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Gerry Davidson

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## *Unemployment Insurance: Good Cause For Leaving Employment*

Gerry Davidson\*

**T**HE PRIMARY OBJECTIVES behind the enactment of unemployment insurance programs have been enunciated as follows:

Unemployment insurance is a program—established under Federal and State law—for income maintenance during periods of involuntary unemployment due to lack of work, which provides partial compensation for wage loss as a matter of right, with dignity and dispatch, to eligible individuals. It helps to maintain purchasing power and to stabilize the economy. It helps to prevent the dispersal of the employers' trained work force, the sacrifice of skills, and the breakdown of labor standards during temporary unemployment.<sup>1</sup>

However, there are certain requirements a claimant must fulfill before he can be entitled to receive such benefits. One of these is that the worker must have left his employment for "good cause."

"Good cause" and "just cause" have been used synonymously in the interpretation of unemployment compensation statutes which qualify, or disqualify, an individual for such benefits.<sup>2</sup> However, according to Black's Law Dictionary, "good cause" means "substantial reason, one that affords a legal excuse,"<sup>3</sup> whereas, "just cause" is defined as "a cause outside legal cause, which must be based on reasonable grounds, and there must be fair and honest cause or reason, regulated by good faith."<sup>4</sup> Thus, there seem to be two approaches in determining what constitutes "good cause." The more liberal approach uses a standard of reasonableness as applied to the ordinarily intelligent man.<sup>5</sup> The more conservative approach is to determine whether the cause for leaving employment was of a necessitous or compelling nature.<sup>6</sup>

"Good cause" and "personal reasons" for quitting employment connote "real circumstances, substantial reasons, objective conditions, palpable forces producing correlative results, adequate excuses which will bear the test of reason, just grounds for action, and good faith."<sup>7</sup>

\* B.B.A., Ohio University; Third-year student at Cleveland State University College of Law; Law clerk of the Third Aid Society of Cleveland.

<sup>1</sup> UNITED STATES DEPARTMENT OF LABOR, BUREAU OF EMPLOYMENT SECURITY, MAJOR OBJECTIVES OF FEDERAL POLICY WITH RESPECT TO THE FEDERAL-STATE EMPLOYMENT SECURITY PROGRAM, GENERAL ADMINISTRATION LETTER No. 305, April 25, 1965.

<sup>2</sup> *Frigidaire Div. General Motors Corp. v. Board of Review, Bureau of Unemployment Compensation*, 97 N.E.2d 96 (Ohio C.P. Montgomery County 1950); *Chalker v. First Federal Savings & Loan Ass'n.*, 126 N.E.2d 475 (Ohio C.P. Summit County 1955).

<sup>3</sup> BLACK'S LAW DICTIONARY, 822 (1968 rev. ed.).

<sup>4</sup> *Id.* at 1001.

<sup>5</sup> *Harp v. Adm'r, Bureau of Unemployment Compensation*, 230 N.E.2d 376 (Ohio C.P. Hamilton County 1967).

<sup>6</sup> *Imre v. Catherwood*, 27 App. Div. 2d 970, 279 N.Y.S.2d 213 (1967); *Weiss v. Catherwood*, 26 App. Div. 2d 851, 274 N.Y.S.2d 3 (1966); *Mee's Bakery v. Unemployment Compensation Bd. of Review*, 162 Pa. Super. 183, 56 A.2d 386 (1948).

<sup>7</sup> *Mee's Bakery v. Unemployment Compensation Bd. of Review*, 162 Pa. Super. 183, 56 A.2d 386 (1948).

Whichever of the two approaches is used, the question of whether the claimant left his employment with or without "good cause" is one of fact for determination by an unemployment compensation board of review.<sup>8</sup> The sections of the Ohio Revised Code pertaining to the Unemployment Compensation Act,<sup>9</sup> do not define "good cause." Therefore, each case must be determined on its own facts and circumstances.<sup>10</sup> In *Layton v. Bureau of Unemployment Compensation*, the court held it to be just cause for an individual to leave his employment for a better paying position. It was further stated that the claimant, after being separated from the new employment after one week was entitled to unemployment benefits due to a lack of work.<sup>11</sup> The court further stated that it is important to consider the rising cost of living and the fact that one has an inherent desire to improve his standard of living.<sup>12</sup> Therefore, for the purpose of entering the ranks of the compensated unemployed, the quitting of one's employment must be for such reasons as would motivate the average reasonable man in a similar position to do the same.<sup>13</sup>

In insurance programs, it is a cardinal rule that insurance does not cover losses willfully caused by the insured. However, there are circumstances which have been considered to be reasonable and justified for the worker to quit his employment and then receive unemployment benefits if he cannot find other employment. The controversies have arisen not over the payment of benefits to those who have voluntarily quit, but, instead, as to what constitutes "good cause" for leaving employment.<sup>14</sup>

If a worker leaves his employment voluntarily in any state, it must be for "good cause." Otherwise, he will not qualify for unemployment benefits. Most states restrict "good cause," to such as may be attributable to the employer or connected with the work.<sup>15</sup> The Ohio Revised Code states:

No individual may serve a waiting period or be paid benefits for the duration of his unemployment if the administrator finds that he quit his work without just cause or has been discharged for just cause in connection with his work.<sup>16</sup>

Therefore, "good cause" for leaving employment must be connected with the claimant's employment, and the test becomes one of whether

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<sup>8</sup> *Hackenberg v. Catherwood*, 31 App. Div. 2d 577, 294 N.Y.S.2d 803 (1968); *Haynes v. Catherwood*, 30 App. Div. 2d 722, 291 N.Y.S.2d 459 (1968).

<sup>9</sup> OHIO REV. CODE ANN. §§ 4141.01-.99 (Baldwin 1964).

<sup>10</sup> *Layton v. Bureau of Unemployment Compensation*, 218 N.E.2d 767 (Ohio C.P. Erie County 1965).

<sup>11</sup> *Id.*

<sup>12</sup> *Layton v. Bureau of Unemployment Compensation*, 218 N.E.2d 767 (Ohio C.P. Erie County 1965).

<sup>13</sup> *Sun Shipbuilding & Dry Dock Co. v. Unemployment Compensation Bd. of Review*, 358 Pa. 224, 56 A.2d 254 (1948).

<sup>14</sup> HABER AND MURRAY, UNEMPLOYMENT INSURANCE IN THE ECONOMY 292 (1966).

<sup>15</sup> HABER AND MURRAY, *supra* note 14, at 114-115.

<sup>16</sup> OHIO REV. CODE ANN. § 4141.29(D) (2) (a) (Baldwin 1964).

the employee left for "good cause" connected with his employment.<sup>17</sup> Based on this test, if an employee leaves work because of pregnancy,<sup>18</sup> or to get married,<sup>19</sup> or to follow her spouse to another locality,<sup>20</sup> she will not be entitled to receive unemployment benefits. There are, however, certain extraneous factors, or personal reasons, in the absence of a statutory provision requiring the cause for leaving employment be connected with the work, which may be considered to be "good cause."<sup>21</sup>

In a recent New York decision, it was held that "earlier than usual work, reasonably required by an employer's business and not adversely affecting the claimant, was not, as a matter of law, 'good cause' for leaving employment."<sup>22</sup> On the other hand, it has been held, in Ohio, that unemployment resulting from a refusal to transfer from daytime employment to the night shift, because the place of employment at night would cause an average female employee to fear for her safety was a voluntary quitting with "just cause" and did not bar the claimant from unemployment benefits.<sup>23</sup> Therefore, to constitute "good cause," the reasons for which an employee is compelled to leave his employment must be real, substantial, and reasonable.<sup>24</sup>

Any type of whimsical reason for leaving work will bar a claimant from receiving benefits, because, as stated in *Hrebar v. Unemployment Compensation Board of Review*:

The vitalizing element of "good cause" is "good faith" and "good faith" embraces not only the merely negative virtue of freedom from fraud but also positive conduct which is consistent with a genuine desire to work and to be self-supporting.<sup>25</sup>

The *Hrebar* case is supported by a New York decision stating that a claimant who had operated a manual and an electric comptometer and then quit when the electric machine was no longer available, after being told to simply do her best with the manually operated machine, quit without good cause.<sup>26</sup>

A claimant can be disqualified from receiving unemployment insurance if he is discharged for just cause,<sup>27</sup> as a case where an individual has failed to report for work after numerous warnings by his

<sup>17</sup> *Harp v. Adm'r, Bureau of Unemployment Compensation*, 230 N.E.2d 376 (Ohio C.P. Hamilton County 1967).

<sup>18</sup> *Leach v. Columbus Plastics Products, Inc.*, 194 N.E.2d 469 (Ohio C.P. Franklin County 1962).

<sup>19</sup> *Moore v. Bureau of Unemployment Compensation*, 73 Ohio App. 362, 56 N.E.2d 520 (1943).

<sup>20</sup> *Farloo v. Champion Spark Plug Co.*, 145 Ohio St. 263, 61 N.E.2d 313 (1945); *Brown-Brockmeyer Co. v. Herschberger*, 67 N.E.2d 820 (Ct. App. Ohio 1944).

<sup>21</sup> *Flannick v. Unemployment Compensation Bd. of Review*, 168 Pa. Super. 606, 82 A.2d 671 (1951).

<sup>22</sup> *Vernaskas v. Fumex Sanitation, Inc.*, 35 App. Div. 2d 618, 312 N.Y.S.2d 566 (1970).

<sup>23</sup> *Reeves v. Board of Review of Unemployment Compensation*, 118 N.E.2d 159 (Ohio C.P. Cuyahoga County 1953).

<sup>24</sup> *Duquesne Brewing Co. of Pittsburgh v. Unemployment Compensation Bd. of Review*, 359 Pa. 535, 59 A.2d 913 (1948).

<sup>25</sup> 179 Pa. Super. 103, 116 A.2d 93, 95 (1955).

<sup>26</sup> *DeCicco v. Catherwood*, 24 App. Div. 2d 666, 261 N.Y.S.2d 91 (1965).

<sup>27</sup> OHIO REV. CODE ANN. § 4141.29 (D) (2) (a) (Baldwin 1964).

employer.<sup>28</sup> However, if the unemployment is due to lack of work, the individual may be eligible for benefits if he continuously looks for work, is able to work, and is available for suitable work,<sup>29</sup> but he must be actively seeking such suitable work.<sup>30</sup>

The Unemployment Compensation Act also fails to grant benefits to those who refuse without good cause to accept offered suitable work:

No individual may serve a waiting period or be paid benefits for the duration of employment if the administrator finds that he has refused without good cause to accept an offer of suitable work when made by an employer . . . or has refused or failed to investigate a referral to work when directed to do so by a local employment office. . . .<sup>31</sup>

The question which now arises is, what can be considered to be suitable work? Suitable work is a question of fact to be determined by the trier of the facts.<sup>32</sup> In *Shay v. Unemployment Compensation Board of Review*, the appellants had been denied unemployment benefits, after they were laid off because they were offered work as laborers, at a considerable reduction in wages. One claimant was a carpenter for fourteen years and the other was a bricklayer with eight years' experience. The Pennsylvania Supreme Court vacated the decision on the grounds that the lower court had refused to consider what was "suitable" work, in view of the claimants' training and experience which are "inevitable touchstones of deliberation."<sup>33</sup>

The Ohio Revised Code expressly provides guidelines for the administrator, the trier of fact, to determine what is suitable work:

In determining whether any work is suitable for a claimant . . . the administrator shall . . . consider the degree of risk to the claimant's health, safety, and morale, his physical fitness for the work, his prior training and experience, the length of his employment, the distance of the available work from his residence, and his prospects for obtaining local work.<sup>34</sup>

However, the Federal Unemployment Tax Act<sup>35</sup> specifies certain conditions by which a state cannot disqualify a claimant for refusing new work. These conditions were designed so that a worker could refuse a job where a labor dispute existed, where hours,<sup>36</sup> wages,<sup>37</sup> or working conditions are substandard, or where his right to join a bona fide labor union would be restricted.<sup>38</sup> It must be remembered, though, that all the facts and circumstances are considered when determining

<sup>28</sup> *Ohio Ferro-Alloys Corp. v. Tichnor*, 168 N.E.2d 334 (Ohio C.P. Muskingum County 1959).

<sup>29</sup> *Wallace v. Bonded Oil Co.*, 152 N.E.2d 172 (Ohio C.P. Clark County 1958).

<sup>30</sup> OHIO REV. CODE ANN. § 4141.29 (A) (4) (Baldwin 1964).

<sup>31</sup> OHIO REV. CODE ANN. § 4141.29 (D) (2) (b) (Baldwin 1964).

<sup>32</sup> *Pennington v. Dudley*, 10 Ohio St. 2d 90, 226 N.E.2d 738 (1967); *Linker v. Catherwood*, 27 App. Div. 2d 884, 277 N.Y.S.2d 831 (1967).

<sup>33</sup> 424 Pa. 287, 227 A.2d 174 (1967).

<sup>34</sup> OHIO REV. CODE ANN. § 4141.29 (F) (Baldwin 1964).

<sup>35</sup> INT. REV. CODE OF 1954, § 3304(a) (5).

<sup>36</sup> *Linker v. Catherwood*, 27 App. Div. 2d 884, 277 N.Y.S.2d 831 (1967).

<sup>37</sup> *Kotlowitz v. Catherwood*, 24 App. Div. 2d 813, 263 N.Y.S.2d 798 (1965).

<sup>38</sup> OHIO REV. CODE ANN. § 4141.29 (E) (1) (1) (Baldwin 1964).

whether a refusal of offered employment was with "good cause." In *Palmer v. State Bureau of Unemployment*, a seamstress was offered evening employment as a waitress at half her usual wage. She refused the offer because she had never worked as a waitress before and, if she accepted, would have had to hire a baby sitter. The Court ruled that her refusal was with "good cause."<sup>39</sup>

Another consideration for refusal with "good cause" of offered employment is whether such new employment is

at an unreasonable distance from the worker's residence. Consideration should also be given to the character of the work he has been accustomed to do, and whether travel to the place of work involves expenses substantially greater than that required for his former work, unless the expense is provided for.<sup>40</sup>

Therefore, while the person must be available for work in order to receive unemployment benefits, his availability depends upon whether or not there is suitable work in the community.<sup>41</sup> Notwithstanding other factors, in determining what is "good cause" for leaving employment, one of the major considerations is the "consistency of one's conduct with a reasonably evidenced intent and desire to be at work and be self-supporting."<sup>42</sup> As the Bureau of Employment Security has put it,

The qualifying requirement and the requirement that claimants be able and available for work are the two halves of a single requirement that protection be limited to unemployed members of the labor force.<sup>43</sup>

An employer has the privilege of writing into employment contracts certain provisions for which an employee may be discharged for "just cause."<sup>44</sup> One example of such a provision might be calling for mandatory retirement at the age of sixty-five. Therefore, when an employee reaches this age, and is at that time discharged, it can be said that he has been discharged for "just cause" and will not be entitled to receive unemployment insurance benefits.<sup>45</sup> Under a different type of provision, an employee can be discharged for a violation of a labor contract by reporting for work in an intoxicated condition or under the influence of intoxicating liquor, and such discharge will be deemed to be within the scope and meaning of "discharge for just cause in connection with his work," thus denying the employee unemployment benefits.<sup>46</sup> However, if an employee is discharged only because of a misunderstanding

<sup>39</sup> 177 N.E.2d 806 (Ohio C.P. Scioto County 1961).

<sup>40</sup> OHIO REV. CODE ANN. § 4141.29 (E) (3) (Baldwin 1964).

<sup>41</sup> *Kontner v. Board of Review*, 148 Ohio St. 614, 76 N.E.2d 611 (1947); *Leach v. Board of Review*, Bureau of Unemployment Compensation, 115 Ohio App. 235, 178 N.E.2d 94 (1961).

<sup>42</sup> *Dept. of Indus. Relations v. Mann*, 35 Ala. App. 505, 50 So. 2d 780, 783 (1950).

<sup>43</sup> UNITED STATES DEPARTMENT OF LABOR, BUREAU OF EMPLOYMENT SECURITY, "UNEMPLOYMENT INSURANCE LEGISLATIVE POLICY, RECOMMENDATIONS FOR STATE LEGISLATION 1962," BES No. U-212A, October, 1962, at 44.

<sup>44</sup> *Mathieu v. Dudley*, 10 Ohio App. 2d 169, 226 N.E.2d 763 (1967).

<sup>45</sup> *Leach v. Columbus Coated Fabrics Co.*, 205 N.E.2d 608 (Ohio C.P. Franklin County 1964).

<sup>46</sup> *Hawkins v. Leach*, 115 Ohio App. 259, 185 N.E.2d 36 (1961).

between himself and the employer, such discharge is not for "just cause."<sup>47</sup>

Our society has a system which doles out cash payments for wage loss due to unemployment, and it is not illogical for the legislatures of the several states to deny such payments to those individuals who are voluntarily unemployed. These unemployment benefits were not designed to make up for lost wages of a worker whose behavior leads to unemployment for which neither the community nor an employer has a responsibility.<sup>48</sup> Therefore, disqualification from unemployment compensation benefits has become a necessary part of unemployment insurance legislation.

As in any typical insurance policy, the conditions for unemployment benefits or compensation to be paid are spelled out in detail. A regular insurance policy will also spell out conditions or exceptions under which benefits will not be paid. Therefore, it is not surprising to find that there are certain limitations which have been included in unemployment compensation statutes, for the purpose of limiting compensation to involuntary unemployment. However, the purpose is not to disqualify workers from all voluntary unemployment.

A worker is disqualified from benefits only when the voluntary leaving is "without good cause," or when discharge with misconduct is "connected with the work," or if he refuses "suitable" work. Thus, the laws allow for cases in which quitting, discharge, or refusal of work is justified and so is not disqualifying.<sup>49</sup>

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<sup>47</sup> Coey v. Burwell Nurseries, 2 Ohio App. 2d 102, 206 N.E.2d 577 (1965).

<sup>48</sup> HABER AND MURRAY, *supra* note 14, at 281.

<sup>49</sup> HABER AND MURRAY, *supra* note 14, at 284.