

New York State Department of Labor

Section 700

AVAILABILITY AND CAPABILITY

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700. Introduction

Section 591.2 of the Unemployment Insurance Law imposes two conditions for eligibility for benefits:

1. The claimant must be "capable of work". That is (s)he must possess the physical and mental ability to perform work; and
2. The claimant must be "ready, willing and able to work in his usual employment or in any other for which he is reasonably fitted by training and experience." One who meets this condition is considered to be "available" for work.

The issue of capability must be resolved whenever the local office receives information that a claimant may be, or may have been, unable to work due to some physical or mental impairment.

The impairment may be a temporary condition caused by a short-term illness or injury. or may result from a chronic or debilitating illness or disability. In resolving a question of capability involving long term or serious conditions, claims personnel are not only to consider the nature and extent of the impairment, but also to evaluate the claimants residual capacity for work.

A claimant who is capable of work must also be available for work to be eligible for benefits. That is, (s)he must be ready, willing and able to work in employment for which (s)he is reasonably fitted by training and experience. A claimant is considered to be available for work if (s)he places no unreasonable restrictions on the type or conditions of employment (s)he will accept, is making a diligent effort to obtain work, and is prepared to start work without delay upon securing employment.

Notwithstanding the requirement of Section 591.2 that a claimant be ready, willing and able to work in a claimant may not be denied benefits due to unavailability because of such claimants service on a grand or petit jury of any state or of the United States.. (sub. sec. 591.1); nor may a claimant be held ineligible for benefits because of "regular attendance at a vocational training course, or at a course in basic education skills which the commissioner has approved (sub. sec. 599.1), or because (s)he "is in training approved under the federal trade act of nineteen hundred seventy-four...". (sub. sec. 599.2)

When interviewing claimants regarding the issues of availability and capability, claims personnel should consult the appropriate Fact-Finding Guidecards for a checklist of questions to be explored. Determinations should be made in accordance with the principles reported in this section of the Interpretation Service Index, the policies set forth in relevant Special Bulletins (A-710 series) and Field Memoranda.

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Availability and Capability

701. Advice required

There must be a causal connection between any lack of specific advice at the local office and the claimant having removed herself from the labor market in order for the lack of advice to form a basis for claimant to be held available for employment. (A.B. 390,920; [A-750-2002](#))

705. Arrest, detention, quarantine

Claimant was not considered available for employment while in prison. (A.B. 2573-40; [A-750-71](#))

Claimant was unavailable during period of detention by immigration officers pending deportation proceedings. (A.B. 427-38; [A-750-1982](#))

Claimant was unavailable during the period in which he was quarantined because of a contagious disease in his house. (A.B. 1220-39)

710. Corporate officers

[\(See Index 1430\)](#)

Claimant's duties as president of and financial interest in a new corporation prevented him from accepting other work and thus rendered him unavailable for employment. (A.B. 7074-42; [A-750-342](#))

Where it was inferable from claimant's substantial interest in a summer resort hotel that his remuneration was dependent to some extent on "some supervisory, managerial or caretaking service throughout the part of the year the hotel is closed." and where his efforts to find employment were desultory or half-hearted, it was held that his unemployment was voluntary, that he was not genuinely in the labor market, and therefore unavailable for employment. (Matter of Leshner. 268 App. Div. 582; [A-750-598](#))

A salaried officer who reported daily during period of negotiation to determine his stock interest in corporation was neither totally unemployed nor available for employment until negotiations were completed and he resigned his office. (A.B.770-39)

Nominal officer of corporation, not owning stock therein and performing only manual work therefor, was found totally unemployed and available during slack periods where the evidence established that during the slack periods he received no wages from the corporation and was ready, willing, and able to take other work. (A.B. 9672-43; [A-750-558](#))

715. Domestic circumstances

[\(See Index 755\)](#)

Voluntary leaving of employment to devote entire time to domestic duties resulted in unavailability because of withdrawal from labor market. (A.B. 5264-41; [A-750-267](#))

Claimant who could not accept referral because she must take care of child was not available for employment. (A.B. 3612-40; [A-750-214](#))

Claimant, who filed for benefits after childbirth and alleged that her mother would care for her baby if she accepted employment, was held to be unavailable. It was found that her mother was unable to do so because of her age and physical condition and in view of the distance of her home from claimant's residence. (AB. 21,794-49; [A-750-943](#))

Claimant's contention that she would take her two-month-old child in a taxicab each working morning to the home of her sister-in law who had three infants of her own was not believed and claimant was held to be unavailable for employment since she had made no practical arrangement for the care of her child. (A.B. 24,691-50; [A-750-1004](#))

Claimant was held unavailable for employment after childbirth, in spite of alleged independent efforts to seek work, when alleged arrangements for the care of her infant child appeared incredible, and when it was unreasonable to believe that claimant could not have obtained work during the extended period of her unemployment in view of the unusual demand for her occupation if she were genuinely interested in obtaining employment. (A.B. 28,762-51; [A-750-1086](#))

A foster mother of two children, licensed under the requirement that "The applicant is not to be employed outside her home," was held to be available for employment since it is the practice of the Welfare Office, when a foster mother is found to have outside employment and arrangements have been made for the care of her foster children, to continue such arrangement until the children are transferred elsewhere. In the instant case, claimant's availability was not affected by her duties as a foster mother; claimant secured employment and her 21-year-old daughter cared for the one remaining foster child until arrangements for transfer could be made. (A.B. 14,246-47; [A-750-791](#))

A long experienced homemaker, validly unable to accept other than homework but ineligible for certificate in usual regulated industry, and ready, willing and able to accept homework in any other industry even though employment possibilities in another industry were remote, was held available for employment. (Matter of Smith, 269 App. Div. 795; [A-750-509](#))

Claimant a homemaker in the crochet beading industry, having failed to qualify for a federal homework permit in that industry and who nevertheless was unwilling to accept homework employment in other obtainable lines, was held to be unavailable for employment. (A.B. 12,251-45; [A-750-676A](#))

Homemaker whose employment was terminated because her last employer discontinued giving out homework and who made no efforts to look for homework with other employers or in other industries where homework was available. but remained unemployed for more than a year, held to be unavailable for employment. (A.B. 10,283-43; [A-750-549](#))

725. Illness and disability

Where inability to call on prospective employer was due to illness, benefit rights were suspended for incapability and not for refusal. (A.B. 916-39; A.B. 1397-39)

Illness between reporting periods resulted in suspension of benefit rights for incapability. (A.B. 594-39)

To maintain his eligible status, claimant must be capable of and available for employment, regardless of whether or not there were jobs actually available in his trade during that period. (A.B. 982-39)

Claimant, afflicted with a mental illness, whose only work experience was with the aid and help of his brother during the canning season and who refused to accept other canning jobs, was held to be incapable of performing work which there was a reasonable possibility of' obtaining. (A.B. 11,759-45; [A-750-642](#))

Claimant, who entered convalescent home to rebuild his health and was not permitted to leave the grounds under penalty of expulsion, was both incapable and unavailable. (A.B. 3065-40; [A-750-187](#))

Entering a veterans' domiciliary home for a rest and on the basis of proving inability to work established unavailability. (A.B. 11,963-45; [A-750-664](#); similarly A.B. 25,333-50)

A claimant with a serious heart ailment which caused him to be retired by employer on disability pension and Physical incapability to perform usual work and preference for a job at a salary which there was no reasonable probability of obtaining constituted unavailability. (A.B. 1311-39; [A-750-4](#))

Physical incapability to perform usual work and preference for a job at a salary which there was no reasonable probability of obtaining constituted unavailability. (A.B. 7747-42; [A-750-383](#))

Physical inability to perform usual work as a machine presser did not disqualify a claimant who was ready, willing, and able to perform sedentary work, which reasonably was obtainable. (A.B. 9745-43; [A-750-501](#))

Handicapped workers were capable of employment if they were able to perform some work, which there was a reasonable probability of obtaining. Reasonable probability did not mean that there must be actual placement opportunities in existence at the time. (A.B. 1160-39; similarly, A.B. 966-39)

A notification from the United States Employment Service that claimant was unplaceable in employment, based on a medical report that claimant was not able to work, was held not controlling and insufficient to support a determination of incapability, where the evidence established that claimant had a work history of protracted employment, demonstrating his ability to perform work and remain in the labor market despite his affliction with Parkinson's disease.

NOTE: There was no evidence to show that such employment as claimant had, had been, or would be injurious to his health. (A.B. 12,317-45)

Where claimant, a carpenter, suffered from pulmonary tuberculosis but desired light work of any kind and demonstrated his physical ability to work full time prior to and subsequent to filing for

benefits, despite his physician's statement that he needed a complete rest for an indefinite period of time and suggestion that he work only three or four hours a day, (statements not quite consistent in themselves) it was concluded that he was available for and capable of employment.

NOTE: The doctor's statement was not an unequivocal assertion that work would be injurious to claimant's health and was nullified to some extent by the fact that the doctor himself employed the claimant after making the statement. (A.B. 13,159-46; [A-750-771](#))

(a) Discharge for pilfering is not disqualifying when such conduct stems from a psychiatric disorder manifested by a compulsion to steal.

(b) A claimant discharged under such circumstances is incapable of employment in the absence of medical evidence that he is no longer suffering from the psychiatric disorder. (A.B. 191,103; [A-750-1773](#))

730. Military Service

(See [Index 1480C](#) and Special Bulletin [A-710-36](#))

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 employment is not permitted. (A.B. 18,447-48; [A-750-858](#); similarly, A.B. 26,259-51)

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. (A.B. 19,077-49; [A-750-882](#))

United States Army Reserve officer on voluntary active duty for, two weeks receiving regular officer's pay was held unavailable for employment. Although claimant at his own request could be released from duty to accept employment, it was doubtful whether such application could be acted upon before expiration of short period of service. (A.B. 21,025-49; [A-750-906](#); similarly, A.B. 52,319-55)

A member of the National Guard is not available for employment during his annual active duty for field training at a military camp for a period such as two weeks, regardless of whether release

from such duty to accept employment is permitted and obtainable. (A.B. 67,211-58; [A-750-1501](#))

735. Move to another locality

(See Special Bulletins [A-710-16](#) and [A-710-46](#))

Permanent move

Removal to a community with no placement possibilities and no transportation to communities where employment might be found resulted in unavailability. (A.B. 7954; [A-750-394](#); similarly. A.B. 13,021-46)

Where claimant moved to a small isolated community and for only four months commuted to distant employment under a share-the-ride plan, subsequent layoff and inability to obtain any transportation to any possible place of employment rendered her unavailable. (A.B. 12,489-45; [A-750-722B](#)) (This case is distinguishable from those cases in which claimant's earned their wage credits while residing in isolated areas and were making honest efforts to solve their transportation problem. See A.B. 9431-43; [A-750-473](#))

Looking in newspapers twice a week and making 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. (A.B. 17,064-48; [A-750-839](#); similarly A.B. 19,678-49; A.B. 19,655-49)

Temporary move or visit

Voluntary leaving of employment to live at summer resort where placement opportunities were non-existent constituted unavailability because of temporary withdrawal from the labor market. (A.B. 5923-41; [A-750-310](#))

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. (A.B. 19,361-49; [A-750-883](#))

Reading the newspapers every morning and making inquiries of friends fall 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. (A.B. 17,153-48; [A-750-840](#); similarly A.B. 20,947-49)

A stage electrician who, after the theater 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 because there were opportunities for employment in New York City since fifty percent of the theaters remained open during the summer. (A.B. 18,492-48; [A-750-870](#); similarly A.B. 26,561-51)

Where a claimant leaves the State of New York and goes to Florida for the winter months, the submission of convincing evidence of availability for employment may be required in order to sustain a claim for benefits. (Matter of Dunn, 1 A.D. 2d 722; [A-750-1399](#))

Claimant, who filed a claim in Florida and confined his search of employment to jobs in a vocation which because of local conditions and personal circumstances it was impossible to obtain, was not available for employment within the meaning of the statute. (A.B. 24,894-50; [A-750-995](#))

A claimant who moves to another locality, but is unwilling to accept the wage rate prevailing in that locality, is not available for work. (Matter of Smolofsky, 281 App. Div. 937)

A race track mutuel clerk who soon after he went to Florida during the off season for racing in New York was made aware that he would not obtain employment in his occupation because of the Florida law requiring 85% of all race track employees to be permanent residents, and where he did not make any efforts to find work in any other field, was held to be unavailable for employment. (A.B. 28,078-51; [A-750-1056](#); similarly A.B. 28,332-51)

Claimant who filed a claim and certified for a month in Baltimore after being temporarily laid off in New York was held available for employment since his unemployment was caused by the seasonal slack in the garment industry in both cities. rather than a desire not to work or lack of independent efforts to secure other employment. (Matter of Geller, 278 App. Div. 624, [A-750-981](#))

Claimant, a licensed electrical engineer, mandatorily retired on pension at the age of 65, who temporarily moved to his summer cottage and filed and reported in Connecticut as instructed, was held available for employment as he was ready, willing and able to accept any suitable employment offered by the Employment Service in New York and Connecticut and he made efforts to find work (which resulted in re-employment) through Columbia University and influential friends. (A.B. 14,547-47; [A-750-796](#))

A musician, regularly engaged by an established symphonic orchestra during its season in the winter, is available for employment within the meaning of the Unemployment Insurance Law during the off-season of such orchestra in the summer, although sojourning in his summer home located in a resort area, provided he maintains contact with an agent whose business it is to secure musicians for symphonic orchestras and through whom he has occasionally obtained employment in the off-season, and provided he is prepared to accept employment of such nature at any place where his type of work could be procured. (A.B. 31,497-52; [A-750-1128](#))

A claimant who maintains an apartment in the locality of her normal labor market, does not render herself unavailable by regular returns to another community on weekends and during layoff periods in her industry to live with her husband and children, although she restricts herself to her usual occupation for which opportunities do not exist in that community, when she continues her attachment to her normal labor market and exerts conscientious and effective efforts to obtain employment in her line of work. (A.B. 31,298-52; [A-750-1116](#))

Claimant, whose occupation is such that he customarily works anywhere in the United States, was not held to be unavailable upon his return to his home during periods of unemployment where his type of employment is non-existent, since he was found to have exerted efforts to find employment in the most effective manner available to him. and in the usual and customary method of securing employment in his branch of the industry. (A.B. 24,512-50; [A-750-993](#); similarly A.B. 27,927-51; A.B. 27,344-51)

740. Pension

Claimant who, due to advanced age, elected to retire although light work was available for him at a lower rate had he chosen to request a transfer, and who received a pension from his employer

in addition to Federal Old Age Insurance benefits, held to have withdrawn from the labor market despite his contention of availability for light work. (A.B. 21,996-49; [A-750-926](#)).

Claimant who retired from employment, obtaining a pension, must establish his bona fide return to the labor market by convincing proof in order to be eligible for benefits. A contention of a return to the labor market and application to former employer without other independent efforts to secure employment was insufficient. (A.B. 26,540-51; [A-750-1039](#)).

Where claimant elected to retire, receiving a substantial pension in addition to Old Age Insurance benefits, although entitled to apply for deferments on a year-to-year basis until he reached the age of 70, he was held not to be in the labor market and unavailable for employment. His alleged willingness to accept employment in another occupation was discounted because of his conduct, particularly in view of his insistence on a salary which he had no reasonable prospect of obtaining since he had no work experience other than that from which he had retired. (A.B. 22,279-49; [A-750-934](#)).

A union contract requiring compulsory retirement at a specified age does not represent a withdrawal from the labor market of workers -retired- under the contract and does not render them ineligible for benefits if they are ready, willing and able to work. (A.B. 71,117-59. et al; [A-750-1529](#))

Receipt of a pension and of Federal Old Age Insurance benefits is, in and of itself, not a sound basis for a determination of unavailability in cases of involuntary retirement. (A.B. 29,444-51; [A-750-1117](#)).

Limiting employment to maximum yearly earnings so as not to jeopardize social security payments does not render claimant unavailable unless such restriction precludes reasonable job opportunities, either because earnings are already close to the maximum or claimant's occupation is such that the restriction militates against employment prospects. (A.B. 139,774; [A-750-1688](#))

Unwillingness to accept employment at prevailing wages because it would entail the loss of claimant's social security benefits and might jeopardize pension payments from former employer indicated claimant's unavailability. (A.B. 10,150-43; [A-750-535](#)).

A retired employee of advanced years, to be eligible for unemployment insurance benefits, must possess remaining abilities usable in the labor market and be free from restrictions which greatly reduce the possibility of obtaining employment. Thus, when a salary restriction is made which is not realistic considering claimant's age and prior work history, claimant does not meet such test and is unavailable within the meaning of the Law. (Matter of Bourne, 282 App. Div. 1; [A-750-1197](#); similarly, Matter of Dellwater, 15 AD 2d 619)

A retired worker, receiving a substantial pension, who failed to seek work independently between benefit years, after exhausting his benefit rights, was unavailable for employment; a person genuinely interested in obtaining employment does not limit his efforts in seeking employment only to periods during which he is obtaining benefits. (A.B. 29,076-51; [A-750-1072](#)).

750. Receipt of sickness and injury benefits

State workers' compensation

Receipt of workmen's compensation did not constitute proof of incapability for employment where there was satisfactory evidence to the contrary. (A.B. 6427-41; [A-750-306](#))

Workmen's compensation award for permanent total disability, while creating a strong presumption of physical inability to work was not conclusive on question of capability within the meaning of the Unemployment Insurance Law. (A.B. 6748-42; [A-750-326](#))

State disability benefits

Where claimant upon adequate proof of total disability is entitled to benefits under the Disability Benefit Law, he is deemed incapable of employment and ineligible for unemployment insurance benefits. (A.B. 29,469-51; [A-750-1096](#))

Federal disability benefits

The filing of an application for disability benefits under the Social Security Act or the receipt of such benefits does not constitute conclusive proof of incapability but may be treated as evidence in support of a factual determination of incapability. (A.B. 113,369 and Matter of Roehsler, 19 AD 2d 927; [A-750-1617](#))

755. Restrictions of employment

Type of work

When a claimant, because of a desire to seek work in his "primary" occupation (public relations) is unwilling to perform obtainable full time employment in another occupation (taxi driver) in which he has extensive experience, though usually and in recent years limited to weekends and days off from other work, he is not available for work within the meaning of Section 591.2 since that provision requires a claimant to be ready, willing and able to work, not only in his usual employment, but also in any other for which he is reasonably fitted by training and experience. (Matter of Reiger, 17 AD 2d 269; [A-750-1589](#)) (See "Comments" explaining restrictive use of principle).

Whether claimant's "usual employment" be that of a typist-receptionist or an actress, because she had substantial recent employment as a typist-receptionist she is reasonably fitted by training and experience for such employment and her refusal to seek, or accept classification for such employment brings her within the category to whom the statute mandates "no benefits shall be payable". (Matter of Austen, 285 App. Div. 577; [A-750-1357](#)).

A claimant who restricts his search of employment to the acting profession only, and refuses to consider work in any other field although his principal source of income during his base period was in another occupation, is unavailable for employment within the meaning of the law. (Claimant had 9 weeks' employment as an actor and 31 weeks intermittent employment as a salesman.) (A.B. 36,602-53; [A-750-1191](#)) (Similarly. A.B. 114,070 and A.B. 101,330; in the latter case, claimant in her base period worked 18 weeks as a clerical worker and 8 weeks in theatrical field.)

Where claimant a writer and vaudeville performer prior to and during Army service was subsequently employed for approximately three years as a stock supervisor until laid off, and thereafter only desired and sought employment as a professional writer, held that he "... rendered himself unavailable for employment for which he was reasonably fitted by training and

experience and not entitled to unemployment benefits within the spirit and purpose of the Unemployment Insurance Law." (Matter of Gilbert, 278 App. Div. 733; [A-750-1011](#); similarly A.B. 25,810-50 and A.B. 28,339-51)

A long-experienced sheet metal worker and layout man was held to be unavailable because he restricted his employment to work as a layout man only when employment as a sheet metal worker was available and there was a dearth of jobs as layout man. (A.B. 11,976-45; [A-750-667](#))

A claimant who is seeking work only in fields which are held to constitute self-employment (independent contractor), such as registered nurse restricting herself to case work for private patients, is unavailable for employment within the meaning of the Unemployment Insurance Law. (A.B. 29,123-51; [A-750-1073](#)).

Claimant, such as a marine engineer owning a derrick-boat, primarily interested in renting his valuable equipment at a stipulated price is not available for employment within the meaning of the law, even though upon renting his equipment, he is placed on the renter's payroll and receives an additional sum for servicing his equipment. (A.B. 32,431-52; [A-750-1142](#))

A claimant who misled the employment service to be classified as a personal shopper instead of a salesperson and restricts her employment to such erroneous classification is not available for employment. (Matter of Gerard, 280 App. Div.1011)

Wages

A dress buyer who insisted upon a salary of at least \$100 per week, which was above the prevailing rate and in excess of her previous salary and which precluded referring her to employment for which she was fitted was held to be unavailable. (A.B. 11,333-44; [A-750-624](#))

Removed pursuant to App. Div. decision dated 9/30/43.

A claimant who is no longer able to work in his usual occupation because of physical conditions but whose inflexible wage demand is substantially in excess of the entrance wage for the type of

work he is willing and able to perform is unavailable for employment. (A.B. 24,989-50; [A-750-1013](#))

Limiting employment to maximum yearly earnings so as not to jeopardize social security payments does not render claimant unavailable unless such restriction precludes reasonable job opportunities, either because earnings are already close to the maximum or claimant's occupation is such that the restriction militates against employment prospects. (A.B. 139,774; [A-750-1688](#))

Arrangement of full-time hours

Restrictions to unusual working hours, if necessitated by compelling circumstances, do not render claimant unavailable, provided there is a market for claimant's services and claimant is not restricting the working hours to unobtainable periods of employment. (A.B. 30,384-52; [A-750-1093](#)).

Where the evidence indicates a complete dearth of 5-day jobs within claimant's specifications, which did not include Saturday as a working day, restriction of employment, because of domestic circumstances, to work weeks which did not include Saturdays rendered claimant totally unavailable for employment and not entitled to any effective days.

With the removal of the restriction against Saturday employment, even though claimant was still willing to work only five days per week, she was held to be available and entitled to four effective days in each statutory week as there were then reasonable prospects for employment.

Where claimant has valid reasons for restricting herself to a 5-day week and there is a reasonable prospect of obtaining employment. such claimant is entitled to the full credit of unemployment. (A.B. 12,175-45; [A-750-746](#))

Where claimant was unwilling because of domestic circumstances to work every third week, it was held that she was unavailable during such weeks. (A.B. 10,822-44; [A-750-592](#))

Claimant who restricts her employment to night shift factory work which she previously performed because of compelling domestic circumstances is unavailable within the meaning of the Law when no opportunities for such type of work currently exist in the area. (A.B. 39,760-53; [A-750-1267](#))

Claimant with a history of night shift employment and whose domestic circumstances prohibited work on other than night shifts was found to be available upon a conclusive showing that there was a reasonable prospect of obtaining night shift work. (A.B. 11,437-44; [A-750-613](#); similarly, A.B. 83,671)

Claimant cannot be denied full benefits because of a lack of availability to work on a specific day of the week due to religious observance. (A.B. 459,582; [A-750-2085](#))

Part-time

Claimant last employed on a pattern of four full days per week may register as a "short-time worker" and, while adhering to such pattern may accumulate one effective day in a statutory week. (A.B. 57,228-56; [A-750-1441](#)).

Unwillingness to work more than three days a week rendered claimant ineligible for benefits since she could not have "four or more days of total unemployment" or accumulate any "effective" days in any statutory week. (A.B. 9358-43; [A-750-462](#)) (Principle confirmed by Matter of Busman, 47 A.D. 2d 811)

Student seeking benefits as a short-time worker need be available only for short-time employment during the hours in which (s) he normally worked in the past, provided there was a reasonable probability of obtaining such employment. (A.B. 719-39)

A short-time worker who restricts himself to a specified schedule of hours which is non-existent for all practical purposes, is not available for employment within the meaning of the Law, even if he previously worked at such hours. (A.B. 21,971-49; [A-750-971](#))

A claimant who for health reasons performed part-time work for approximately six months prior to filing for benefits was held to be a "short-time worker" as defined in Section 596.3 (now 596.4) of the Law and was not held to be unavailable solely because of a restriction to part-time employment. (A.B. 20,457-49; [A-750-919](#))

A claimant whose last employment was full-time for a substantial period (7 months) does not qualify as a short-time worker so that despite a prior history of considerable short-time employment (21/2 years) a refusal of full-time employment is without good cause. (A.B. 56,876-56; [A-750-1439](#)).

Two months of part-time employment is not sufficient to qualify a claimant with a full time work history as a short-time worker, even though it is the claimant's most recent experience (A.B. 172,920)

A claimant who is compelled by force of circumstances, over which he has no control, to limit himself to part-time work which he can perform and which is obtainable in the labor market is available for employment even though he has a prior history of full-time employment. (A.B. 62,005-57; [A-750-1472](#))

Claimant with a prior history of full-time employment who restricts himself to part-time employment because of college attendance is unavailable for employment within the meaning of the Law. (A.B. 74,013-60; [A-750-1525](#))

A claimant with a history of full-time employment who will only accept part-time employment in order to limit earnings and thereby avoid loss of Social Security benefits is not available for work. (A.B. 55,193)

Restriction to part-time work because of claimant's desire to be with her children after school is a personal reason insufficient to justify a status change from a full-time to a part-time worker and, therefore, renders the claimant unavailable for employment. (A.B. 123,329; [A-750-1642](#))

A claimant with a full time work history is available for work despite restriction to part-time, when upon a doctor's recommendation, (s)he is required to be at home when a young child arrives

from school. (A.B. 182,643)

Locality

Restricting employment to establishments within walking distance from home, where there was no reasonable probability of obtaining it, constituted unavailability. (A.B. 7959-42; [A-750-402](#)).

Unwillingness to work elsewhere than in a community which offered no reasonable prospect of employment constituted unavailability. (A.B. 8603-43; [A-750-429](#)).

A seasonal resort hotel worker who failed to seek employment in other nearby towns where employment opportunities existed in the off-season, and to which areas she could travel in approximately three-quarters of an hour in her personally owned automobile, was held to be unavailable because she restricted her employment to her home community where no work opportunities existed. (A.B. 26,660-51; [A-750-1050](#)).

A claimant's refusal to transfer membership from the union local serving the labor market in which (s)he last worked to one serving the area in which (s)he resides does not make the claimant unavailable for employment unless it can be shown that job prospects are better with the new local. (A.B. 343,347; [A-750-1953](#))

760. School or training attendance 1/

(See [Index 2000](#) and Special Bulletin [A-710-45](#))

General

Attendance at a trade school during customary working hours does not render a claimant unavailable for employment, if the school hours can be adjusted to working hours or if claimant would discontinue his course if compelled to do so in order to obtain employment, and if claimant's conduct indicates genuine desire to work. (A.B. 24,046-50; [A-750-951](#); similarly, A.B. 29,577-51).

Claimant with a prior history of full-time employment who restricts himself to part-time employment because of college attendance is unavailable for employment within the meaning of the law. (A.B. 74,013-60; [A-750-1525](#)).

Where claimant moved to another state to pursue graduate work in a university, he was held available for employment although he restricted his employment to hours after 3:00 P.M. since a number of industrial plants in the area had full-time afternoon and evening shifts and claimant diligently sought and eventually obtained such employment. (A.B. 25,156-50; [A-750-1001](#))

Claimant who voluntarily left full time satisfactory employment to enroll in an intensive course leading to a degree in medicine, was held unavailable for employment since his statement that he would work full time while doing so was incredible; neither was credence given to claimant's contention that he would immediately abandon his chosen career if he obtained a "good offer." (A.B. 12,058-46; [A-750-724](#); similarly. A.B. 21,954-49).

Availability of a full-time student during a 10-day recess was not proved by a statement that he conducted a search for employment but was unable to furnish the names or other identity of any prospective employers whom he contacted. Because attachment to the labor market for a possible maximum of only ten days is at best only tenuous, clear and convincing proof that he was in reality in the labor market is necessary. (A.B. 20,678-49; [A-750-903](#))

College student, with previous work history of full-time employment, who would accept any type of employment only during special hours selected by himself which would not interfere with his studies, held unavailable as full-time employment did not exist during the hours desired and whatever work he might engage in would be subordinate to his purpose of perfecting his education. (A.B. 12,027-46; [A-750-708A](#)).

Vocational Rehabilitation Training Course

Claimant, registered with the Special Placement Unit, attending a rehabilitation course (watch repairing: 9:00 A.M.-4:00 P.M. 5 days) through arrangements by the NYS Division of Rehabilitation, was available for employment when he was prepared to abandon the

rehabilitation program if he obtained employment, followed want ads, and would have accepted any employment consistent with his physical limitation. (A.B. 105,315; [A-750-1602](#))

765. Search for work 1/

(See also Special Bulletin [A-710-23](#))

When a claimant's readiness and willingness to accept work is brought into question by his conduct or other facts indicating possible unavailability, the presence or absence of efforts to obtain employment, other than merely registering with the employment service as required, constitutes overt acts indicative of a claimant's state of mind, and is competent evidence to be judged in determining the probability of a claimant's assertions in the light of the established and admitted facts. (A.B. 36,874-53; [A-750-1199](#))

Disqualification of an elderly claimant with language difficulties because of unavailability based upon inadequate job efforts was overruled since claimant was not given needed information and assistance concerning appropriate search for work methods to enable him to utilize effectively his work qualifications in the existing labor market. (A.B. 39,503-53; [A-750-1223](#); similarly A.B.42,705-54)

The number of employer contacts made by a claimant in his independent job efforts does not constitute the sole basis for determining a claimant's availability; other relevant factors and circumstances must be considered and the nature and efficacy of the efforts must be evaluated to determine claimant's attitude towards work. (A.B. 46,075-54; [A-750-1347](#))

Failure to make an independent search for work does not establish unavailability when the claimant lives in a small compact community where no suitable job opportunities exist and when claimant, because of familiarity with conditions, knows that there are no such opportunities due to slack business conditions. (Ref. 10-65-51R; [A-750-1044](#))

Answering newspaper help wanted ads and accepting the only referral offered by the employment service in a six-month 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. (A.B. 16,359-47; [A-750-849](#); same principle upheld in A.B. 17,011-48)

Claimant, possessing a general skill (registered nurse) which is usable in several fields, does not become unavailable by limiting job efforts to one of such fields in accordance with claimant's work history (industrial nursing), when there are reasonable employment opportunities in such special field. (A.B. 38,682-53; [A-750-1215](#))

Claimant's course of conduct by imposing restrictions as to wages, hours and type of work, and lack of due diligence in search of employment over a considerable period of time in an apparently active labor market indicated unavailability for employment. (A.B. 23,662-50; [A-750-963](#))

Failure of claimant to avail himself of his union's rotating list, which was designed to share available work at the trade among all members, plus lack of other effort to obtain employment, evinced unavailability. (A.B. 9933-43; [A-750-555](#))

Availability of a full time student during a 10-day recess was not proved by a statement that he conducted a search for employment but was unable to furnish the names or other identity of any prospective employers whom he contacted. Because attachment to the labor market for a possible maximum of only ten days is at best only tenuous, clear and convincing proof that he was in reality in the labor market is necessary. (A.B. 20,678-49; [A-750-903](#)).

Where claimant refused to answer questions on a prescribed form or at an oral interview relative to prospective employers contacted in seeking employment, held not entitled to receive benefits during the period of such refusal. (Matter of Sorrentino, 277 App. Div. 1073; [A-750-964](#))

Refusal to divulge the details of an alleged job interview in another city justifies denial of benefits for unavailability on the days of absence from the local office jurisdiction and for failure to report due to such absence. (A.B. 164,715; [A-750-1738](#))

Insistence on attire that is generally not acceptable to employers in the area, making referral by the placement office virtually impossible, and his independent job efforts unrealistic, renders

claimant unavailable. (Claimant. seeking clerical or sales work. reported repeatedly to the employment service office wearing dungarees, a jersey and sneakers, despite advice of that office that employers would not interview applicants so dressed.) (A.B. 170.282; [A-750-1747](#))

There must be a causal connection between any lack of specific advice at the local office and the claimant having removed herself from the labor market in order for the lack of advice to form a basis for claimant to be held available for employment. (A.B. 390,926; [A-750-2002](#))

An individual who takes the New York State Bar Examination is not ready, willing, and able to work on the days of such examination, nor can such examination be treated as a job seeking effort. (A.B. 390,924; [A-750-2011](#))

In cases where claimants falsely certify that they have maintained a work search record, a recoverable overpayment, civil penalty, and willful misrepresentation penalty may be imposed. (A.B. 630571 and A.B. 630572; [A-750-2171](#))

770. Seasonal workers

(See Special Bulletin [A-710-16](#))

Workers who were willing to accept employment only in certain seasons of year were not available for employment during other periods of year. (A.B. 2410-40; [A-750-56](#))

Claimants who reside in rural areas and who are genuinely attached to the labor markets as exist in those areas are not unavailable for employment solely because during certain seasons of the year opportunities of securing employment do not exist. However, where it is shown by the credible evidence that a claimant has no real desire to obtain employment during off-seasons, the unemployment not being entirely attributable to conditions in the area, generally evidenced by a consistent pattern of work only during certain seasons and a failure to seek employment independently in establishments where a likelihood of securing employment exists, ineligibility because of unavailability is proper. (A.B.27,213-51 and A.B. 27,440-51; [A-750-1041](#)).

Claimant whose employment in past years was confined to limited seasonal periods must, in order to be available for employment within the meaning of the Unemployment Insurance Law outside such season, demonstrate attachment to the labor market by bona fide diligent and sincere efforts to obtain employment in keeping with his employment history, his training and experience and the labor market in which he resides. (A.B. 24,518-50. sustaining Ref. 14-66-50R; [A-750-950](#))

A seasonal resort hotel worker who failed to seek employment in other nearby towns where employment opportunities existed in the off-season, and to which areas she could travel in approximately three-quarters of an hour in her personally owned automobile, was held to be unavailable because she restricted her employment to her home community where no work opportunities existed. (A.B. 26,660-51; [A-750-1050](#)).

Claimant who worked in a summer resort area exclusively for a partnership, of which her husband was a member, only during the 1942 summer season and one week in June 1943, and although unemployed during the summer months delayed filing her claim until opportunities for employment became non-existent. was properly denied benefits for unavailability. (A.B. 10,836-44; [A-750-565](#)).

Where claimant for ten years worked as a bartender only during summers, the balance of each year living with his daughter in Long Island and in the South, and did not seek employment outside the summer season, or consider employment not in close proximity to his home, where no employment opportunities existed benefit rights were properly suspended for unavailability. (A.B. 9388-43; [A-750-492](#)).

Where claimant, a cook, had a long work history which was restricted to summer season hotel work and claimant's entire course of conduct indicated she was interested only in such summer employment, it was held that she was unavailable for employment outside the summer season. (A.B. 10,224-43; [A-750-578](#)).

Where claimant's experience as a cook for over 20 years was limited to summer hotel work and was not usable 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. (A.B. 16,871-48; [A-750-837](#)).

A race track mutuel clerk and cashier, who for the past three years worked only seven months a year and never sought or wanted any other employment during the five-month slack season of each year, held unavailable for employment because he was not truly in the labor market during the slack season. (A.B. 8929-43; [A-750-434](#))

A race track mutual clerk who soon after he went to Florida during the off season for racing in New York was made aware that he would," not obtain employment in his occupation because of the Florida law requiring 85% of all race track employees to be permanent residents and where he did not make any efforts to find work in any other field, was held to be unavailable for employment. (A.B. 28,078-51; [A-750-1056](#)).

The fact that a cannery worker had no employment during off seasons was insufficient in itself to support determination of unavailability. (A.B. 9155-43; [A-750-458](#)).

Seasonal cannery workers residing in a rural community refused with good cause referral to identical employment ten and twenty miles distant, transportation to be supplied by employers, as acceptance would necessitate approximately thirteen hours away from home each day entailing, because of domestic duties unwarranted hardship and sacrifice. Unavailability was not attested as some employment, although limited, existed during all periods of the year within the locality where their benefit rights were earned. (A.B. 12,072-45; [A-750-689A](#)).

775. Self-employment

(See [Index 1420](#))

Substantial activity in preparing for commencement of business may indicate not only unavailability but also lack of total unemployment, even though the venture is abandoned before it becomes operative. (A.B. 148,052; [A-750-1708](#))

Working (nominal) partner in men's clothing firm who regularly worked elsewhere in the slack season was available for employment in that period but was entitled to benefits based only on earnings in employment outside the partnership. (A.B. 1628-39; [A-750-67](#))

Claimant was not regarded as totally unemployed or available for employment during slack season where his past employment history indicated that during such slack season he devoted substantially all of his time to the conduct of an enterprise in which he had a large investment. (A.B. 6855-42; [A-750-329](#))

Claimant, a dentist, devoting usual business hours to the practice of his profession, was held not available for employment notwithstanding his professed desire for night shift employment during which hours he was previously employed in a war factory as an inspector and machine operator; self-employment which requires continuous attention removes one from the labor market. (A.B. 12,622-46; [A-750-706](#); similarly. A.B. 23,493-50)

An attorney, following his pattern of the previous eight years of devoting his spare time to his law practice in an effort to supplement his income from full-time employment, as evinced by his active search for full-time employment and immediate acceptance of the first job offered, was held available for employment, though he rented space in a law office for the practice of his profession. (A.B. 12,844-46; [A-750-741](#))

Self-employment as a junk dealer on an average of not more than five hours, three days per week, earnings being not more than \$15 a week, did not attest to unavailability as such employment was a sideline to partially tide claimant over his period of unemployment (investment nominal -no place of business, commitment or obligations) and he would have willingly abandoned such activities for employment as evidenced by his return to regular full-time employment as a lens grinder at \$50 per week. (A.B. 14,660-47; [A-750-789](#))

A claimant, while devoting himself to remunerative self-employment, is held not to meet the test of availability, and therefore not eligible for benefits, even though he was ready, willing and able to abandon such self-employment and accept work as an employee. (A.B. 23,493-50; [A-750-959](#); similarly. A.B. 23,373-50)

Where claimant's wage credits were earned by accepting a limited number of musical engagements as a union musician while operating a music store which he owned, claimant was held unavailable for employment since he devoted full time to the operation of his business

which was at all times his primary interest and main source of livelihood. (A.B. 25,554-50; [A-750-1005](#))

Claimant who operated a gasoline station and sundry store with his wife's assistance and who, because of poor business, desired, sought and eventually found other full-time employment, was nevertheless held to be unavailable because of his active participation in self-employment even though it was contended that his wife could have operated the business until liquidation. (A.B. 25,373-50; [A-750-1012](#))

780. Period of ineligibility

Effective date

An unavailability disqualification for self-imposed non-compelling reasons does not preclude the imposition of an additional disqualification for refusal of employment even if the unavailability predates the refusal. (A.B. 77,331-60; [A-750-1536](#))

In the absence of proof of claimant's unavailability prior to her refusal of employment, suspension for unavailability was sustained as of the date of such refusal. (Matter of Salavarría, 266 App. Div. 933; [A-750-476](#))

Refusal of employment during the course of a strike, in support of which claimants were engaged as pickets and were not permitted to discontinue such picketing, was deemed to be additional evidence of not being in the labor market, and claimants because of being out of the labor market were accordingly held to be unavailable for employment after the expiration of the 49-day strike suspension. The Salavarría decision (266 App. Div. 933; Index 780A-2) was not applicable since the refusal of employment was merely additional evidence of unavailability. (A.B. 20,199-49; [A-750-900](#))

Suspension as of May 21, the date claimant admittedly was unable to accept employment because of 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. (A.B. 18,030-48; [A-750-860](#))

A determination of unavailability loses its validity when a claim becomes inactive, so that a new determination must be issued if a claimant is still unavailable when an additional claim is filed after a lapse of time or a change of conditions. (A.B. 157,903; [A-750-1723](#))

Saturday and Sunday

Sunday was held to be a day of "total unemployment" although claimant became ill and was incapable of work commencing with such day. (A.B. 22,628-50; [A-750-1000](#))

A five day worker may receive credit for Saturday and Sunday even though unavailability or incapability commences prior to Saturday and continues through and after Sunday. (A.B. 62,584-58; [A-750-1477](#))

A person's status as a claimant terminates upon death and a claimant who dies on Friday cannot receive credit for Saturday and Sunday. (A.B. 92,820; [A-750-1576](#))

785. Transportation, lack of

A claimant who has lost transportation facilities to his former place of work is not available for employment when he has no means of commuting to areas where employment opportunities exist. (A.B. 134,758; [A-750-1662](#); similarly, A.B. 276,114)

Where a claimant resided in a community of no present or past placement possibilities and her husband, the owner of an automobile, was unwilling to furnish the necessary four-mile transportation to the nearest possible place of employment, it was decided that claimant was unavailable for employment. (A.B. 9030-43; [A-750-441](#); similarly, A.B. 16,371-47)

Removal to a community with no placement possibilities and no transportation to communities where employment might be found, resulted in unavailability. (A.B. 7954; [A-750-394](#); similarly

A.B. 13,021-46)

Where claimant moved to a small isolated community and for only four months commuted to distant employment under a share-the-ride plan, subsequent layoff and inability to obtain any transportation to any possible place of employment rendered her unavailable. (A.B. 12,489-45; [A-750-722B](#)) This case is distinguishable from those cases in which claimants earned their wage credits while residing in isolated areas and were making honest efforts to solve their transportation problem. (A.B. 9431-43; [A-750-473](#))

Inability to obtain transportation to only possible night work, which was the only shift she could work because of domestic circumstances, rendered claimant unavailable. (A.B. 11,550-45; [A-750-623](#))

Unwillingness to work on day shift because of domestic circumstances, restricting herself to night employment, and refusing referral to night employment because of inability to obtain transportation, rendered claimant unavailable. (A.B. 12,654-46; [A-750-705A](#))

790. Union Considerations

Claimant who filed for benefits following a strike suspension period and 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; [A-750-854](#))

Where the industry in which claimant worked was 90 per cent unionized, unwillingness to work where union membership was required indicated a withdrawal from the labor market. (A.B. 25,253-50; [A-750-1014](#))

If there is a union requirement which prevents, for a period such as 90 days, acceptance of full-time work by a claimant upon his removal to the area over which the union has jurisdiction, but which allows acceptance of work for single days, such limitation of itself does not render the claimant unavailable for employment. (A.B. 28,382-51; [A-750-1063](#); similarly. A.B. 40,442-53)

Where claimant was aware of his right under a union agreement to share in the work which was available in the establishment of his last employer a failure to request such employment or to insist upon his right through his union representative showed a disinterest in employment and evinced unavailability. (A.B. 30,025-51; [A-750-1122](#))

A seaman who takes a "trip-off" in accordance with a union agreement requiring seamen to take a 28 day vacation from their regular vessel after a year's continuous service thereon, is unavailable during such 28 days. He is not disqualified thereafter if his expectations for early employment are better by waiting to re-ship on his regular vessel, rather than by registering at the seamen hiring hall under forfeiture of his re-ship rights. (Ref. OSR-200-56R; [A-750-1418](#))

Where a seaman has reasonable prospects of employment because of employment registration seniority, his failure to bid for a position while present at the union hiring hall constitutes a refusal of employment within the meaning of the Unemployment Insurance Law. (See. "Comments" for other circumstances such as failure to report at hiring hall, raising the availability issue.) (A.B. 120,452; [A-750-1626](#))

A claimant's refusal to transfer membership from the union local serving the labor market in which (s)he last worked to one serving the area in which (s)he resides does not make the claimant unavailable for employment unless it can be shown that job prospects are better with the new local. (A.B. 343,347; [A-750-1953](#))

792. Volunteer Activities

Engaging in volunteer activities, while actively seeking work, does not mandate a finding of ineligibility due to lack of total unemployment even when the volunteer services lead to employment with the same organization or when the organization reimburses the volunteer for expenses. This decision conflicts with prior decisions on this issue. The Appeal Board will not follow those prior decisions. (A.B. 577,489; [A-750-2152](#))

A claimant, who is an attorney, does not necessarily lack total unemployment or is unavailable for work, while performing pro bono legal services. (A.B. 577,763; [A-750-2153](#))

795. Other causes of unavailability.

Where claimant refused to answer questions on a prescribed form or at an oral interview relative to prospective employers contacted in seeking employment. held not entitled to receive benefits during the period of such refusal. (Matter of Sorrentino. 277 App. Div. 1073; [A-750-964](#))

Failure to disclose a physical disability as the true reason for refusing referral to employment in claimant's usual occupation, rendered claimant unavailable for employment since it precluded a proper new occupational classification and the possibility of referral to suitable employment. (A.B. 35,695-53; [A-750-1183](#))

Where in claimant's occupation workers must supply their own tools to obtain employment, an inability to do so renders the claimant unavailable. (A.B.46,539-54; [A-750-1326](#)).

Tugboat workers who participate in an arrangement designed to enable them to accumulate their normal 120 hours of work for a 3 week period in a period of 2 weeks, so that no work was performed in the third week, are ineligible for benefits during the third week because of a temporary withdrawal from the labor market. (A.B. 66.229-58; [A-750-1510](#))

Claimant, employed as a fur dresser who worked "with gangs" on a rotation basis, wages being an equal share of the money value of the entire production of all the working "gangs", and who did nothing more to find employment than register at the employment office on days his "gang" did not work, was unavailable for employment since, (1) mere registration with the employment office is not conclusive of a condition of availability, (2) there was no reasonable possibility of obtaining work in any other occupation as his 32-year work history was as a fur dresser and (3) he could not accept work in his usual occupation without forfeiting his rights to share in the weekly wages. (A.B. 14,407-47; [A-750-794](#))

Insistence on attire that is generally not acceptable to employers in the area, making referral by the placement office virtually impossible and his independent job efforts unrealistic, renders claimant unavailable. (Claimant, seeking clerical or sales work, reported repeatedly to the employment service office wearing dungarees, a jersey and sneakers, despite advice of that office that employers would not interview applicants so dressed.) (A.B. 170,282; [A-750-1747](#))

Claimant who did not desire employment during the pending of an appointment to a civil service position was held unavailable. (A.B. 11,868-45; [A-750-657](#))

Unwillingness to accept employment other than with former employer was found to indicate unavailability. Specific referral was unnecessary as a condition for suspending for unavailability. (A.B. 7680-42; [A-750-370](#))

The mere signing of a mimeographed statement by claimant that he would not accept employment while waiting for his usual employer to recall him was insufficient in itself to support a finding of unavailability when the uncontroverted evidence showed that claimant was willing to accept work, and actually did work for other employers on a temporary basis. (A.B. 9961-43; [A-750-536](#))

A suspension of benefit rights on the ground of unavailability was rescinded by the Appeal Board in the case of a claimant who stated that she "could not take full-time job now" but on the same date changed her mind in order not to forfeit her benefit rights and held herself available for full-time employment. (A.B. 3243-40; [A-750-215](#))

Refusal to divulge the details of an alleged job interview in another city justifies denial of benefits for unavailability on the days of absence from the local office jurisdiction and for failure to report due to such absence. (A.B. 164,715; [A-750-1738](#))

Claimant by leaving the State to take a vacation removed himself from the labor market and was not available for employment. (A.B. 2240-40; [A-750-52](#))

A claimant who takes an out-of-state vacation and leaves the labor market is not available for employment, even when the claimant's entire industry is closed for vacation. (A.B. 160,396)

A claimant who filed a claim and certified for a month in Baltimore after being temporarily laid off in New York was held available for employment since his unemployment was caused by a

seasonal slack in both cities, rather than a desire not to work or lack of independent efforts to secure other employment. (Matter of Geller, 278 App. Div. 624; [A-750-981](#))

An individual who takes the New York State Bar Examination is not ready, willing, and able to work on the days of such examination, nor can such examination be treated as a job seeking effort. (A.B. 390,924; [A-750-2011](#))

A claimant, who is an alien legally present in the United States with a visa authorizing her to work, but only for a specific employer, is not able and available to work when laid off from that employment. Under her visa, she could not legally accept an offer for immediate employment with a different employer (A.B. 417,640; [A-750-2059](#))
