under these circumstances, was with good cause, but constitutes additional evidence of her unavailability. The Board is of the opinion that the referee made proper findings of fact and correctly determined the issue involved in this case, except as noted above. The decision of the referee, as modified, is affirmed. (April 26, 1948)

A-750-839

Index No. 735A.3

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

July 30, 1948

INTERPRETATION SERVICE- BENEFIT CLAIMS
AVAILABILITY AND CAPABILITY
Claims filed from without the State

Appeal Board Case Number 17,064-48

PERMANENT REMOVAL TO A RESORT CITY; INSSUFFICIENT EFFORTS TO OBTAIN
EMPLOYMENT

Looking in newspapers twice a week and periodic visits to the State employment office in a resort city to which claimant allegedly moved permanently was not the conduct of a normally prudent person who is anxious to work and was insufficient to establish availability for work in such a community.

Referee's Decision: The initial determination of the Miami, Florida local office disqualifying claimant from benefits on the ground that she was unavailable for employment, is sustained. (3/10/L.8)

Appealed By: Claimant

Findings of Fact: Claimant was employed as a slip stitcher in the men's neckwear industry in New York City until December 26, 1947. On January 1, 1948 claimant, her husband and her 16-year-old daughter moved to Miami,

Florida because the condition of her daughter's health required that she live in a warmer climate. Claimant's apartment in a home owned by her niece has been sublet furnished to another party. Claimant has testified that if she likes Florida, she will remain there, otherwise she can return to her former apartment. Claimant filed a claim for benefits at the Miami local office on January 7, 1948. On February 10, 1948 she was interviewed at that office with respect to her availability for work. She signed a written statement to the effect that she had "made no

effort to get employment since coming to Florida." An initial determination was issued disqualifying her from benefits, effective February 8, 1948 for unavailability for work. Claimant is a member of a union and before leaving New York she obtained a withdrawal card from the union. There is no local of her union local in the area. Her efforts to secure work have been confined to looking in the newspapers twice a week and periodic visits to the local employment office. She did not attempt to ascertain whether there are any neckwear factories in the locality.

Appeal Board Opinion: The question to be decided is whether or not claimant may be regarded as available for employment within the meaning of the New York State Unemployment Insurance Law. Accepting claimant's statement that she expects to remain permanently in the City of Miami, Florida, the issue is not, nevertheless, to be tested by ordinary standards as in the case of localities with a greater diversity of commerce and industry. Availability for employment has been defined by the Board and the courts as readiness and willingness to work. Particularly in the case of a person who has removed himself from an active labor market to a resort city do the efforts exerted by him to obtain work and the manner in which he has conducted such search cast important light on the subject of his sincere

desire to work. This is especially so where, apparently as here, the facilities of public employment agencies are not readily at his disposal. In applying the test of availability to a claimant who has gone into such a strange labor market, allegedly to become a permanent member thereof, we believe that "readiness and willingness to work" may be established only by a showing of sincere individual efforts in search of work and of a desire to accept available work under the employment conditions prevailing there. In our opinion a fair test would be whether such claimant has conducted himself as would a normally prudent person who finds himself in a strange resort city and who is anxious to obtain work. It is reasonable to expect that a prudent person under the circumstances would do more than make a mere token search, but would use all of his ingenuity to survey the labor market with a view to determining the most feasible way to succeed in his search. In the instant case it must be held that the claimant has fallen far short of meeting even the minimum test required. Under all of the circumstances herein the initial determination holding her unavailable for employment was proper.

Appeal Board Decision: The initial determination of the local office disqualifying claimant for unavailability for employment is hereby sustained. The decision of the referee is affirmed. (5/3/46)

A-750-840

Index No. 735B.3

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

July 30, 1948

INTERPRETATION SERVICE- BENEFIT CLAIMS
AVAILABILITY AND CAPABILITY
Claims filed from without the State

Appeal Board Case Number 17,153-48

AVAILABILITY OF CLAIMANT SOJOURNING IN A RESORT CITY; INSUFFICIENT SEARCH
FOR EMPLOYMENT

Reading the newspapers every morning and making inquiries of friends falls far short of the conduct of a normally prudent person in need and anxious to obtain work in a resort city and was in fact a mere token search and not the sincere, concerted efforts to find work necessary to show availability as a temporary resident of a resort city.

Referee's Decision: The initial determination of the Miami, Florida local office disqualifying claimant from benefits on the ground that he was unavailable for employment, is sustained. (3/16/48)

Appealed By: Claimant

Findings of Fact: Claimant was employed for many years as a cutter in the garment industry in New York City. His last employment terminated sometime in November 1946, after which he filed a claim for benefits in New York City and received several benefit checks. Thereafter claimant left New York to accompany his wife to Miami Beach, Florida. He maintains that she was required to live there in the winter season because she cannot stand cold weather. He arrived in Florida on December 11, 1947. His intention was to remain in Florida until May 1948. Claimant filed an additional claim for benefits at the Miami local office on December 12, 1947. On January 23, 1948 he was interviewed at that office with respect to his availability for work. He signed a written statement at that time reading in part as follows:

"I am a member of _____ union _____ there is no local union office here... I see no chance to get work here .I have been looking around since coming here but with no results ." .

An initial determination was issued by the local office disqualifying claimant from benefits, effective January 23, 1948 for unavailability for employment. Claimant's efforts to secure work in Florida has been confined to reading the newspapers every morning for positions as a cutter and making inquiries of friends. He stated that he had scan advertisements for operators in his line but that he had not made any inquiry of any of the employers as to whether they had work for a cutter. Although his union maintains an office in Miami, Florida and is listed in the telephone directory, claimant made no attempt to ascertain whether such an office existed. At the hearing before the referee he stated that he had been informed in New York City that there was no Miami office of his union.

Appeal Board Opinion: The Question to be decided is whether or not claimant was available for employment during the period of his temporary residence in Florida following the effective date of the determination. Bearing in mind that claimant: had removed himself from an active labor market to the resort city of Miami Beach, Florida, the issue of his availability is to be determined in accordance with conditions found to be current in the latter locality. Availability for employment has been defined by the Board and by the courts as "readiness and willingness to work". Where a person has left an active labor market to take up temporary residence in a resort city, the efforts exerted by him to obtain work and the manner in which he has conducted such search are of extreme significance in casting light on the genuineness of his desire to work. This is especially so where, apparently as here, the facilities of public employment agencies are not readily at his disposal. Applying the test of availability to a claimant who is residing temporarily in the locale of an unfamiliar labor market, we believe that his "readiness and willingness to work" may be established only by a showing of sincere, concerted efforts in search of work and of a desire to accept available work under prevailing local employment conditions. In our opinion, a minimum test would be whether such claimant is conducting himself as would a normally prudent person who finds himself in need of work in a strange

resort city and who is anxious to obtain work. It is reasonable to expect that a prudent person under like circumstances would do more than conduct a mere token search, but would exert consistent efforts and survey the local labor market with a view to determining the most feasible way to succeed in his search; and in doing so would conform his standards to those prevailing in the community as to the type of work and the amount of wages he would accept during the temporary sojourn. It is pointed out that in the instant case claimant failed to even inquire as to the existence of a local branch of his union, which would ordinarily be the most fruitful source of employment for him. Under all of the circumstances herein, it is held that claimant's acts have fallen far short of meeting the minimum test required and that the initial determination holding him unavailable for employment is proper.

Appeal Board Decision: The initial determination of the local office disqualifying claimant from benefits for unavailability for employment is hereby sustained. The decision of the referee is affirmed. (5/3/48)

A-750-843

Index No. 1275A-10

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

August 27, 1948

INTERPRETATION SERVICE – BENEFIT CLAIMS
REFUSAL OF EMPLOYMENT

Qualifications

Other reasons for refusing

Appeal Board Case No. 16,453-47

REFUSAL; APPRENTICE MACHINIST HELPER TO LATHE OPERATOR

Refusal of referral to employment as a lathe operator by an apprentice machinist helper was with good cause since only part of his knowledge would have been utilized and acceptance would have seriously retarded his training as a machinist which the State encourages through the adoption of Article 23 of the Labor Law.

Referee's Decision: The initial determination of the local office disqualifying claimant from receiving benefits upon the ground that he refused employment without good cause, is sustained. (11/24/47)

Appealed By: Claimant

Findings of Fact: Claimant is a fully qualified machinist's helper. He has had one and one-half years practical experience working at that occupation. Prior thereto, claimant completed a four-year course at a vocational school and in addition attended a technical institute for one year where he studied tool making. He also studied mathematics at an evening high school. In his last employment, claimant earned 90¢ per hour and worked from blueprints. He set up the machine upon which he worked, ground his own tools and operated a lathe, a milling machine, a surface grinder, a drill press and a shaper. He never did any production work. Claimant was classified by the employment service as a machinist's helper. On September 24, 1947 he was offered employment as a lathe operator at 80¢ per hour. Claimant refused the proffered employment primarily on the ground that it would not utilize all of his skills. The duties of the job

offer merely involved some drilling and tapping but did not require the setting-up of machines. Starting November 12, 1947, claimant procured employment at 85¢ an hour as a machinist's helper, through his own efforts. The duties of the job require him to assist a die maker in assembling dies and odd parts. In the course of his work, claimant uses a lathe, a shaper, a milling machine, a grinder and a drill press. He also makes set-ups and uses a variety of measuring instruments. Based upon claimant's refusal of employment, the local office made an initial determination disqualifying claimant from receiving benefits upon the ground that such refusal was without good cause. Claimant requested a hearing and the referee sustained the initial determination of the local office.

Appeal Board Opinion: The referee, in sustaining the initial determination of the local office, concluded that the job offer in question was suitable for claimant. We do not concur in the conclusion reached. Concededly, claimant is a qualified machinist's apprentice. Claimant's entire experience and training have been directed toward becoming an all-around machinist. His activities at no time had been confined to operations as a machine tender. On the contrary, he has some experience on a variety of machines customarily found in a machine shop. The job to which claimant was referred was a production job which would utilize only part of the knowledge he has gained as an apprentice. Its acceptance would have at least seriously retarded claimant's training as a machinist. Claimant, through his own efforts, found employment shortly thereafter which is in furtherance of this training. We make note of the fact that the State of New York has, through the adoption of article 23 of the Labor Law, provided for the training of apprentices in all apprenticeable trades. Thus, it has become a matter of public interest to encourage the training of well-rounded mechanics. To hold that under the circumstances herein, the claimant's refusal of a job as a machine tender was without good cause, would be contrary to the State's policy as expressed in Article 23. Upon all the facts and circumstances herein, we believe claimant did not, without good cause, refuse employment for which he was reasonably fitted by training and experience.

Appeal Board Decision: The initial determination of the local office, disqualifying claimant from receiving benefits upon the ground that he refused employment without good cause, is overruled. Claimant did not receive an overpayment in benefits. The decision of the referee is reversed. (5/26/48)

A-750-849

Index No. 765.5
765.9

STATE OF NEW YORK DEPARTMENT OF LABOR
UNEMPLOYMENT INSURANCE DIVISION
ADJUDICATION SERVICE OFFICE
September 15, 1948

INTERPRETATION SERVICE-BENEFIT CLAIMS
DETERMINATION OF BENEFITS
AVAILABILITY AND CAPABILITY
Efforts and willingness to work

Appeal Board Case No. 16,359-47

AVAILABILITY – LACK OF SUBSTANTIAL SEARCH, QUESTION OF

Answering newspaper help wanted ads and accepting the only referral offered by the employment service in a six months period of unemployment in a fair labor market and complying with all the provisions of the statute and regulations relative to eligibility was sufficient to attest the availability of an experienced full-charge bookkeeper even though she did not call in person on employers who advertised for bookkeepers.

Referee's Decision: The initial determination of the local office disqualifying claimant from receiving any benefits, as of September 23, 1947, on the ground that she was unavailable for employment, is sustained. (11/17/47)j

Appealed By: Claimant

Findings of Fact: Claimant is a full-charge bookkeeper, with about 12 years experience in the bookkeeping field. She was so employed up to April 4, 1947, when she was laid off due to lack of work. Her final salary was \$50 a week. She filed a claim for benefits and registered for employment on April 8, 1947. She thereafter reported to the State Employment Service and to the local office on each occasion she was directed to do so. She made independent efforts to secure employment by answering box-number help-wanted ads in newspapers. She was offered only one job by the employment office. She accepted the referral but was not hired by the prospective employer. The record does not indicate that she raised any barriers with respect to salary asked, hours of work or location of employment that might militate against her becoming employed. She stated she did not want to work in factories where dust is in the air because her skin is allergic to dust. There was a fair labor market for bookkeepers during the period in question. On September 23, 1947, the local office issued an initial determination disqualifying claimant from receiving any benefits on the ground that she was unavailable for employment. Claimant protested and requested a hearing. The referee sustained the initial determination and claimant appealed to the Board. In November 1947, claimant became employed as an alteration hand, and was so employed until about January 1, 1948, when she quit because of pregnancy. She expects to give birth in August.

Appeal Board Opinion: The question to be decided is whether or not there is sufficient basis for holding that claimant was unavailable for employment. The grounds upon which the initial determination of unavailability was based were that claimant had remained unemployed for a long period of time in an active labor market, that she had failed to call in person on employers who had inserted advertisements in newspapers and that she had imposed the restriction that she cannot work in factories because of an allergy to dust. The referee upheld the determination on these grounds, stating further that "claimant's restrictions are not consistent with an active desire to obtain employment." We cannot agree with the conclusion arrived at in this case. At no time did claimant impose any restriction which might have created a barrier to obtaining employment or prevented any employer from hiring her. It has not been questioned that her objection to working in a dusty atmosphere was based on a physical allergy; and in any event such a restriction was of no consequence, since most bookkeepers work in offices which are separated from factories. Neither at the referee's hearing nor before the Board was there any indication of any demand or condition of employment asserted by claimant which might be viewed as being a disqualifying nature. With respect to her efforts to obtain employment, the referee found that, in addition to reporting at the state employment office, claimant had answered newspaper advertisements in writing. Surely, her failure to call on employers in person does not, of itself, disqualify her. Moreover, the employment service has access to any more sources of employment than the individual claimant could possibly have. There is significance in the fact that during the period in question and in a labor market which was described as "fair" by the employment office, they made claimant only a single offer and were unable to place her in employment. Neither the insurance office nor the employment service

ever gave her any other lead which might have resulted in a job. How then can it be said that this claimant rendered herself unavailable for employment? Concededly, she complied with all of the provisions relating to eligibility for benefits found in the Statute and in the implementing regulations of the Commissioner. It is reasonable to believe that the Legislature, in providing for inter-related functions between the benefit claims-taking section and the employment service, intended that the Commissioner should expose claimants to the large reservoir of employment opportunities afforded by the latter service. This claimant did expose herself to this source of employment, but without success. Claimant has thus fully complied with all of the provisions of the Law and met the tests laid down by the statute and the Commissioner's regulations. Her inability to find work, therefore, cannot be used as a basis to establish that she was unavailable for work. Under all of the circumstances herein, we reach the conclusion that no sufficient basis for the determination that claimant was unavailable for employment exists.

Appeal Board Decision: The initial determination of the local office disqualifying claimant from benefits for unavailability for employment is overruled. The decision of the referee is reversed. (3/15/48)

A-750-851

Index No. 1605F-3

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

October 27, 1948

INTERPRETATION SERVICE – BENEFIT CLAIMS
VOLUNTARY LEAVING OF EMPLOYMENT
Personal reasons

Referee's Case No. 510-282-48R

VOLUNTARY LEAVING BY SEAMAN UPON TERMINATING VOYAGE

Severance of employment at the termination of a voyage and upon the receipt of Certificate of Discharge issued by the United States Coast Guard, but after continuing work was offered, was voluntary leaving of employment, and as the principal reason for so doing was that the voyage had ended, the leaving was without good cause.

Initial determination: Claimant's voluntary leaving of employment without good cause.

Request for Hearing By: Claimant

Findings of Fact: A hearing was held at which appeared the claimant, representatives of the Industrial Commissioner and of the employer and attorneys for the employer. Testimony was taken. Claimant, a seaman, refiled for benefits on May 6, 1948. An initial determination was issued, effective that date, disqualifying claimant for 42 days for voluntary leaving of employment without good cause. Claimant was last employed as a wiper in the engine room of the SS A....R...., operated by the U....S....L.... Company, from February 5, 1948 to May 4, 1948, when claimant left. During this period, claimant worked aboard the ship for three voyages. He was also kept on the "port payroll" for six days between the second and third voyages, for which he received his regular rate of pay. Claimant's work history discloses that he worked as a fireman-watertender from about February 26, 1946, to about October 24, 1947, aboard various vessels in foreign and coastwise trade. He explained that prior to commencing

his employment with the U....S....L.... he changed his classification from fireman-watertender to wiper in the hope of obtaining such employment aboard a Diesel operated ship. He wanted to study Diesel engine operations. He claimed he was compelled to accept employment as a wiper aboard a non-Diesel type of ship because he was unemployed for almost three months, and unless he reshipped before the expiration of such period, he would lose his right to priority of re-employment in the union hiring hall. Being unable to obtain employment on a Diesel ship within that period, he nevertheless accepted employment with the U....S....L.... in the category of wiper. In accordance with maritime custom and the laws affecting such employment, claimant signed shipping articles at the commencement of each voyage and then "signed off" on such articles at the termination of each voyage. As required by federal regulations, he received at the end of each voyage a so-called "Certificate of Discharge" from the United State Coast Guard. Immediately prior to the termination of his last voyage on the A....R....ending May 4, 1948, claimant was asked by a superior to reship as a wiper on the next voyage. Claimant declined to do so, informing his superior and his union delegate aboard ship that he was quitting. When claimant's employer was advised that he had filed for benefits, it notified the insurance office as follows:

"This man is a merchant seaman and was hired through the office of the local union. The job was permanent and the man quit voluntarily. The law requires that the man sign shipping articles for each voyage but the termination of articles does not mean termination of continuous employment.

"Man started employment 2/5/48, left 5/4/48."

Upon being interviewed in the insurance office on May 25 claimant signed the following Summary of Insurance Interview:

"I last worked for U.S. L.... – 1 Broadway, NYC as a wiper on SS A....R.... for 2 months. I made two (2) voyages – N.Y. to Europe. I could have re-signed articles. I quit because the voyage ended and for no other reason. I registered at the union 5/6/48 as FMWT. I am 21 years of age. Single."

When claimant was again interviewed in the insurance office on June 14 he signed an additional statement which included the following:

"I left the vessel, because I felt I had worked enough aboard the vessel and needed a rest."

Claimant registered for work as a fireman-watertender at his union hiring hall on May 6 the day he filed for benefits. He has had no employment since leaving the A....R.... He claims that he has been attending the union hiring hall regularly but has been unable to get a job as fireman-watertender for which he put in his card, because there are workers in that class with higher priorities who have been unemployed a longer period of time. Claimant did not inquire about possible openings as a fireman-watertender with the employer herein but assumed that there would be no such place for him. He knew that the employer afforded opportunities for promotion to higher grades on the same or other vessels owned by it. Although claimant admitted that he was asked at the insurance office, when interviewed, to give all of the reasons for not continuing his employment with the U....S....L...., he gave only the reasons set forth in the excerpts of the Summary of Insurance Interviews quoted above. He explained that he regarded it as sufficient to give one reason; that he did not think it necessary to give all of his reasons. At the hearing he advanced the following reasons for declining to continue in employment with his last employer: 1. he wanted work as a fireman-watertender; 2. He needed a rest; 3. The work of wiper was too hard, and 4. The fireman job was preferable because of

opportunity to earn more money through overtime. Claimant also made contradictory statements as to whether or not he had been offered continued employment before the termination of the last voyage. He first testified that he was not asked to sign new articles for a further voyage or to continue working for the U....S....L.... Later, he admitted that his superior had asked him to reshipe. It appears that when the two prior voyages of the A....R.... were completed, claimant left his belongings aboard ship, but on termination of the third voyage, he removed his belongings, indicating his intention not to continue to work aboard that ship. The employer contended that claimant had permanent employment with it, regardless of the end of any particular voyage. Between voyages the seamen are kept on the payroll and are paid the regular rate of wages fixed by union contract. This is known as being put upon the port payroll. It further contended that, in keeping with long established practice, employment such as claimant's continues unbrokenly between voyages although no shipping articles are executed. It is the company's practice to ascertain from the ship's personnel prior to the termination of each voyage whether or not each crew member desires to continue work and to sign new articles for the next voyage. The relations between this employer and seamen are governed by agreements between the shipping companies and the National Maritime Union of America, of which claimant is a member. Under such agreement, ships' personnel can only be hired through the union hiring hall. When a ship arrives in port and the employer ascertains what vacancies exist, the union is asked to furnish replacements. The men sent by the union are examined by the employer's doctor and then go to the ship to which they are assigned. When the ship is ready to sail, shipping articles are signed between the master and the seaman on forms furnished by the Treasury Department, United States Coast Guard. This is a government form which complies with federal statute. (R.S. 4612, as amended – U.S.C., title 46, sec. 713) The shipping articles set forth the name of the vessel, its master, and the itinerary of the voyage. They prescribe the conduct required on the part of the crew and the obligation of the master to pay crew members their wages and supply them with provisions. Arrangement is also made for the presentation of any grievances to the master. The articles must be signed by the master of the vessel and the crew members prior to or at the beginning of each voyage. A ship cannot clear port unless such shipping articles have been executed. The federal law (R.S. 4514-46 U.S. 567) provides that, if any person shall be carried to sea as one of the crew on board of any vessel without entering into an agreement with the master of such vessel in the form and manner and at the place and times in such cases required, the vessel shall be held liable for each such offense to a penalty of not more than \$200. At the completion of the voyage, each crew member again signs the articles, indicating a fulfillment of the terms thereof for that particular voyage. Neither the master nor a member of the crew may change the printed matter in the shipping articles. There is no formal contract of hire between the employer and the crew members, aside from the shipping articles. The agreement between the employer and the union provides as follows:

"Section 6. Employment. (a) The company agrees that during the period this agreement is in effect all employment, except for the positions set forth in subsection (g), will be given the members of the Union when available in the Deck, Engine, and Stewards' Departments, provided that the prospective employees are satisfactory to the company.***

"(b) Unlicensed Personnel may remain continuously in employment on the vessels operated by the Company, provided the Company and employee desire such employment to continue.

"(c) Unlicensed Personnel may be promoted at the option of the Company.

"(d) Unlicensed Personnel available may be transferred to another vessel on the basis of seniority within the organization of the Company, seniority to be construed as continuous service with a Company in a particular rating."

The union agreement further sets forth a schedule of wages from which it appears that the wages of a fireman-watertender are \$210.01 per month and those of a wiper \$207.05 per month. The union agreement also provides that for the first year of continuous service, every licensed member of the crew shall receive a vacation of seven consecutive days with full pay, and for each subsequent year of continuous service a vacation of 14 consecutive days with full pay.

Referee's Opinion: When claimant signed off at the end of the voyage of the A....R.... on May 4, 1948, and declined to sign new articles and continue in the employ of the U....S....L....., did he voluntarily leave his employment, and if so, was such leaving without good cause under the Unemployment Insurance Law? When claimant received a Certificate of Discharge from the United States Coast Guard on the completion of his last voyage, did that mean that his employment had terminated? As to the shipping articles, I find that such document is an agreement between master and seaman, setting forth their respective rights and obligations covering a particular voyage. I find that the Certificate of Discharge issued by the United States Coast Guard is merely a document which evidences the nature and duration of a crew member's services during a particular voyage. I find that the signing of the shipping articles at the commencement and at the end of the voyage on May 4, 1948 and the obtaining of a Certificate of Discharge by claimant did not result in a severance of the employer-employee relationship between the claimant and the employer. The execution of these documents is prescribed by law without regard to the wishes of employer or employee. The employer is required by law to have the shipping articles executed before its ships are permitted to leave port. Under the circumstances the shipping articles cannot be construed as a limitation upon the duration of employment. The practice of the employer is persuasive evidence of the fact that claimant's employment was not terminated by the necessarily temporal nature of each voyage despite the execution of the mentioned documents and by the fact that claimant was kept on its payroll between voyages at the same rate of pay as when working at sea. The union agreement specifically provides that unlicensed personnel, such as claimant, may remain continuously in employment on the vessels of the employer. This is subject to the respective wishes of the employer and the employee to continue such employment. The union contract gave this claimant the option to continue in his employment. Aside from any conditions which would constitute good cause for leaving, the failure of the claimant to exercise that option and to continue work under the same terms and conditions as theretofore must be construed as a voluntary leaving without good cause, provoking a disqualification under Section 593 of the Unemployment Insurance Law. By such construction no attempt is made to interfere with the employee's right to exercise such option. If an employee chooses not to continue in employment, he must accept the consequences if his voluntary leaving is without good cause. The exercise of his option to cease work is not good in and of itself. In the absence of an expressed desire by either of the parties to terminate the employer-employee relationship, it continues. The one who gives notice of termination, ends the relationship. In that respect, the situation here is no different from that of the usual hiring of an industrial worker, on a weekly basis, on land. Such a worker is, of course, as free to leave as is the employer to discharge him at the end of any week. Yet it has never been suggested that if he does so he may not properly be disqualified for voluntary leaving of employment under Section 593 of the Unemployment Insurance Law, (Unless other reasons indicate that he had good cause to quit his job). Perhaps a closer analogy may be found in the case of a travelling salesman or a railway employee. The contention would obviously be untenable that the employment of either is at an end when he

completes each selling trip or run. Assuming but not conceding that the shipping articles could be construed as a contract of hire which expired with the termination of the voyage, for unemployment insurance purposes voluntary leaving of employment occurs when an employee fails to continue in employment with an employer who has work for him for which he is fitted by training and experience at the prevailing rate of pay for such work in the locality. However, the contract of hire is not measured by the shipping articles because employment continues beyond the expiration of a voyage when, as in this claimant's case, he was continued on the port payroll between voyages at the union scale of wages and at the same rate as paid for work at sea. The duration of the voyage as expressed in the shipping articles is construed to be merely a measurement of time and does not lead to the conclusion that the end of the voyage is the end of the employment relationship. Support is found for the foregoing views in National Labor Relations Board vs Waterman Steamship Corporation (309 U.S. 206). There the employer had a contract with one union giving preference to the members of that union in filling vacancies on its ships. Certain crew members left that union and joined another union (the one involved in the instant case). The employer thereupon put its vessels in dry dock, and the crews signed off articles. Thereafter, the employer engaged entirely new crews composed of members of the first union. The second union filed a charge of unfair labor practice with the National Labor Relations Board. The employer contended that the employment of the crew ceased when they signed off articles. The court held that the federal statutory provisions requiring the execution of shipping articles and the signing off on such articles does not preclude employers and seamen from mutually undertaking to continue the relationship of employer and employee after the termination of the particular voyage. It held that the employment relationship continued and that the complaint of the second union before the National Labor Relations Board was well founded. (See also Southern Steamship Company vs. National Labor Relations Board, 316 U.S. 31, where a similar ruling was made.) I find, upon the credible evidence, that claimant was actually offered continued employment with the employer but that he voluntarily left his employment and did so without good cause. Claimant's credibility has been seriously affected by his contradictory testimony as to whether or not he was actually offered continued employment. I find that the claimant severed his employment relationship principally for the reason that the voyage ended. The reasons given by him later, that he wanted work as a fireman-watertender, that he needed a rest, that the work was too hard, and that work as a fireman-watertender was more desirable because it afforded opportunity for overtime, were after thoughts and as a matter of credibility did not constitute good cause for leaving of employment under the Law. I do not believe that claimant had to quit because the work was too hard. The difference in pay received by a fireman-watertender and a wiper is \$2.96 per month. Even if it be considered that a fireman's job was of a higher type and more desirable, the union contract provided, as did the practice of the employer, for opportunity to be promoted, but claimant did not wait for that opportunity. To quit work because one wants a rest or because one has worked too hard at his job may be good personal reasons, but are not valid reasons for leaving employment in this instance. The lack of opportunity to make more money through overtime is also an insufficient reason for leaving under the Law. The Appeal Board has so ruled in Case 12,726-46. Upon similar facts and considering the same contentions as are involved herein, the California Unemployment Insurance Appeal Board reached the same conclusion as is reached herein in the Matter of Peter Rumore, claimant – Matson Navigation Company, employer – Benefit Decision No. 4709, Case No. 8674, decided February 5, 1948.

Referee's Decision: Upon the credible evidence herein, I therefore conclude that claimant voluntarily left his employment for personal reasons not constituting good cause within the meaning of Section 593 of the Law. The initial determination is sustained. (7/16/48)

NEW YORK STATE DEPARTMENT OF LABOR
UNEMPLOYMENT INSURANCE DIVISION
ADJUDICATION SERVICES OFFICE
JANUARY 1949

INTERPRETATION SERVICE - BENEFIT CLAIMS
AVAILABILITY AND CAPABILITY
Withdrawal from labor market
Willingness to work

AVAILABILITY SUBSEQUENT TO STRIKE DISQUALIFICATION PERIOD - DESIRE TO
CONTINUE PICKETING

Claimant who filed for benefits following a strike suspension period would not accept any employment while the strike was still in progress because of orders from her union to that effect and that she must continue picketing, was not in the labor market and therefore was unavailable for employment.

A.B. 16,956-48

Referee's Decision: The initial determinations of the local office disqualifying claimant on the ground that she refused employment for which she was reasonably fitted by training and experience, without good cause, and ruling her unavailable for employment, are overruled. (2/17/48)

Appealed By: Industrial Commissioner.

Findings of Fact: Claimant, a finisher on contact lenses, registered for employment and filed a claim for benefits on June 13, 1947. She was employed for one year to March 19, 1947 by a manufacturer of contact lenses. At the time of the termination of employment, claimant earned \$31.50 for a 40-hour week. The U.O. Union called a strike against the claimant's employer and ordered all members to picket. Claimant started picketing on March 19, 1947. at the time that the claimant filed for benefits, the strike was still in effect. Claimant waited the necessary disqualification period and thereafter refiled for benefits. On August 28, 1947, she was offered employment as an assembler on bicycle chains at 75 cents an hour for a five-day week. Claimant refused the job offer on the ground that her union prohibited her from accepting employment while picketing. The union directed claimant not to accept any offer of employment but to continue picketing on the premise that if she disobeyed the order, it might lead to her loss of union membership. Claimant refused to accept employment while the strike was pending. The local office issued a determination disqualifying claimant for refusal of employment and also ruled her unavailable as of August 28, 1947. The referee overruled the initial determinations of the local office. The Industrial Commissioner appeals from such decision.

Appeal Board Opinion: The credible evidence indicates that claimant's sole reason for refusing employment was to continue with her picketing. At the hearing before the Board she testified that under no circumstances would she accept employment while the strike was in progress. Although claimant waited the suspension period of seven weeks before filing for benefits, she continued to picket and made no effort to obtain employment. Claimant's reason for refusing the job offer of August 28, 1947 was that the union prohibited her from accepting employment during the strike. A claimant, in order to be eligible for benefits, must meet the statutory test of

total unemployment, i.e. must be capable and available for employment. The claimant herein by her own admissions stated that she would not accept employment while the strike was pending. Under the circumstances, the Board is of the opinion that the claimant was not in the labor market and therefore, is unavailable for employment. The question of refusal of employment therefore becomes academic.

Appeal Board Decision: The initial determination of the local office, effective August 28, 1947, disqualifying claimant on the ground that she was unavailable for employment, is sustained. The decision of the referee is reversed. (11/3/48)

A-750-858

Index No. 730.1

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

March 4, 1949

INTERPRETATION SERVICE- BENEFIT CLAIMS
AVAILABILITY AND CAPABILITY

Training Course and Students Military Training

Appeal Board Case No. 18,447-48

AVAILABILITY -NAVAL RESERVE MILITARY TRAINING

A member of the Naval Reserve is unavailable for employment while in required participation in an annual training cruise since release from such duty to accept is not permitted.

Referee's Decision: The initial determination of the local office holding that the claimant was unavailable for employment during the period in question is sustained. (10/27/43)

Appealed By: Claimant

Findings of Fact: We have reviewed the evidence as adduced at the hearing before the referee and we find that such evidence supports the following findings of fact made by the referee:

" Claimant filed for benefits on June 6, 1948. By initial determination effective the same date, claimant was ruled ineligible for unavailability. In May 1947, claimant, then 18 years of age and not a veteran, enlisted in the Naval Reserve as a seaman recruit for a term of four years. He was required to attend a meeting at least once a week for two hours in the evening in the organized reserve and an annual training cruise. For attending those meetings he received \$2.50 per session and part of the cost of his uniform. On June 6, 1948, the claimant received orders from the commanding officer at Fort Schuyler to report for duty at Norfolk, Virginia, for 57 days. Thirty-nine of these days were to be paid for out of naval appropriations. Claimant commenced his tour of duty aboard ship on June 6. On June 7 through July 31, claimant was on the high seas. He returned to New York and his claim was reinstated on August 3, 1948.

Claimant contended that he was available for employment even though he was on tour of duty. He stated that he could have returned to this jurisdiction at any time if there was employment for him and that messages could have reached him at sea.

A communication from the Commandant of the Third District stated, in part, as follows:

"The annual training duty is required of all members of the Organized Naval Reserve. Such duty of 14 days duration may be performed at a convenient time during the fiscal year commencing 1 July. The rate of pay for Seaman Recruit is \$75.00 per month base pay. (sic)

"...it is possible under law for a man to be released from training duty at any time on his own request. However, this procedure is not normally carried out, unless the best interests of the Government are served by such action. It appears that by accepting employment in a civilian job would serve only to the best interests of the individual.

"If a man were released prior to the expiration of his training duty, it is doubtful that the Navy would fly him to the place of commencement of training duty at Government expense."

Appeal Board Opinion: We adopt the following opinion of the referee as the opinion of this board:

Claimant, as a seaman recruit in the Naval Reserve, was required to serve annual training duty. Claimant was ordered to duty for about 57 days on the high seas. Contrary to claimant's contention, claimant would ordinarily not be released from such duty merely to accept employment. Moreover, even if he might have been released from the duty, it is doubtful that he could have reached this jurisdiction within a reasonable time.

In Appeal Board, 2387-40, it was held that a member of the National Guard called for compulsory military training was not thereby rendered ineligible for benefits. The Appeal Board noted the established policy of the National Guard to release men promptly where an offer of employment was made to an enlisted man unemployed at the time he entered his training duties. This case, however, is not analogous to the one cited. There is no established policy of release of a recruit as in the other case. Release in the instant case is granted only if the interests of the Government would be served and not those of the recruit. Furthermore, in the cited case, the National Guardsman, when released, could readily return to this jurisdiction for employment. In the instant case the situation is to the contrary. While recognizing that claimant is performing a patriotic service, I cannot overlook the substantial difference existing between the instant case and the cited case. In view of the foregoing, I am constrained to find that claimant, during his tour of duty, was unavailable for employment.

The initial determination is sustained.

Appeal Board Decision: Initial determination of the local office that claimant was unavailable for employment from June 6, 1948 to August 2, 1948, is sustained. The decision of the referee is affirmed. (1/12/49)

A-750-860

Index No. 780A.4

NEW YORK STATE DEPARTMENT OF LABOR
UNEMPLOYMENT INSURANCE DIVISION
ADJUDICATION SERVICE OFFICE
April 15, 1949

INTERPRETATION SERVICE-BENEFIT CLAIMS
DETERMINATION OF BENEFITS
AVAILABILITY AND CAPABILITY
Suspension period – Effective date

Appeal Board Case Number 18,030-48

AVAILABILITY, EVIDENCE OF – EFFECTIVE DATE OF SUSPENSION

Suspension as of May 21, the date claimant admittedly was unable to accept employment because her child's sickness was sustained notwithstanding that such evidence was first received by the insurance office from the employment service on June 3, since claimant, having been instructed regarding availability requirements should have notified the insurance office that she was unable to accept employment

Referee's Decision: The initial determination of the local office, modified by holding that claimant was unavailable for employment effective June 3, 1948 and not on May 21, 1940 as fixed in the said determination and that consequently claimant was not overpaid \$42 in benefits, is sustained. (8/12/48)

Appealed By: Industrial Commissioner

Findings of Fact: Claimant, a counter girl, filed a claim for unemployment insurance benefits and registered for employment on January 6, 1948. She reported regularly through June 2, 1948. On that day claimant received a telegram from the employment office directing her to report to a prospective employer for a job. Claimant phoned the employment office informing them that she could not accept the job offer because her child was ill and required her constant attention. In an interview at the local office on June 8, claimant disclosed that her child became ill on May 21 and that she had been unable to accept a job since that date. The local office thereupon issued an initial determination holding claimant unavailable for employment as of May 21 and that consequently she was overpaid in the sum of \$42 for the effective days May 21 through May 30, inclusive. Claimant protested this determination and requested a hearing. The referee modified the initial determination by changing the date of claimant's unavailability to June 3, the day when the employment office advised the local office that claimant would not accept employment. The overpayment was consequently eliminated. From this decision the Industrial Commissioner appealed to the Board. At the hearing before the Board it was disclosed for the first time that since claimant filed for benefits in January 1948, she had been instructed many times at the local office in connection with routine interviews and job offers. On each of these occasions, claimant was told that she had to be ready, willing and able to accept employment in order to be eligible for benefits.

Appeal Board Opinion: The decision of the referee was predicated on the ruling of the Appellate Division in the Matter of Maria Salavarría 266 App. div. 933, affirming Appeal Board, 7831-42. In our opinion, the ruling in that case is not applicable to the facts herein. As a result of her numerous interviews at the local office, claimant knew that she had to be ready, willing and able to accept employment in order to be entitled to benefits. By her own admission she was unable to take a job from May 21, 1948 until the time when her child had fully recovered. She further admitted that had she been offered a job during that period of time, she would have been compelled to refuse same because of her child's illness. Since claimant had been instructed regarding the requirement that she must be available for work in order to collect benefits, she should have notified the local office that her child was ill and that she was unable to accept an offer of employment. Her unavailability for employment, under those circumstances, must be fixed as of May 21, 1948. She was therefore overpaid in the sum of \$42.

Appeal Board Decision: The initial determination of the local office holding that claimant was ineligible for benefits as of May 21, 1948, upon the ground that she was unavailable for employment and was overpaid 442 in benefits, is sustained. The decision of the referee is modified accordingly. (2/2/49)

A-750-863

Index No. 1245-3

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

April 15, 1949

INTERPRETATION SERVICE – BENEFIT CLAIMS
REFUSAL OF EMPLOYMENT
Safety and Health

Appeal Board Case Number 18, 182-48

REFUSAL – HEALTH; MEDICAL CERTIFICATE NOT CONTROLLING

Refusal of employment in usual occupation as a sewing machine operator for the stated reason that piece work would make her nervous was without good cause because her contention was based purely on speculation as she had never worked on a piece work basis, a large majority of workers in her occupation were piece workers and opportunities in her occupation on a weekly basis were greatly limited, therefore it was incumbent upon her to accept the job and try the work.

Referee's Decision: The initial determination of the local office that claimant refused referral without good cause, is overruled. The alternate determination of unavailability, is sustained. (9/23/48)

Appealed By: Industrial Commissioner and Claimant (Cross Appeals)

Findings of Fact: Claimant last worked in February 1948 as a double needle sewing machine operator on ladies' underwear in New York, earning \$53.21 for a 37½ hour work week. She became separated from the employment because the shop moved to another city. Claimant filed a claim for unemployment insurance benefits and registered for employment on June 7, 1948 and reported to at least the date of the hearing on September 1, 1948. She was classified as a double needle sewing machine operator on brassieres. On July 20, 1948 she was referred to a job in her usual line on a piecework basis, with earning estimated at from \$50 to \$60 a week. The rates were fixed by agreement between the employer and the claimant's union. Claimant refused the referral stating that she wanted only week work paying from \$50 to \$52 a week and that piecework would make her nervous. She never worked on a piecework basis. She produced a medical certificate setting forth that "the patient claims that piecework makes her nervous and therefore she is unable to do it." She has no physical limitations. She occasionally received medical treatment for her nerves. The local office issued an initial determination effective July 20, 1948, holding that claimant refused employment without good cause. It also issued an alternate determination effective August 3, 1948 that claimant was unavailable for employment because she restricts herself to week work exclusively. In an effort to place claimant at a job on a work week basis the employment service contacted seven employers of union shops who had requested piece workers. None was willing to change the

job specifications from piecework to week work. The industry is 85% unionized. About 75% of the machine operators work on a piecework basis.

Appeal Board Opinion: The referee ruled that since claimant was unable to work on a piecework basis for health reasons her refusal of the employment was with good cause. He ruled, however, that in view of claimant's restrictions with respect to the type of work and rate of pay acceptable to her, she was unavailable for employment. We are unable to agree with the manner in which the referee disposed of this case. Claimant's objection to piecework based on alleged health reasons lacks merit. Since she never did piecework her contention that it might adversely affect her health is based purely on speculation. It was incumbent on claimant to accept the job offer and try to adapt herself to the work. The evidence shows that opportunities for claimant at a weekly rate were greatly limited because a large majority of the operators in her industry customarily were employed on a piecework basis. Moreover, the intensive efforts exerted by the employment service to obtain work for claimant in accordance with her specifications were futile. As a matter of fact the average weekly earnings of piece workers were higher than those employed on a work week basis. None of the reasons advanced by claimant can be accepted as constituting good cause for her refusal of the employment. In view of this holding, the issue of claimant's availability becomes academic.

Appeal Board Decision: The initial determination of the local office that claimant refused employment without good cause is sustained. The decision of the referee is modified accordingly. (1/12/49)

COMMENT

Claimant presented a statement from a doctor reading "The patient claimed that piece work makes her nervous and therefore she is unable to do it." It is noted that that statement contains no conclusion of the doctor himself and therefore does not contain the necessary elements of a medical certificate.

A-750-867

Index No. 1230-2

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

April 15, 1949

INTERPRETATION SERVICE – BENEFIT CLAIMS
REFUSAL OF EMPLOYMENT

Hours – Interference with Domestic Duties

Appeal Board Case Number 18,426-48

REFUSAL – DOMESTIC RESPONSIBILITIES – EMPLOYER'S CLOSING HOUR THIRTY
MINUTES LATER THAN CUSTOMARY

Refusal of employment in usual line of work at the prevailing rate primarily because the 5:30 p.m. closing hour interfered with domestic responsibilities (shopping preparation of meals) was without good cause since, although the usual closing hour in claimant's occupation was 5 p.m. and occasionally 5:15 p.m., claimant's objection was prompted by conditions of personal convenience rather than hardship.

Referee's Decision: The initial determination of the local office that claimant refused employment without good cause, is overruled. (11/3/48)

Appealed By: Industrial Commissioner

Findings of Fact: Claimant worked for two years ending June 26, 1947 as a table worker on paper boxes, earning \$32 for a five day week. Her hours of work were from 8:00 a.m. to 4:30 p.m. She was laid off due to lack of work. Claimant filed a claim for benefits on May 31, 1948. On August 3, 1948 she was referred to a job as a table worker, paying 76 cents an hour for the first 40 hours with time and a half thereafter. After the first month claimant would be required to join the union and her basic rate would then be increased to 81¢ an hour. The hours of work were from 8:00 a.m. to 5:30 p.m., five days a week, a total of 45 hours. The time consumed in traveling from claimant's residence to the place of employment is estimated at 30 minutes, one way. Claimant refused the referral, stating that the employer is located at an unreasonable distance from her home and that the closing hour of work interfered with her domestic responsibilities. She did not object to the wages offered. The local office issued an initial determination, effective August 3, 1948, disqualifying claimant for refusal of employment without good cause. The usual hours of work in claimant's occupation start either at 8:00 a.m. to 8:30 a.m. and close at 5:00 p.m. and occasionally at 5:15 p.m. The work week consists of 40 hours. About 5% to 10% of the jobs in this category require a 45-hour week. The usual remuneration for this type of work ranges from 65¢ to 75¢ an hour. Claimant's husband comes home from work at 4:00 p.m. She is required to attend to her household duties, the shopping and preparation of meals. She has no children but her two nieces, who reside elsewhere, have their meals at her home. She was willing to work only until 4:30 or 5:00 p.m. On September 14, 1948 claimant returned to work for her former employer at a salary of \$30 for a five day week. Her hours of work are from 8:00 a.m. to 4:30 p.m.

Appeal Board Opinion: The referee ruled that claimant had good cause to refuse the employment on the theory that the hours of work offered claimant were substantially less favorable to her than those prevailing for similar work in the locality. The referee's conclusion is not borne out by the record. Claimant raised no objection as to the number of hours in the work week offered but only as to the closing hour. No compelling reason was advanced by her to justify her unwillingness to work later than 5:00 p.m. Her objection to working as late as 5:30 p.m. was prompted by considerations of personal convenience rather than hardship. A consideration of all the circumstances compels the conclusion that claimant's refusal was without good cause.

Appeal Board Decision: The initial determination of the local office, effective August 3, 1948, holding that claimant refused employment, without good cause, is sustained. The decision of the referee is reversed. (2/2/49)

A-750-868

Index No. 1310-12

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

May 27, 1949

INTERPRETATION SERVICE – BENEFIT CLAIMS
INDUSTRIAL CONTROVERSY

Lack of work or industrial controversy

Appeal Board Case No. 17,254-48

LOCKOUT – CLOSING OF PLANT BY EMPLOYER TO INDUCE ACCEPTANCE BY
EMPLOYEES OF CHANGED WAGE AGREEMENT

Where an employer stopped active operations and laid off employees because of failure to obtain a new piece work instead of a weekly pay basis, and he resumed operations when agreement with the union was reached, the loss of employment was caused by a lockout and suspension from benefits was proper.

Referee's Decision: The initial determination suspending each of the claimants from an accumulation of benefit rights during a period of seven consecutive weeks on the ground that they lost their employment because of a lockout or other industrial controversy in the establishment in which they were employed, is sustained. (3/23/48)

Appealed By: Claimants

Findings of Fact: We have reviewed the evidence as adduced at the hearings before the referee, and we find that such evidence supports the following findings of fact made by the referee:

Claimants filed for benefits on or shortly before December 31, 1947. By initial determinations, their benefit rights were suspended for seven weeks because of unemployment due to a strike, lockout or other industrial controversy in the establishment where they were employed. In addition, (claimants) M. was ruled overpaid \$42, C. \$42 and H. \$21.

F. was employed as a trimmer and the other claimants in other capacities, by a manufacturer of hats. F. was a member of the hat trimmers' union, the other claimants of another union.

Prior to the execution of a master agreement between the employers' association and the unions, the employer sought to institute a piecework basis of compensation with respect to the trimmers employed by him. The request was overridden when the agreement was executed in the summer of 1947, to provide inter alia for a week work basis of compensation for the trimmers. The employer believed his production cost excessive, and sought thereafter to effect a modification of the method of computing the wages of his trimmers from week work to piecework. He obtained the intercession of the association, but unsuccessfully, and later requested assistance from the trimmers' union representative. The union would not give its consent to any modification without that of the trimmers involved.

Accordingly, and on at least one occasion prior to December 20, 1947, the union representative transmitted the employer's request to the trimmers in the employer's establishment. The trimmers were aware of the relevant contract provisions and declined to waive them for one calling for payment of their wages on a piecework basis.

On December 31, 1947, the employer wrote to the union, stating in part:

" . . . As you know we have lost a considerable amount of money this year, all due to the fact that our trimming and operating department have not earned the salaries given them weekly.

"We have been calling this matter to your attention and on several occasions you even tried to straighten this trouble out for us but to no avail.

"You asked us to give the girls another chance and to try and trim the same way as they are doing in other piecework shops, assuring us that we would get our production and also that the girls would earn their weekly salaries.

"We abided with your request and regret to inform you that after giving it a six weeks' trial, the situation is not any better.

* * * *

"It has gotten so that we are really disgusted with the entire thing and have told the girls that we do not intend to operate again.

"There is only one course for us to take, Miss T., and this is to close our New York plant and we mean this sincerely. Before doing this we first want to see if you can't straighten this mess out for us once and for all and that is to get the girls to work on piecework. You are the only one to do it and if this will be accomplished our troubles will be over. We have plenty of work in the hour, but we will not get started until this matter is straightened out to your satisfaction.

"We would appreciate your giving this matter your immediate attention and to notify us of your pleasure so that we will know what step to take next."

The employer commenced laying off his employees shortly before December 31, 1947. C. was laid off on December 27, H. and M. on December 29 and F. on December 31. It does not appear, however, that the employer had any firm intention of going out of business at the time. He did not dismantle the machinery in the establishment or notify his landlord that he would vacate the premises. Nor did he advise the trade that he was going out of business. He merely stopped active operations, hoping that the trimmers would accede to his request. His establishment was not picketed. At the intercession of the union, the trimmers agreed about three weeks later to return to work on a piecework basis and the employer then resumed full operations.

The employer and representatives of the unions, of the Industrial Commissioner and of the employer's association agreed that cases of other persons employed by the employer and growing out of the same situation, be decided similarly and without the necessity or notice of hearing.

Appeal Board Opinion: Inasmuch as the referee has already issued a well-reasoned opinion in this matter, we adopt the referee's opinion and decision as the opinion of this Board:

Section 592.1 of the Unemployment Insurance Law provides:

"1. INDUSTRIAL CONTROVERSY. The accumulation of benefit rights by a claimant shall be suspended during a period of seven consecutive weeks beginning with the day after he lost his employment because of a strike, lockout, or other industrial controversy in the establishment in which he was employed, except that benefit rights may be accumulated before the expiration of such seven weeks beginning with the day after such strike, lockout, or other industrial controversy was terminated."

The employer ceased furnishing work to his employees for the sole purpose of securing compliance with his demand that the trimmers' wages be computed on a piecework instead of on a week work basis. When compliance was secured, he resumed the active operation of his business

All the elements of a lockout, therefore, were present. The benefit right of claimants, therefore, were correctly suspended; they "lost . . . (their) . . . employment because of a . . . lockout . . . in

the establishment in which . . . (they were) . . . employed." It is immaterial, under the quoted section of the Law, that some of the claimants were members of a union whose membership included no trimmers, that the employer made no demands of them or that they did not participate in the controversy, and, indeed, as one or two of them testified, they knew nothing about it. Section 592.1 makes no distinction relevant to these factors.

Some of the determinations were made effective other than as of the date following the day when claimants' respective loss of employment occurred. Although the effective dates were thus incorrectly fixed, no useful purpose would be served in modifying the determinations, inasmuch as all claimants returned to work for the employer before the expiration of the seven weeks' period computed from the correct dates. Moreover, the amounts of the overpayments would not be affected by such modifications.

The initial determinations are sustained. M. and C. were each overpaid \$42 and H. \$21.

Appeal Board Decision: The initial determinations of the local office holding that claimants lost their employment as a result of an industrial controversy are sustained. The claimants M., C. and H. were each overpaid in benefits as herein above indicated. The decision of the referee is affirmed. (3/18/49)

A-750-869

Index No. 815-3

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

May 27, 1949

INTERPRETATION SERVICE – BENEFIT CLAIMS
CLAIMS, REGISTRATION, REPORTING
Filing & Certifying requirements

Appeal Board Case No. 18,419-48

REGISTRATION REQUIREMENTS – FAILURE TO SUBMIT MEDICAL INFORMATION NOT
WARRANTED

A request to a claimant that she sign a consent to enable the Employment Service to ascertain from her physician the nature and extent of her epileptic seizures was within the requirements for registration for work and her refusal to so sign constituted failure to comply with registration requirements because such information was reasonable and necessary to safeguard the interest of the claimant and any prospective co-workers and employer to whom she might be referred.

Referee's Decision: The initial determination of the local office holding that claimant failed to comply with registration requirements promulgated by the Industrial Commissioner and that she was unavailable for employment effective July 21, 1948, is overruled. (11/10/48)

Appealed By: Industrial Commissioner

Findings of Fact: Claimant, a typist-biller, filed a claim for benefits on May 3, 1948. From August 1944 to August 1945 claimant was confined to a state institution during which time she was under treatment for epileptic seizures. After her release, she was employed for about one year to May 1946 as a file clerk and typist. Thereafter, she became employed as a biller from

October 1946 to April 26, 1948. On July 21, 1948 claimant was interviewed at the employment service and on that occasion she disclosed her confinement to the state institution and that she was afflicted with epileptic seizures. She was then requested to sign a consent to enable the employment service to ascertain from her physician the nature and extent of her illness in order to properly refer her to suitable employment. When claimant hesitated to comply with such request she was asked to consider the matter until August 18, 1948 at which time she refused. On September 17, 1948 claimant did comply with such request and the employment service was able to communicate with her physician and ascertain from him what type of employment claimant was able to accept without jeopardizing her well being. During all the times in question claimant was ready, willing and able to accept employment in her customary occupation. The local office issued an initial determination effective July 21, 1948, disqualifying claimant from unavailability, or in the alternative for failure to comply with registration requirements.

Appeal Board Opinion: At the hearing before the Board the issue involved was confined to the question as to whether the claimant's failure to consent to submit medical information regarding ailment was tantamount to a failure of her compliance with registration requirements. The employment service is charged with the duty of placing claimants in suitable employment and determining the type of work for which they are best fitted. In the present circumstances, since claimant disclosed that she was afflicted with epileptic seizures it was necessary for the employment service to ascertain the nature and extent of such affliction and the manner in which it affected her ability to work, in order to safeguard the interest of the claimant and any prospective co-workers and employer to whom she might be referred. Since this ailment was of a serious nature and of a type that can readily influence the nature of employment referrals, we believe the request of the employment service that claimant submit medical information regarding her affliction was reasonable. It therefore follows that claimant, by failing to comply with the request as aforesaid from August 18, 1948 to September 16, 1948, thereby failed to comply with the registration requirements and to that extent was properly disqualified.

Appeal Board Decision: The initial determination is modified to the extent that claimant has failed to comply with registration requirements from August 18, 1948 to September 16, 1948 and as modified is affirmed. The decision of the referee is modified accordingly. (3/18/49)

A-750-870

Index No. 735B.4

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

May 27, 1949

INTERPRETATION SERVICE- BENEFIT CLAIMS
AVAILABILITY AND CAPABILITY
Removal of residence
No employment opportunities

Appeal Board Case No. 18,492-48

AVAILABILITY; TEMPORARY REMOVAL TO RESORT AREA -NO EMPLOYMENT OPPORTUNITIES

A stage electrician who, after the theatre in which he was employed closed for the summer, left New York City to reside in Sullivan County, a resort area, where it was impossible to obtain

work, was unavailable for employment while there were opportunities for employment in New York City since fifty percent of the theatres remained open during the summer.

Referee's Decision: The initial determination of the local office that claimant was unavailable for employment, is overruled. (11/10/48)

Appealed By: Industrial Commissioner

Findings of Fact: Claimant filed a claim for benefits on June 23, 1948 in New York City. On July 21, 1948 the Monticello local office issued an initial determination, effective July 14, 1948, holding that he was unavailable for employment. Claimant protested and requested a hearing. Claimant had worked for 17 years as a theatrical stage electrician for the same employer in New York City. He is a member of the New York City local of his trade union. He was laid off on June 14, 1948 because the theatre in which he worked closed for the summer season. This was the first time in seven years that the theatre closed during such time. About 50 percent of the theatres in New York City were open for business during the summer of 1948. On July 14, 1948 claimant left New York City to join his wife at Lake Huntington in Sullivan County, where she was spending her summer vacation. There were no job opportunities for claimant in Lake Huntington, which is a summer resort area. During his stay there claimant followed the theatrical news in the newspapers. He exerted no other efforts to seek work. On August 23, 1948 claimant and his wife returned to New York City. He worked for one day on August 23, 1948 at one theatre and several days later obtained employment for a week at another theatre. He testified that he would have had an opportunity to obtain temporary employment from time to time if he remained in New York City during the period in question.

Appeal Board Opinion: Claimant left a locality in which there were opportunities in his line to spend some time with his family in a summer resort area. While he remained in Lake Huntington it was impossible for him to obtain employment. Under the circumstances in this case, it must be held that claimant was unavailable for employment during the period in question.

Appeal Board Decision: The initial determination of the local office that claimant was unavailable for employment, effective July 21, 1948, is sustained. The decision of the referee is reversed. (3/25/49)

A-750-872

Index No. 1185-6

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

May 27, 1949

INTERPRETATION SERVICE – BENEFIT CLAIMS

MISCONDUCT

Violation of company rule

Appeal Board Case Number 19,028-49

MISCONDUCT – VIOLATION OF EMPLOYER'S RULE PROHIBITING SMOKING

Discharge of a department store salesman for violating employer's rule prohibiting smoking in restricted part of premises constituted misconduct as the rule was not unreasonable in a business of that nature.

Referee's Decision: The initial determination of the local office disqualifying claimant as of November 9, 1948 on the ground that he lost his employment through misconduct in connection therewith, is sustained. (2/9/49)

Appealed By: Claimant

Findings of Fact: Claimant filed an application for unemployment insurance benefits on November 12, 1948. His benefit rights were suspended for a period of 42 effective days commencing with November 9, 1948 on the ground that he lost his employment through misconduct arising out of the following circumstances: Claimant was employed as a salesman in a department store. He was aware that pursuant to the rules promulgated by the employer, smoking was prohibited on the premises, although it was permissible in the cafeteria. On November 8, 1948, claimant concededly violated this rule, which culminated in his discharge on that day.

Appeal Board Opinion: Claimant was cognizant of the rule of the employer against smoking. This rule was a reasonable one in view of the nature of the business conducted on the premises. His violation of this rule and the resultant discharge, justified the issuance of the initial determination in question. It therefore follows that the referee properly sustained the initial determination of the local office.

Appeal Board Decision: The initial determination holding that claimant lost his employment through misconduct in connection therewith is sustained. The decision of the referee is affirmed. (4/8/49)

A-750-873

Index No. 1305A-8

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

May 27, 1949

INTERPRETATION SERVICE – BENEFIT CLAIMS
INDUSTRIAL CONTROVERSY

Unemployment, due to

Appeal Board Case No. 18,913-49

EFFECTIVE DATE OF DISQUALIFICATION –
STRIKE OCCURRING DURING TEMPORARY PENALIZATION LAY-OFF

Suspension from benefits commenced on October 14 the day after a strike commenced, even though on that day claimant was serving a penalty layoff for the period October 13 to 16 inclusive, of which he was notified on October 11 the last day on which he worked, and he was requested by the employer to return to work on October 18 which he did not do because of the strike.

Referee's Decision: The referee modified the initial determination of the local office to hold that claimant lost his employment as a result of an industrial controversy effective October 19, 1948 instead of October 14, 1948. (1/12/49)

Appealed By: Industrial Commissioner

Findings of Fact: Claimant filed an additional claim for benefits on October 14, 1948. The local office issued an initial determination suspending his benefit rights for seven weeks, effective October 14, 1948, for loss of employment as a result of an industrial controversy. He was charged with an overpayment of \$26. Claimant was employed as a driver for a brewery company. His last day of work was October 11, 1948, when he received a notice from his employer that he was penalized by being laid off from work for four days commencing October 13, 1948 and ending on October 16, 1948 for doing work not in conformance with the union agreement. On October 13, 1948 an industrial controversy was initiated in the employer's establishment by the drivers and helpers belonging to claimant's trade union. On October 16, 1948 claimant received a telegram from the employer requesting him to report to work on October 18, 1948. He did not return to work on October 18, 1948 because of the strike of the drivers in the employer's establishment.

Appeal Board Opinion: The referee modified the initial determination of the local office by changing the effective date from October 14, 1948 to October 19, 1948 on the theory that it was the day after the date when claimant's loss of employment due to the strike occurred. The Industrial Commissioner appealed from this portion of the decision on the ground that the effective date fixed in the initial determination of the local office was proper. The following language in Appeal Board, 13,748-46 and Appeal Board 13,749-46 (affirmed in Matter of Hazel Birkmeyer, et al, 272 App. Div. 855), on which the Commissioner relies, applies here:

In our view the Legislature intended that all claimants involved in a strike or other industrial controversy should be treated alike during a single fixed period measured from the day following the strike or industrial controversy. The error in departing from this principle is, we think illustrated in the referee's distinction between those on sick leave when the strike commenced and those who took sick leave immediately thereafter. Although both categories obviously merit the same treatment, opposite results were arrived at on an artificial basis. If the strike suspension period in the Law were penal in nature, there would be justification for segregating the claimants on the basis of their employment, availability and capability. The provisions in question are not penal but rather are designed to maintain the State's policy of neutrality in an industrial controversy.

In line with the reasoning in the above case the effective date of the initial determination was properly fixed as of October 14, 1948, which was the day after the industrial controversy in the employer's establishment began.

Appeal Board Decision: The initial determination of the local office, effective October 14, 1948, holding that claimant lost his employment as a result of an industrial controversy and that he was overpaid \$26 is sustained. The decision of the referee is reversed. (4/8/49)

A-750-875

Index No. 1245-7

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

May 27, 1949

INTERPRETATION SERVICE – BENEFIT CLAIMS
REFUSAL OF EMPLOYMENT

Appeal Board Case No. 18,418-48REFUSAL – HEALTH; ALLERGY TO ACETONE AND GLUE – INSUFFICIENT EVIDENCE

A contention of being allergic to acetone and glue was not considered good cause for refusing referral to employment assembling and pasting jewelry since such contention was based upon and experience in using these substances for one-half day twenty years ago at which time no medical examination was made to justify such conclusion and no medical proof was submitted that such allergy existed at the time of the job offer.

Referee's Decision: The initial determination of the local office disqualifying claimant from receiving benefits on the ground that she refused an offer of suitable employment without good cause, is overruled. (10/26/48)

Appealed By: Industrial Commissioner

Findings of Fact: Claimant was employed as a packer of frozen food for two years prior to April 19, 1948. Her terminal pay was 75¢ per hour. Prior thereto she was employed for about 10 years as a stockroom girl and about two years as a packer. She filed a claim for unemployment insurance benefits at the local office and registered for employment on April 27, 1948. She told the employment office that she would accept any type of work. On July 28, 1948 the employment office offered claimant a job assembling and pasting costume jewelry. The hours were from 8:00 a.m. to 4:30 p.m., five days a week, and the rate of pay was 75¢ an hour. Claimant refused this offer on the ground that it was not in her line of work and she wanted a job similar to her last one. At an interview in the local office on August 1, 1948 claimant for the first time advanced as an additional reason for refusing the job offered her, the fact that she was allergic to acetone, which she claimed was used in connection with that job. She alleged she had become sick after working one-half day on a job assembling machine-made jewelry 20 years ago. She furnished no medical proof of such allergy. Claimant also demanded a minimum pay of 85¢ if she had to travel to work. The prevailing rate of pay for an assembler in a factory was 65¢ to 75¢ per hour. Based on the foregoing, an initial determination was issued by the local office disqualifying claimant for refusing an offer of suitable employment without good cause. Claimant objected thereto and demanded a hearing. The referee overruled the initial determination on the ground that the job offer was not a suitable one for claimant, because of her allergy to the glue or acetone used in connection with the job. The Industrial Commissioner appealed from this decision.

Appeal Board Opinion: The decision of the referee is predicated upon his belief that claimant's acceptance of the job offer would be detrimental to her health. He was also of the opinion that claimant would be provided with a job as a packer within a short time. Furthermore, since claimant had no recent experience as an assembler of machine-made jewelry, the referee held that she was justified in refusing the offer of employment. We cannot subscribe to this view. The only proof offered by claimant that she was allergic to glue or acetone was her mere statement of her experience in using those substances for one-half day 20 years ago. At that time no medical examination of claimant was made to justify the conclusion that her illness was due to such allergy. Claimant's illness might have resulted from any number of other causes. Furthermore, no medical proof was submitted that such allergy existed at the time of the job offer. In any event, the incident was too remote to be considered as a ground for refusal of employment. The report of claimant's prospective employer indicates that no acetone is contained in the adhesive used in the assembling of machine-made jewelry and that the glue used in their establishment is odorless. Claimant is classified as a packer. This occupation falls within the category of unskilled labor. Similarly the job offered claimant was one of unskilled

labor. No experience was required and claimant was qualified for such job. She did not possess any exceptional skill, which could be utilized in a particular type of work. Claimant had been unemployed for some time and the evidence revealed that there was a dearth of packing jobs at the time the offer was made. Claimant was offered a job at the prevailing wage. On the basis of all the evidence, we hold that the job offer was suitable and that her refusal thereof was without good cause.

Appeal Board Decision: The initial determination of the local office disqualifying claimant from receiving benefits on the ground that she refused an offer of suitable employment without good cause, is sustained. The decision of the referee is reversed. (4/1/49)

A-750-876

Index No. 1540-5

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

May 27, 1949

INTERPRETATION SERVICE – BENEFIT CLAIMS
CLAIMS, REGISTRATION & REPORTING

Evidence of, Miscellaneous

Appeal Board Case No. 18,818-49

WILFUL MISREPRESENTATION – WITHHOLDING INFORMATION CONCERNING REFUSAL
OF JOB OFFERED BY FORMER EMPLOYER

Denial, by a claimant, in response to specific question, that she had refused a job or an offer of a job by her former employer in the preceding week and subsequent signing of a statement that she had never been recalled by her former employer, such statements being contrary to the fact, constituted deliberate withholding of material information and as such was wilful misrepresentation to obtain benefits.

Referee's Decision: The initial determination of the local office that claimant refused employment without good cause that she made wilful misrepresentations to obtain benefits and that she was overpaid \$75 in benefits, is overruled. (1/3/49)

Appealed By: Industrial Commissioner

Findings of Fact: Claimant worked from April 7, 1947 to June 8, 1948 as an insulating machine operator for a manufacturer of electrical equipment in Buffalo, earning \$1.01 an hour. She was laid off from this employment. Claimant filed a claim for benefits and registered for employment on June 9, 1948 and reported to September 19, 1948. On August 4, 1948 claimant's former employer offered her a job as insulating machine operator, paying \$1.01 an hour plus a piecework bonus, which she refused. The hours of work and the job description were identical with her previous employment, except that the machine to which she would be assigned was higher and it had one more head. The qualifications specified by the company were that the height of the operator of such machine must be five feet six inches, which corresponds to claimant's height. Claimant's reasons for refusing the job were as follows: first, the work was too heavy; second, she would be required to lift reels of wire; third, she would be required to work on a triple insulation machine and her previous experience was in connection with a single machine; fourth, the assigned machine was operated at a great speed, it caused a great deal of

noise and was nerve-wracking; and fifth, she was nervous and feared that the work would affect her health. Claimant was qualified to operate the machine. The rolls of wire are placed in the machine and all lifting is done by men specifically assigned to such work. At a conference at the local office on September 2, 1948 claimant signed a statement which among other matters set forth that she is in "good health." At the hearing she testified that her doctor told her that she was nervous and that she should leave any job affecting her nerves. No evidence was submitted by claimant to show that the work would affect her physical condition. At the time that claimant filed her original claim she was furnished with an identification booklet and a printed pamphlet which gave claimant information concerning her rights and the penalties prescribed by statute for wilful misrepresentations to obtain benefits. When she reported at the local office on August 5, August 12, August 19 and August 26, 1948 she was asked on each occasion whether she had refused any job or referral during the preceding statutory week for which she certified. In each instance she replied in the negative. On August 26, 1948 she filled out and signed a questionnaire form periodically submitted to claimants for the purpose of obtaining certain information. In response to the question on the form "What jobs did you refuse during your present period of unemployment" she answered "None." On September 2, 1948 claimant was interviewed in the local office after information was received from her employer that she refused "a job of a comparable nature." On that day she signed a statement which reads as follows: "I have never been recalled by the company since laid off in June 1948." Later in the same day she admitted that she was offered a job by her former employer on August 4, 1948, which she had refused. Her stated reason for withholding this information was that "it would cause trouble." "The local office issued an initial determination, effective August 4, 1948, holding that claimant refused employment, without good cause, and charged with an overpayment of \$75. It issued another initial determination that she made wilful misrepresentations to obtain benefits. Her future benefit rights were reduced by 24 effective days.

Appeal Board Opinion: The referee overruled both local office determinations. We are unable to agree with his disposition of the case. The terms and conditions of the job offered claimant on August 4, 1948 were substantially the same as in her previous employment and the employer considered her qualified for the work. The evidence fails to support her contention that the work was either arduous or that it would affect her health. In any event, she should have given the job a fair trial. None of the reasons advanced by claimant can be accepted as constituting good cause for her refusal of the employment. On five separate occasions claimant deliberately withheld pertinent information from the local office concerning the offer of employment of August 4, 1948. Her avowed reason for doing so was that had she disclosed the facts in connection therewith it might have affected her claim for benefits. A consideration of all the circumstances compels the conclusion that the penalty imposed against claimant for wilful misrepresentations to obtain benefits was proper.

Appeal Board Decision: The initial determinations of the local office that claimant refused employment, without good cause, and that she had made wilful misrepresentations to obtain benefits are sustained. The decision of the referee is reversed. (4/8/49)

A-750-877

Index Nos. 1635B-2
1660B-5

NEW YORK STATE DEPARTMENT OF LABOR
UNEMPLOYMENT INSURANCE DIVISION

ADJUDICATION SERVICES OFFICE

July 25, 1949

INTERPRETATION SERVICE – BENEFIT CLAIMS

VOLUNTARY LEAVING OF EMPLOYMENT

Household Duties

Hours; Excessive-Overtime

Appeal Board Case Number 18,911-49

VOLUNTARY LEAVING – OVERTIME INTERFERING WITH HOUSEHOLD DUTIES

Requirement of overtime work by a typist in a department store during the Christmas seasonal rush was not good cause for voluntarily leaving such employment even though household duties would be interfered with since only personal inconvenience would be caused and not actual hardship.

Referee's Decision: The initial determination of the local office that claimant voluntarily left her employment with good cause and withdrew from the labor market, or, in the alternative left her employment without good cause and withdrew from the labor market is overruled.

Appealed By: Industrial Commissioner

Findings of Fact: Claimant filed a claim for benefits and registered for employment on November 8, 1948. The local office issued an initial determination that claimant voluntarily left her employment with good cause but under circumstances indicating a withdrawal from the labor market or, in the alternative, that she voluntarily left her employment without good cause and withdrew from the labor market. She contested and requested a hearing. Claimant is 23 years of age and is in good health. She last worked for two years ending October 15, 1948 as a typist in a department store in Manhattan, where she then resided, earning \$46 a week. Her hours of work were from 9:00 a.m. to 6:00 p.m., five days a week. She was married on October 23, 1948 and subsequently occupied an apartment with her husband in the upper Bronx. Her husband arrives home from work at 6:00 p.m. It is estimated that the time consumed in traveling from her residence in the Bronx to her employment would be about an hour. Claimant is required to do the necessary shopping and to prepare her husband's evening meal. Most of the stores in her neighborhood close at 6:00 p.m. During the month of December she was required to work six days a week and to put in overtime. Claimant's reasons for leaving the employment were that she would not return home until about 7:00 p.m., that she would be required to work six days a week and overtime before the Christmas holiday and that the hours of work would interfere with her domestic responsibilities. She preferred employment in the Bronx or Mount Vernon but was willing to work in Manhattan providing the closing hour was not later than 5:00 p.m. She was willing to work for \$35 a week. During claimant's reporting period she exerted substantial efforts to obtain employment by answering advertisements in the local newspapers. On December 1, 1948 at the employment service claimant expressed a willingness to accept a referral to 88th Street in Manhattan. It appears from claimant's statement submitted to this Board that on March 21, 1949 she obtained employment in the Bronx at \$35 per week through a private employment agency.

Appeal Board Opinion: We are unable to agree with the referee's conclusion that claimant was justified in leaving her employment on the premise that the hours of work would prevent her from fulfilling her domestic responsibilities. Since the time consumed in traveling to the employer in Manhattan was about one hour, it cannot be said that the employment was located at an unreasonable distance from her residence in the Bronx.

No compelling reason was advanced by her to justify the voluntary leaving of her employment. Her objection to the hours of work was prompted by considerations of personal convenience rather than hardship. It is pointed out that claimant left her employment about six weeks before the busy season, during which she customarily works overtime. Upon all the facts in this case, it must be held that claimant voluntarily left her employment without good cause. We agree with that portion of the referee's decision holding that claimant did not withdraw from the labor market.

Appeal Board Decision: Claimant voluntarily left her employment without good cause. She did not withdraw from the labor market. The initial determination of the local office is modified accordingly. The decision of the referee is modified. (5/6/49)

A-750-878

Index No. 1655-8

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

July 25, 1949

INTERPRETATION SERVICE – BENEFIT CLAIMS
VOLUNTARY LEAVING OF EMPLOYMENT
Health or Safety

Appeal Board Case Number 18,923-49

VOLUNTARY LEAVING – TEMPORARY CONDITION CAUSING MILD ILLNESS

Lack of heat for a short time prior to the heating season, which allegedly caused a cold which lasted one or two days, is not good cause for voluntary leaving of employment since to be detrimental to health a causative condition must be a continuing condition.

Referee's Decision. The initial determination of the local office, which disqualified claimant for 42 consecutive days from August 12, 1948, upon the ground that she voluntarily left her last employment without good cause is overruled.

Appealed By: Industrial Commissioner

Findings of Fact: Claimant, an assistant bookkeeper, refiled a claim for benefits and registered for employment on July 26, 1948. On October 1, 1948 the employment service procured a position for her as assistant bookkeeper with a wholesale dry good concern located in lower Manhattan. The hours were from 9 a.m. to 6 p.m., five days a week and the salary was \$46 per week. Claimant accepted the position and commenced to work on October 6. She worked on October 6, 7 and 11. On the 14th or 15th she phoned the employer she would not return to work because she became ill with a cold on the 8th, which she allegedly contracted due to lack of heat in the office. Claimant contended her health would be impaired if she returned to work. The employer's establishment was located on the street level. It consisted of a store in the front and an office in the rear, separated by a wall partition. The office, in which claimant worked, was ventilated by three large windows and contained three radiators for heating purposes. The entire personnel of the establishment consisted of about 15 persons, two of whom were women. There were separate washrooms for the men and for the women on the basement floor. On October 28, 1948, as the result of information received from the claimant's employer, the local office issued an initial determination disqualifying claimant for voluntarily leaving her

employment without good cause. Claimant protested this determination and requested a hearing. At the hearing before the referee, claimant advanced several reasons for leaving her position. She claimed the washroom was filthy and unsanitary; the office was cold and unheated; she was compelled to work until 6:30 p.m. every day without additional compensation; she was not given the work of an assistant bookkeeper. Claimant did not previously complain to anyone about these conditions. The referee found that claimant contracted a cold during the three days of her employment, as a result of the lack of heat in the establishment where she worked. He decided that since claimant's health was being impaired by her job, she had good cause for leaving her employment. The Industrial Commissioner appealed from this decision. The testimony before the Board indicated that the washroom was not in an unsanitary condition. It was used by only two persons, the claimant and the bookkeeper. It was cleaned regularly once a week in accordance with a contract between the employer and a servicing company. The premises were also examined by inspectors from the Department of Health and the Department of Labor.

Appeal Board Opinion: We do not agree with the conclusion of the referee that the claimant had good cause for leaving her employment. The Board has repeatedly held that a claimant has good cause for leaving a job which impairs her health (See Appeal Board, 16,432-48; 17,404-48; 18,048-48). However, this implies the existence of a continuing condition which would make it detrimental to the health of a claimant if she continued to remain in her position. In the present case, the condition which existed in the establishment was merely a temporary one. The incident occurred a few days prior to October 15. It is a recognized fact that in the city of New York the heating season commenced on that day. Therefore, it is fair to assume that if claimant had remained a few more days in her position or had returned on the 15th, she would have found sufficient heat in the office. This was corroborated by the testimony of the bookkeeper, who had been working there for eight years. she testified before the Board, that commencing October 15th there was more than sufficient heat in the office. In any event, it cannot be said that contracting a common cold of one or two day's duration is to be considered a condition which is detrimental to the health of the claimant. We find there is no merit to the other reasons advanced by claimant for leaving her employment. Her contention that the washroom was kept in a filthy and unsanitary condition is unfounded and not borne out by the evidence. The women's washroom was used by only two persons and was washed and cleaned regularly. A representative of the local office made a personal inspection of the premises and certified that the room was clean and sanitary. It is therefore unnecessary to consider the other reasons advanced by the claimant for leaving her position.

Appeal Board Decision: The initial determination of the local office, disqualifying claimant from receiving benefits for 42 consecutive days from October 12, 1948 on the ground that she voluntarily left her employment without good cause is sustained. The decision of the referee is reversed. (5/6/49)

A-750-879

Index No. 1680E-2

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

July 25, 1949

INTERPRETATION SERVICE – BENEFIT CLAIMS
VOLUNTARY LEAVING OF EMPLOYMENT

VOLUNTARY LEAVING – PERSONAL AFFAIRS; TO PURCHASE HOME IN CALIFORNIA
FOR FATHER AND FAMILY

Moving to California to purchase a home for her father was not good cause for voluntarily leaving employment as it did not constitute a compelling reason such as health or family circumstances.

Referee's Decision: The initial determination that claimant voluntarily left her employment without good cause is overruled. (1/24/49)

Appealed By: Industrial Commissioner

Findings of Fact: Claimant filed a claim for benefits on July 1, 1948 in Arcadia, California against New York as the liable State. The Out-of-State Resident Unit issued an initial determination holding that she voluntarily left her employment without good cause. Claimant contested the determination and requested a hearing. Claimant worked from January 1948 to April 15, 1948 as a clerk in a bank in Rochester, New York. She voluntarily left her employment on April 15, 1948 and moved to Arcadia, California. Her father had authorized her to negotiate for the purchase of a home that was offered for sale in California. He intended to move there with the family after he disposed of his business in Rochester. Upon her arrival in California claimant discovered that the home in question was not for sale. She decided to continue her visit in California, since this was her first trip to this locality. She worked in California as a sales clerk in a dress shop from October 1, 1948 to about November 15, 1948. Claimant returned to Rochester on November 24, 1948 because her father had abandoned his plans to move to California due to the fact that he was unsuccessful in selling his business. On December 20, 1948, she obtained employment as an officer clerk in Rochester.

Appeal Board Opinion: We are unable to agree with the referee's conclusion that under the circumstances claimant had good cause for voluntary leaving of her employment in New York State. No compelling reason, such as health or family circumstances, was advanced by claimant to justify the leaving of her employment. Upon the facts in this case, it must be held that she voluntarily left her employment without good cause.

Appeal Board Decision: The initial determination of the Out-of-State Resident Unit that claimant voluntarily left her employment without good cause is sustained. The decision of the referee is reversed. (5/20/49)

A-750-881

Index No. 1650D-5

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

July 25, 1949

INTERPRETATION SERVICE – BENEFIT CLAIMS
VOLUNTARY LEAVING OF EMPLOYMENT
Discharge or Leaving
Grievances – Discrimination

VOLUNTARY LEAVING BECAUSE OF ALLEGED HUMILIATION

Alleged humiliation, attributed by claimant to having been notified of discharge for exceeding a 15 minute rest period, the discharge being cancelled before its stated effective date, was not good cause for voluntary leaving.

Referee's Decision: The initial determination of the local office holding that claimant left her last employment voluntarily without good cause is sustained. (1/28/49)

Appealed By: Claimant

Findings of Fact: We have reviewed the evidence as adduced at the hearing before the referee and we find that such evidence supports the following findings of fact made by the referee:

Claimant, a sales clerk, filed for benefits on July 5, 1948. She was ruled ineligible because of unavailability and in the alternative disqualified for 42 days for voluntary leaving of employment by initial determination effective July 5. For three years to July 3, claimant was employed by a firm engaged in the retail sale of watches and jewelry. Her salary was \$42 for a six-day week, daily hours from 9 a.m. to 6 p.m. from Monday to Friday and to 4 p.m. on Saturday. She received 45 minutes for lunch and an additional 15 minute rest period. The employer was advised by claimant's supervisor that claimant and other sales clerks were exceeding 15 minutes for the rest period. On or about June 30 the claimant exceeded 15 minutes for the rest period and upon her return was told by the employer that she was discharged effective Saturday July 3. On Friday morning, July 2, the employer told her that he had discharged her in anger, and reconsidered his discharge and that claimant could continue in her job. She refused to do so contending that she had been humiliated by the discharge. She had no immediate prospect of other employment and thereafter looked for similar work by answering newspaper advertisements and reporting to the employment office.

Appeal Board Opinion: We adopt the opinion of the referee as the opinion of the Board:

She did not have good cause to leave her employment on July 3. Although the employer had discharged her on June 30 effective July 3 he reconsidered and withdrew his charge prior to July 3 and had claimant wished to do so she could have continued in her employment. Her alleged humiliation at being discharged should have been assuaged by the employer's withdrawal of the discharge and offer to keep her in her job. Since she had no immediate prospect of other employment she did not have good cause to leave her job.

Appeal Board Decision: The initial determination of the local office disqualifying claimant for voluntary leaving of employment, without good cause, is sustained. The decision of the referee is affirmed. (4/21/49)

INTERPRETATION SERVICE- BENEFIT CLAIMS
AVAILABILITY AND CAPABILITY
Military Training

Appeal Board Case Number 19,077-49

AVAILABILITY -MILITARY TRAINING WITH U. S. MARINE CORPS RESERVE

A member of the U.S. Marine Corps Reserve was unavailable for employment while in required participation in a two-week training period at camp since release from such duty to accept employment was not permitted.

Referee's Decision: The initial determination of the local office holding that claimant was unavailable for employment from August 7, 1948 through August 21, 1948 is sustained. (2/8/49)

Appealed By: Claimant

Findings of Fact: We have reviewed the evidence as adduced at the hearing before the referee and we find that such evidence supports the following findings of fact made by the referee:

Claimant refiled for benefits on July 14, 1948. By initial determination effective August 7 through 21, claimant was ruled ineligible for unavailability and for not being totally unemployed. Claimant enlisted in the United States Marine Corps Reserve for a period from April 8, 1948, through April 7, 1950. He was in the organized reserve, Class IIB. He was required to train one night a week. On August 7, 1948, claimant obtained orders to report to camp in North Carolina for a two-week training period. He left New York on August 7 and was released from duty on August 21. He obtained employment on August 23. While in the organized reserve, claimant was exempt from induction under the Selective Service Act. He received \$2.50 a day. He would not have been excused by the military authorities from the two-week training period to accept employment.

Appeal Board Opinion: We adopt the following opinion of the referee as the opinion of this Board:

Claimant was required to undergo the two-week training period as a member of the organized reserve of the United States Marine Corps. He received remuneration while on duty. He would not be excused to accept employment. His membership in the reserve exempted him from induction under the Selective Service Act. This case is not analogous to Appeal Board, 2387-40 where a member of the National Guard would have been released from duty had he obtained employment. I find, therefore, that claimant was unavailable for employment. In view of this finding, it is not necessary to decide the other issue.

Appeal Board Decision: The initial determination of the local office holding that claimant was unavailable for employment from August 7 through August 21, 1948, during which time he was in active service as a member of the organized reserve of the United States Marine Corps, is sustained. The decision of the referee is affirmed. (4/21/49)

A-750-883

Index No. 735B.2

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

August 31, 1949

INTERPRETATION SERVICE- BENEFIT CLAIMS

AVAILABILITY AND CAPABILITY

Employment Opportunities Removal of Residence

Appeal Board Case Number 19,361-49

AVAILABILITY -REMOVAL OF RESIDENCE TO RESORT AREA FOR SUMMER DURING
TEMPORARY LAYOFF

Although claimant allegedly sought employment in the resort area to which she moved for the summer after being temporarily laid off as was customary during such season unavailability resulted since a greater number of job opportunities existed in the metropolitan area and she made no effort to obtain such employment before moving.

Referee's Decision: The initial determination of the local office, effective July 5, 1948, that claimant was unavailable for employment is sustained.

Appealed By: Claimant

Findings of Fact: We adopt the following findings of fact by the referee which are amply supported by the evidence:

Claimant, a jewelry saleswoman, filed for benefits in Greenport on July 5, 1948. An initial determination ruled her ineligible effective July 5 for unavailability. Claimant resides in Jersey City. For the past two and a half years she has been employed as a saleswoman in a retail jewelry shop at Staten Island. Prior to that she was a housewife without any employment. The claimant has not worked during the summer time at the shop in Staten Island, alleging that she is laid off each summer because of slackness. She owns a summer home in Greenport, a resort community. The claimant came to Greenport on July 2, 1948. She alleges she visited two jewelry shops in Greenport for work. Claimant concedes that there are a greater number of jewelry shops in New York City, Jersey City or Newark, New Jersey, but made no effort to obtain employment there before coming to Greenport. She expects to go back to her former employer when she is recalled and that might not be until November.

Appeal Board Opinion: An analysis of the testimony discloses that a clear cut issue of fact was presented to the referee on the question as to whether or not claimant was available for employment during the period in question. We perceive no error committed by the referee in resolving the issue adversely to claimant. It therefore follows that claimant was not available for employment effective July 5, 1948.

Appeal Board Decision: The initial determination of the local office ruling claimant ineligible effective July 5, 1948 on the ground that she was unavailable for employment is sustained. The decision of the referee is affirmed in accordance with the above opinion. (6/3/49)

A-750-885

Index No. 1040-5

NEW YORK STATE DEPARTMENT OF LABOR
UNEMPLOYMENT INSURANCE DIVISION
ADJUDICATION SERVICES OFFICE
August 31, 1949

INTERPRETATION SERVICE – BENEFIT CLAIMS
HEARINGS AND APPEALS
COURT OF APPEALS 300 NY 704

Viola Horvat

Appeal Board Case Number 18,607-48

JURISDICTION OF APPEAL BOARD IN REVIEWING AND REDUCING FORFEITURE
PENALTIES

Initial determinations fixing penalties are subject to review and modification by a referee or the Appeal Board. A decision of the Appeal Board reducing a forfeiture penalty from 80 to 20 effective days was affirmed.

Referee's Decision: Two initial determinations of the local office are sustained; first, that claimant was unavailable for employment as of July 1, 1947 and that by virtue thereof she was overpaid the sum of \$546 in benefits; and second, that she made a wilful false statement in order to obtain benefits and imposing a penalty of 80 forfeit days.

Appealed By: Claimant

Referee's Findings of Fact: A hearing was had at which claimant and representatives of the employer and of the Industrial Commissioner appeared. Testimony was taken. Claimant, an assembler, filed a claim for benefits effective July 1, 1947. She received 26 benefit payments of \$21 each through January 8, 1948. She last certified for benefits on January 11, 1948. She refiled on July 2, 1948, and received one benefit payment. Claimant was ruled ineligible because of unavailability by an initial determination effective July 1, 1947 to January 8, 1948, and she was charged with an overpayment of \$546. Claimant's benefits were forfeited for 80 effective days because of wilful false statements to obtain benefits effective July 27, 1948. Claimant was employed from August 7, 1942 to June 27, 1947, by a manufacturer of motion picture sound instruments as an assembler. She was discharged on the latter date because of excessive absences and tardiness after repeated warnings. Claimant had been married on May 3, 1947. At the time she was discharged she was pregnant. She claimed that she consulted one doctor and he told her she was pregnant and she did not believe him. She then consulted another doctor on August 11 who told her she was pregnant. She did not believe him. This doctor continued to attend her from August 11, 1947 until February 27, 1948, because of her pregnancy. The child was born on February 20, 1948. On August 26, 1947, in answer to query as to whether or not she was pregnant she wrote a statement saying, "am not pregnant" and signed it. She stated she did not know whether or not she was pregnant at that time and she did not believe she was pregnant and that she didn't find out she was pregnant until the following month, in September. In an interview in the insurance office on July 27, 1948, she stated she did not know why she was discharged. At the hearing she admitted that the employer had told her why she was discharged and that it was because of her continued unauthorized absences and tardiness. In a Summary of Insurance Interview, which she signed she stated she did not want to work any longer because her husband was making enough to support her. She did not want to quit her job because she would not have been able to collect unemployment insurance. She wanted the employer to discharge her, so she deliberately came in late and took time off. She was warned about her absences and lateness by her union. She also stated that her absences on her last job were caused at times by the fact that she was pregnant. A good many times she did not feel well and was not able to work. She filed a claim for unemployment insurance immediately after being discharged. She was pregnant at that time and she did not recall being asked if she were pregnant while receiving benefits at the office.

She stated further that after she was married and became pregnant, it was her intention to stay home and "take it easy," and that the only thing she did while receiving benefits last year about looking for employment was to report to the employment office as required. She did not look for work elsewhere. At the hearing claimant denied making any of these statements. She stated that although she signed the statement, the interviewer put down these things and she did not understand what was being put down. Because she was so nervous, and could not read his writing, she did not ask him to explain what was in it. Claimant's doctor sent a certificate stating that she had been under his care from August 11, 1947 to February 27, 1948, because of pregnancy.

Referee's Opinion and Decision: Claimant was pregnant in June 1947, and by reason of that fact, it was her desire to withdraw from the labor market and remain at home. She did not want to quit her job because quitting would jeopardize her claim for unemployment insurance benefits. She therefore admittedly embarked upon a deliberate plan to bring about her discharge and was successful. Having succeeded in her plan of being discharged, claimant registered for benefits immediately and denied the fact that she was pregnant and continued to certify for benefits until she exhausted her benefit rights in January 1948. Claimant's conduct in procuring her discharge because she was pregnant was tantamount to a withdrawal from the labor market on her part and rendered her unavailable for employment from the date of her discharge. Claimant's signed statement that she was not pregnant on August 26, 1947, constituted a wilful misrepresentation by her for the purpose of obtaining benefits. Claimant has been overpaid benefits received in the sum of \$546. The imposition of an 80-day penalty for wilful false statement was correct. The initial determinations are sustained. (11/29/48).

Appealed By: Industrial Commissioner

Appeal Board Opinion and Decision: After a careful review of the record, testimony and evidence adduced before the referee, and due deliberation having been had thereon, and having found that the referee's findings of fact and conclusions of law are fully supported by the evidence in this case, and that no errors of fact or law appear to have been made, the Board adopts the findings of fact and conclusions of law made by the referee as the findings of fact and conclusions of law of this Board, except the penalty for the misrepresentation is hereby reduced from 80 forfeit days to 20 forfeit days (Appeal Board, 12,152-45). The board is of the opinion that the referee made proper findings of fact and correctly determined the issue involved in this case, except as modified herein. The decision of the referee, as modified, is affirmed. (2/9/49)

Appealed By: Industrial Commissioner

Appellate Division Opinion and Decision: The claimant, by fraud, drew unemployment insurance benefits to which she was not entitled. Pursuant to Section 594 of the Unemployment Insurance Law, the Industrial Commissioner, acting through one of his "Insurance Managers," imposed the maximum penalty of 80 benefit days during which claimant might not receive insurance benefits. The referee on findings, as above outlined affirmed the initial determination. The Unemployment Insurance Appeal Board specifically affirmed all of the findings of fact and conclusions of law except that it reduced the forfeiture penalty from 80 effective days to 20 effective days. The Commissioner contends that the Board was without authority to reduced the penalty. Although the Industrial Commissioner has authority to make initial determinations, including the right to fix penalties, his discretion in such matters is not absolute, but is subject to a review by a referee and by the Unemployment Insurance Appeal Board, which is specifically given the authority to affirm, reverse or modify (Labor Law, Section 621, subd. 3). There is no limitation on this right which would prevent the Board from modifying a penalty, even in the

absence of a finding that the initial determination of the Commissioner was arbitrary or capricious. The decision should be affirmed without costs. (6/28/49)

A-750-886

Index No. 1205A-1

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

August 31, 1949

INTERPRETATION SERVICE – BENEFIT CLAIMS
REFUSAL OF EMPLOYMENT

Disqualification Period – Effective Date

COURT OF APPEALS DECISION 300 NY 618

Lenore D’Nikinov

Appeal Board Case No. 18,560-48

REFUSAL OF AN OFFER OF EMPLOYMENT – EFFECTIVE DATE OF DISQUALIFICATION

The effective date of disqualification for refusal of an offer of employment is the date on which the offer is refused and not the date the proffered work is to commence.

Referee’s Decision: The initial determination of the local office disqualifying claimant from receiving any benefits effective August 19, 1948, on the ground that without good cause, she refused to accept an offer of employment is sustained.

Appealed By: Claimant

Referee’s Findings of Fact: A hearing was held at which claimant and representatives of the Industrial Commissioner appeared and testified. Claimant filed for benefits on August 17, 1948. By initial determination effective August 19, 1948, claimant was disqualified for refusal of employment and effective September 7 through September 19, 1948, she was ruled ineligible for incapability. Claimant last worked as a secretary-stenographer in August 1948. On August 19, 1948, the employment office offered claimant a stenographer’s position at 16 Greene Street, Manhattan. The hours were 9 a.m. to 5 p.m. The salary was \$45 for a five-day week. When claimant arrived at the employer’s establishment it was after 12 noon. The elevators were then not operating, because the operators were at lunch. Operations were to resume at 1 p.m. Claimant, however, did not wish to wait. In the meantime, she went to another employer and applied for work. Thereafter, she went home. She did not report again to the employer on Greene Street. She stated that the neighborhood was objectionable because of the presence of many trucks. Claimant further alleged that she was unable to report to that employer later that afternoon because of a sore throat, which then developed and lasted for about two days thereafter. When interviewed in the insurance office, she did not mention the latter fact. She said that she did not return to that employer that day because she went to an entertainment in her daughter’s school. On September 7 claimant did not report to the insurance office because she was ill. She next reported on September 20. On October 6 claimant obtained temporary employment on Pearl Street, Manhattan, and was so employed through October 22.

Referee’s Opinion and Decision: That the elevators were not operating between 12 noon and 1 p.m., did not justify the claimant’s failure to report to the employer on or after 1 p.m. that day.

Also, I do not accept as credible claimant's reason, that she was unable to report to the employer that day because of a throat ailment. Her statement to the insurance office was at variance with her testimony at the hearing. Her failure to report was tantamount to a refusal of the employment. Her dislike of the neighborhood because of the presence of many trucks is also not a valid basis for refusing the employment, under the Unemployment Insurance Law. I find that her refusal was without good cause. In view of this finding it is not necessary to decide the other issue. As she obtained employment on October 6, the disqualification terminated on that date. The initial determination, as modified, is sustained. (11/15/48).

Appealed By: Industrial Commissioner

Appeal Board Opinion and Decision: After a careful review of the record, testimony and evidence adduced before the referee, and due deliberation having been had thereon and having found that the referee's findings of fact, and conclusions of law are fully supported by the evidence in this case, and that no errors of fact or law appear to have been made, the Board adopts the findings of fact and the conclusions of law made by the referee as the findings of fact and conclusions of law of this Board, except that we find that the offer of employment made to claimant was for a temporary job of three weeks duration which was to start on August 30, 1948. The Board is of the opinion that the referee made proper findings of fact and correctly determined the issue involved in this case, except that the date of disqualification should be fixed as of August 30, 1948, the date the job would have started. (Appeal Board, 12,003-45, 16,436-47, 16,533-47, 17,903-48). The decision of the referee is modified in accordance with the above opinion and, as modified, is affirmed. (2/2/49)

Appealed By: Industrial Commission

Appellate Division Opinion and Decision: This is an appeal by the Industrial Commissioner from the portion of the decision of the Unemployment Insurance Appeal Board which modified the decision of a referee. The portion of the decision from which the appeal is taken fixed the date from which the claimant was disqualified for unemployment insurance benefits from the 19th day of August to the 30th day of August, 1948. The referee found that the claimant was offered employment on the 19th day of August 1948, at a job which was to begin on the 30th day of August 1948, and that the claimant on the 19th day of August refused such employment without good cause. These findings of the referee were confirmed by the Board and are conclusive. The referee and the Industrial Commissioner fixed the date of the claimant's disqualification as of August 19th, the day on which she refused the offer of employment. The Board changed this date in its decision to August 30th, the date on which the job the claimant was offered was to start. The claimant's disqualification began from the date when she refused the employment and not from the date when the rejected employment was to commence. There was no justification for the action of the Board in changing the decision of the referee to fix the date of disqualification at August 30th. (Matter of Ewasko, 267 App. Div. 845) The decision of the Unemployment Insurance Appeal Board in so far as appealed from should be reversed, and the initial determination of the Industrial Commissioner disqualifying claimant for benefits effective August 19, 1948 confirmed, without costs. (6/28/49)

ADJUDICATION SERVICES OFFICE

October 31, 1949

INTERPRETATION SERVICE – BENEFIT CLAIMS

REFUSAL OF EMPLOYMENT

Offer What Constitutes

Appeal Board Case Number 19,234-49

REFUSAL – QUESTION OF PROPER JOB OFFER – EMPLOYMENT TO COMMENCE IN
FUTURE

Refusal to accept a referral to employment was held to be without good cause, and the fact that the job order contained a notation that the job probably would not start until January 3 was insufficient of itself to vitiate the referral to employment made on December 20 since the employer had a definite job to offer which was not contingent, speculative or uncertain in its terms.

Referee's Decision: The initial determination of the local office that claimant refused employment, without good cause, on December 20, 1948, is overruled. (February 14, 1949)

Appealed By: Industrial Commissioner

Findings of Fact: Claimant filed an additional claim for benefits on December 20, 1948. On the same day she was referred to a job as secretary-stenographer, paying \$45.35 a week. She refused the referral and did not report to the prospective employer for an interview, stating that the wages were inadequate. The salary offered was slightly above claimant's usual earnings and at the rate prevailing for similar work in the locality. The local office issued an initial determination, effective December 20, 1948, that claimant refused employment without good cause. The job order on file with the employment service set forth that the employment "will not start probably until January 3 but please refer now." Another applicant referred to the same job on December 21, 1948, was hired and started working on December 27, 1948.

Appeal Board Opinion: The referee held that the employment to which claimant was referred was one for which she was reasonably fitted by training and experience and the wages offered were not below the prevailing rate. He further ruled that the refusal of the employment is not a basis for disqualification of a benefit claimant because it was to begin at some uncertain time in the future. We are unable to agree with the latter portion of the referee's decision. The Appeal Board cases on which the referee relied pertain to situations where the job offer either is contingent and speculative or uncertain in its terms. In the instant case the prospective employer had a definite job to offer, which was to begin in a few days. The fact that the job order contained a notation that it would not probably start until January 3, 1949, is insufficient of itself to vitiate the offer.

Since claimant failed to report to the prospective employer for an interview she thereby precluded herself from obtaining employment. She was properly disqualified for refusal of employment without good cause.

Appeal Board Decision: The initial determination of the local office that claimant refused employment without good cause is sustained. The decision of the referee is reversed. (July 15, 1949)

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

November 22, 1949

INTERPRETATION SERVICE – BENEFIT CLAIMS

VOLUNTARY LEAVING OF EMPLOYMENT

Imposition of Reprimand

Appeal Board Case Number 20,115-49

VOLUNTARY LEAVING OF EMPLOYMENT AFTER BEING REPRIMANDED TO IMPROVE
QUALITY OF WORK

Being told by her floor manager that if her work did not improve by the end of the following week she would be discharged did not constitute good cause for leaving employment.

Referee's Decision: The initial determination of the local office that claimant voluntarily left her employment without good cause is overruled. (May 23, 1949)

Appealed By: Industrial Commissioner

Findings of Fact: Claimant filed a claim for benefits on February 23, 1949. The local office issued an initial determination that she voluntarily left her employment without good cause. She contested the determination and requested a hearing. Claimant worked for about three years ending January 28, 1949 as a clerk for a firm of stockbrokers, earning \$37.50 at the date of her separation. She had been reprimanded on several occasions by her superiors for unsatisfactory work. On January 28, 1949 at about 4:30 p.m. claimant told her supervisor that she wanted an increase in pay and a transfer as a comptometer operator. After this conversation she and her supervisor went to the floor manager to discuss claimant's grievances. The floor manager denied claimant's requests, told her that he was not satisfied with her work and warned her that if the quality of her work did not improve by the end of the following week she would be discharged. Claimant thereupon decided to leave her job on the same day.

Appeal Board Opinion: The referee overruled the initial determination on the premise that the decision of the employer to replace a worker constitutes good cause for voluntary leaving of employment, citing Appeal Board, 6939-42. The Board decision on which the referee relied does not apply to the factual situation here. There, the employer had definitely decided to dispense with the services of a bookkeeper and to hire another in her place. In the instant case, whether or not claimant would be discharged was contingent on the quality of her work during the week following her leaving. Instead of summarily quitting her job when she received the final warning she should have continued working for another week, leaving it to the employer to decide whether or not her services should be terminated. Having failed to do so, it must be held that she voluntarily left her employment without good cause.

Appeal Board Decision: The initial determination of the local office that claimant voluntarily left her employment without good cause is sustained. The decision of the referee is reversed. (September 9, 1949)

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

November 22, 1949

INTERPRETATION SERVICE – BENEFIT CLAIMS
CLAIMS, REGISTRATION & REPORTING

Misrepresentation or Misstatement

Appeal Board Case Number 1,197-49

WILFUL MISREPRESENTATION – CONCEALMENT OF REASON FOR LEAVING
EMPLOYMENT – LAYOFF INSTEAD OF INDUSTRIAL CONTROVERSY

The signing of statements that their loss of employment was due to temporary layoff or lack of work, whereas the claimants participated in a walkout which constituted an industrial controversy and had been warned by officials of their union that signing such statements in support of their claims would get them in trouble, constituted wilful misrepresentation to obtain benefits.

Referee's Decision: The initial determination of the local office holding that the claimants made wilful false statements to obtain benefits is overruled. (April 29, 1949)

Appealed By: Industrial Commissioner

Findings of Fact: Claimants were employed as garment manufacturing employees in a factory situated in Buffalo, New York. On February 11, 1949 at noon, claimants and about 49 other employees, by a concerted action, stopped work as a protest, because their employer refused to pay their wages for the Thanksgiving holiday. After leaving the employer's establishment, they held a meeting at their union headquarters. At such meeting a union representative admonished the claimants, and other persons similarly situated, as follows: "If you sign your check you will get in big trouble" (referring to any contemplated filing for benefits for unemployment insurance). The claimants, notwithstanding the warning as aforesaid, filed their respective claims on February 14, 1949 and signed statements in which they attributed their loss of employment either to temporary layoff or lack of work. Save for the six claimants involved herein, the other employees who joined in the walkout made no similar misrepresentations. The strike was settled on February 22, 1949. Most of the employees subsequently returned to work. The referee found that the walkout constituted an industrial controversy within the meaning of the Unemployment Insurance Law, from which determination no appeal was taken. However, he overruled the initial determination of the local office which imposed a penalty of 24 effective days against the claimants for wilful misrepresentation to obtain benefits, on the theory that the said claimants acted honestly and were merely guilty of an error of judgment. From this determination the Industrial Commissioner now appeals.

Appeal Board Opinion: A careful analysis of the record discloses that the claimants were aware that on February 11, 1949 at noon the entire personnel walked off the job in order to compel the employer to meet their demands, in spite of the fact that there was work for them to perform. Consequently, when they filed their respective claims for unemployment insurance benefits and indicated that their reason for their separation from employment was due to a temporary layoff or a lack of work, it was deliberate concealment of the true facts and constituted wilful misrepresentation to obtain benefits. That the claimants were not misled nor labored under a misapprehension, becomes clear, when considered in light of the fact that they were forewarned not to file for unemployment insurance benefits because of the existence of the controversy between the employer and themselves. This was heeded by all the employees who walked out, except the claimants herein. Under the above circumstances, we are satisfied that

the six claimants involved on this appeal pretended ignorance and therefore were subject to a penalty of 24 effective days for their wilful false statements to obtain benefits.

Appeal Board Decision: Claimants made wilful false statements to obtain benefits. Therefore, the initial determination of the local office which imposed a penalty of 24 effective days against them for wilful misrepresentation is sustained. The decision of the referee is modified accordingly. (September 15, 1949)

A-750-896

Index No. 1290A-5

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

November 22, 1949

INTERPRETATION SERVICE – BENEFIT CLAIMS
REFUSAL OF EMPLOYMENT

Wages – Prevailing
Other Reasons for Refusal

Appeal Board Case Number 16,131-47

DENIAL BY INTERVIEWER TO ALLOW CLAIMANT TO ACCEPT REFERRAL TO NEGOTIATE
FOR \$40 ON AN OFFER OF \$35 TO \$40

Refusal of employment without good cause did not occur where claimant was denied permission to call upon the employer for the purpose of negotiating for a salary of \$40 per week, the offer being \$35 to \$40, since the prevailing rate for skills possessed by claimant was above \$40 per week and claimant was entitled to an opportunity to make the best bargain possible for her services.

Referee's Decision: The initial determination of the local office disqualifying claimant from receiving benefits upon the ground that she refused employment without good cause is sustained. (September 22, 1947)

Appealed By: Claimant

Findings of Fact: Claimant is a cost clerk with ten years experience at that type of work in the sheet metal industry. In her last employment she maintained cost records, computed and determined costs, purchased sheet metal and parts, and estimated costs on jobs. This employment terminated on May 1, 1947, her final weekly rate being \$47.50 plus an annual bonus of \$200. Claimant filed a claim for benefits and registered for employment on May 15, 1947. She was registered by the employment service as a bookkeeping clerk. On July 22, 1947, she was offered work involving cost record bookkeeping and general office work. The job order indicated that the prospective employer required a high school graduate or a person with two years experience. The salary was quoted to claimant as being \$35 to \$40 per week. Claimant had been seeking a minimum of \$40 weekly and requested the employment interviewer to telephone the prospective employer to ascertain whether or not it would be possible for her to obtain \$40 per week if her qualifications were satisfactory. The interviewer declined to accede to claimant's request, informing her that she must be prepared to accept \$35 a week in the event that the prospective employer refused to meet her minimum salary demands. Claimant then re-requested permission to call upon the employer for the purpose of

negotiating for a salary of \$40 per week. This request likewise was denied. Claimant, thereupon, refused the job offer. This was the sole offer of employment made to claimant by the employment service. Claimant's entire experience and qualifications were not considered in making the job offer. Only part of her acquired skills would have been utilized, thus resulting in a downgrading of the claimant. Claimant had not been informed of her classification as a bookkeeping clerk by the employment service. Evidence before the Board indicates that the prevailing rate in the locality for cost clerks with experience and qualifications comparable to those of claimant exceeded \$40 weekly at the time of the job offer in question. The local office made an initial determination disqualifying claimant from receiving benefits upon the ground that she refused employment without good cause. Claimant requested a hearing and the referee sustained the initial determination of the local office.

Appeal Board Opinion: The referee, in sustaining the initial determination of the local office, based his conclusion upon the premise that claimant refused to report to the prospective employer for the purpose of ascertaining whether her minimum salary demands would be met. We do not agree with the view taken by the referee. Evidence before the Board indicates that some discussion took place at the employment office, between the interviewer and claimant, as to whether or not she could expect to be paid \$40 per week. This Board has held that a claimant is entitled to an opportunity to make the best bargain possible for his services (Appeal Board 15,326-47). Moreover, since the employer indicated a pay rate of \$35 to \$40 per week, the employment interviewer acted arbitrarily in denying claimant's request for permission to talk with the prospective employer with respect to the rate he would pay her. Moreover, the job offer in question required the services of a person with skills and qualifications below those possessed by claimant. The rate prevailing in the locality for persons with skills comparable to those of claimant was above \$40 weekly. Upon all the facts and circumstances herein, we believe claimant did not refuse employment without good cause.

Appeal Board Decision: The initial determination of the local office, disqualifying claimant from receiving benefits upon the ground that she refused employment without good cause, is overruled. The decision of the referee is reversed. (May 19, 1948)

A-750-897

Index No. 11480D-1

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

November 22, 1949

INTERPRETATION SERVICE – BENEFIT CLAIMS
TOTAL OR PARTIAL UNEMPLOYMENT
Relief Work – Other

Appeal Board Case Number 20,543-49

TOTAL UNEMPLOYMENT, QUESTION OF – SERVICES TO SALVATION ARMY

Services rendered to the Salvation Army as a "client" (reconditioning furniture for resale) in return for room and board and small grants totaling not more than \$3.35 per week did not come within the definition of employment as defined in section 511 and 522 since the payments made to the claimant were merely assistance during a period of need as distinguished from wages for employment, the services rendered were incidental to such relief, and the claimant could have left any time to accept employment.

Referee's Decision: The initial determinations of the local office holding claimant ineligible for benefits for the weeks ending February 27 through March 27, 1949 on the ground that he was not totally unemployed and resulting in an overpayment in benefits of \$130 and also that he wilfully made false representations for the purpose of obtaining benefits for which a forfeit of 120 effective days was imposed is overruled. (June 17, 1949)

Appealed By: Industrial Commissioner

Findings of Fact: A hearing was held at which claimant, a witness for claimant and a representative of the Industrial Commissioner appeared and testimony was taken. Claimant, a painter, filed for benefits in December 1948. An initial determination ruled him ineligible for the weeks ending February 27 to March 27, 1949, for lack of total unemployment, and, as a result, had been overpaid \$130. It was also determined that the claimant made a wilful false statement to obtain benefits and his rights to future benefits were reduced by 120 effective days. In February 1949, the claimant, having no place to live, made application to the Men's Social Service Center of the Salvation Army at Hempstead, New York where he stayed from February 22, 1949 to May 1949. The Salvation Army is a social service agency. The claimant was accepted as a client and not as an employee. The Army defines a client as a person in need. He was furnished with room and board, and in return for that the claimant rendered service at the center of the Salvation Army in reconditioning furniture, which was then resold by the Salvation Army. His hours of work varied each week. After evaluating the room and board furnished to the claimant, the Salvation Army for the first week gave him a net cash grant of 45¢ for 17 hours of work. The second week the claimant received 95¢ for 39 hours of work as a net cash grant, and thereafter he received \$1.95 for the third week and a maximum of \$3.35 in any week for five weeks. In the first quarter of the year the net cash grant to the claimant was \$9.55. The claimant was not required to remain at the center for a specific period of time. The claimant did not advise the insurance office of this at the time he certified to total unemployment, because he did not consider this to be employment. When interviewed subsequently, he readily admitted his connection with the Salvation Army.

Referee's Opinion and Decision: Section 511 of the Unemployment Insurance Law in part, defines employment as any service under any contract of employment for hire, express or implied, written or oral, and total unemployment is defined in Section 522 as the total lack of any employment on any day. It appears to me that claimant's work at the Salvation Army does not come within the definition of employment. The Salvation Army is a social service agency and the claimant was being given assistance during a period of need. The services he rendered to the Salvation Army were incidental to such relief. Claimant was not compelled to stay any period of time and could have left the establishment at any time for work. Therefore, the claimant was totally unemployed during the period in issue. Claimant made no wilful, false statement to obtain benefits. He was not employed during the period in issue and was eligible for benefits. The initial determinations are overruled. The claimant has not been overpaid benefits.

Appeal Board Opinion: The Board is of the opinion that the referee made proper findings of fact and correctly determined the issue involved in this case.

Appeal Board Decision: The decision of the referee is affirmed. (September 15, 1949)

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

December 1, 1949

INTERPRETATION SERVICE – BENEFIT CLAIMS
VOLUNTARY LEAVING OF EMPLOYMENT
Domestic or Personal Circumstances

Appeal Board Case Number 20,141-49

VOLUNTARY LEAVING OF EMPLOYMENT – DEMAND BY PROSPECTIVE HUSBAND
BECAUSE OF UNDESIRABLE NEIGHBORHOOD ALONG WATERFRONT

Demand by claimant's intended husband that she leave her job which he felt was in an objectionable neighborhood (warehouse district and requiring traversing a bridge over railroad tracks) did not constitute good cause for voluntarily leaving employment.

Referee's Decision: The initial determination of the local office that claimant voluntarily left her employment without good cause is overruled. (May 25, 1949)

Appealed By: Industrial Commissioner

Findings of Fact: Claimant filed a claim for benefits on March 23, 1949. She stated in her application for benefits that she left her job because of "poor working conditions." The local office issued an initial determination that claimant voluntarily left her employment without good cause. Claimant is 22 years of age. She had worked from 1945 to February 4, 1949 as a bookkeeper for the employer who operated a warehouse and railroad terminal in two buildings located on the Brooklyn waterfront. Her hours of work were from 8 a.m. to 5 p.m. five days a week. Her terminal wages were \$48 a week. She voluntarily left her employment on February 4, 1949 because her prospective husband, whom she married on February 12, 1949, would not permit her to work anywhere on the waterfront. In order to reach the place of employment claimant had to walk through a warehouse district where laborers and longshoremen worked and to cross a bridge over a railroad tract. Throughout her employment she was never molested in the vicinity of the employer's buildings by any person. Five other women were employed in the same office with claimant. Although she did not like the neighborhood in which the employer was located, she had never expressed any dissatisfaction with the employment concerning wages, duties of the job or the working conditions. She had no prospects for other employment at the time of her leaving.

Appeal Board Opinion: The referee ruled that claimant's leaving was with good cause on the theory that her refusal to obey her prospective husband's demand to leave her job because of the location of the employer's office might reasonably have involved her in serious marital difficulties. We are unable to agree with his conclusion. No evidence was submitted by claimant to show that she would be molested or exposed to grave danger or bodily harm had she continued in this employment. This is borne out by the fact that although she worked for the employer for several years, she never complained about the neighborhood until her approaching marriage. Claimant left her job because her husband did not want her to work anywhere along the waterfront and she wanted to obey his orders. This was a personal reason and it did not constitute good cause within the meaning of the Law.

Appeal Board Decision: The initial determination of the local office that claimant voluntarily left her employment without good cause is sustained. The decision of the referee is reversed. (October 7, 1949)

