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Job Refusal in Unemployment Compensation Claims

Robert J. Bowers*

UNEMPLOYMENT COMPENSATION is a type of insurance. As such, it does not cover losses intentionally incurred by claimants. However, the spirit of the Social Security Act of 1935¹ and of similar laws enacted in all the states affect the qualification or disqualification of a claimant who refuses a job.

The broad discretionary powers of administrators and boards of review preclude definitive answer. We must be content with awareness of the tolerance limits indicated by *stare decisis* and commission rules.

Suitable Work. Determination of what constitutes the "suitable work" mentioned in the statutes is, in general, a question of fact, turning on the situation in a given case.² The principal points considered in determining suitability of work are the following: (1) the degree of risk to health, safety and morals;³ (2) physical fitness;⁴ (3) prior training;⁵ (4) experience;⁶ (5) prior earnings;⁷ (6) length of unemployment, and prospects of gaining work in the customary occupation;⁸ (7) the distance of

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¹ See, 1A C. C. H. Unemployment Insurance Reporter, Federal & All-State Explanatory Guide, page 4208, ¶1020 (1963).

² 81 C. J. S., Social Security and Public Welfare, Sec. 201.

³ *McComber v. Iowa Employment Security Commission*, 119 N. W. 2d 792 (Iowa, 1963); *Wolf's v. Iowa Empl. Security Comm.*, 244 Iowa 999, 59 N. W. 2d 216 (1953); *Fannon v. Federal Cartridge Corp.*, 219 Minn. 306, 18 N. W. 2d 249 (1945); *Beecham v. Falstaff Brewing Corp.*, 150 Neb. 792, 36 N. W. 2d 233 (1949).

⁴ *Deere Manufacturing Co. v. Iowa Employment Security Commission*, 249 Iowa 1066, 90 N. W. 2d 750 (1958); *Department of Labor and Industry v. Unemployment Compensation Board of Review*, 199 Pa. Rep. 594, 49 A. 2d 259 (1946); *Beecham v. Falstaff Brewing Corp.*, *supra* n. 3; *Suska v. Unemployment Compensation Board of Review*, 166 Pa. Super. 293, 70 A. 2d 397 (1950).

⁵ *Ex parte Alabama Textile Products Corp.*, 242 Ala. 609, 7 So. 2d 303 (1942); *Hallahan v. Riley*, 94 N. H. 48, 45 A. 2d 886 (1946); *Beecham v. Falstaff Brewing Corp.*, *supra* n. 3.

⁶ *Ibid.*

⁷ *Ibid.*

⁸ *Bigger v. Unemployment Compensation Commission*, 4 Terry (Del.) 274, 46 A. 2d 137 (1946); *Beecham v. Falstaff Brewing Corp.*, *supra* n. 3.

available work from the claimant's residence;⁹ and, (8) whether or not the claimant is required to join a company union, or to resign from or refrain from joining any bona fide labor organization.¹⁰

Health and Safety Aspect. The "health and safety" factor as grounds for refusal of a job must be based upon substantial fact, not on mere conjecture;¹¹ however, sincere trepidation properly grounded may be considered just cause for a refusal.¹² The claimant's own appraisal of his health and physical ability is not sufficient without substantiating factual evidence.¹³ For this reason, a claimant may be required to actually try working at a job. Then if it proves detrimental he may quit without loss of compensation.¹⁴

Morals in Suitability. The question of moral suitability involves a religious issue. Originally, a claimant who refused a job because some aspect thereof was contrary to his religious and/or moral convictions, was disqualified as having rendered himself unavailable.¹⁵ This is no longer the case. The difficulty of testing for sincerity of convictions has been a great factor in moving courts from the callous attitude originally manifested, to the more humane view now taken of this ground for refusal.¹⁶ One

⁹ Beecham v. Falstaff Brewing Corp., *supra* n. 3; Hallahan v. Riley, *supra* n. 5; Ex parte Alabama Textile Products Corp., *supra* n. 5.

¹⁰ Chambers v. Owens-Ames-Kimball Co., 146 Ohio St. 559, 67 N. E. 2d 439, 165 A. L. R. 1373 (1946); Tary v. Board of Review, Bureau of Unemployment Compensation, 161 Ohio St. 251 (1954); Bigger v. Unemployment Compensation Commission, *supra* n. 8.

¹¹ See Suska v. Unemployment Compensation Board of Review, *supra* n. 4, where a refusal on the basis of a medical report stating that the doctor *thought* that the claimant's condition *might* be aggravated by the job was held to be insufficient.

¹² In Glen Alden Coal v. Unemployment Compensation Board of Review, 171 Pa. Super. 325, 90 A. 2d 331 (1952), the claimant never worked inside a mine although he did work just outside one. In this case, claimant refused to work inside, due to fear that he would be killed, as several relatives had been; this was held to be good cause and the work was considered not suitable.

¹³ Claim of Di Stefano, 277 App. Div. 823, 97 N. Y. S. 2d 75 (1950).

¹⁴ Beecham v. Falstaff Brewing Corp., *supra* n. 3. Past experience supporting the contention then is unnecessary to test the proffered employment. See, Sledzianowski v. Unempl. Comp. Bd. of Rev., 168 Pa. Super. 37, 76 A. 2d 666 (1950).

¹⁵ Kut v. Albers Super Mkts. Inc., 146 Ohio St. 522, 66 N. E. 2d 643 (1946); rehear. den. sub nom. Kut v. Unempl. Bureau of Comp. of State of Ohio, 329 U. S. 669, 67 S. Ct. 86, 91 L. Ed. 590 (1946).

¹⁶ The idea of inquiry into a claimant's beliefs, which sometimes may be the only way an administrator has of fairly evaluating a claimant's sincerity,

(Continued on next page)

may now refuse to allow his work week to be extended so as to include his Sabbath day, and if discharged for this, he will remain eligible for benefits.¹⁷

Prior Training and Experience. Duration of the unemployment appears to be the prime factor in the question whether or not a job is appropriate to the skill and training of a claimant. The consensus is that, as the period of unemployment becomes prolonged, the situation demands a pragmatic approach, wherein it is reasoned that the claimant can always accept what is available and then quit, to accept more advantageous employment when and if he is able to find it.¹⁸ Judgment of a claimant's skill and training is based on his previous employment experience, schooling, and work record. A refusal on the basis that the employment is not commensurate with claimant's skill and training may, according to the circumstances of the particular case, disqualify the claimant on grounds of lack of availability.

Prior Earnings. Refusal of a job because the wage is too low will, in many instances, disqualify a claimant. A common example is the situation where an employee refuses a lower paying job in lieu of being laid off, only to find that he is then disqualified because of his failure to accept the reduced wage.¹⁹ In general, a refusal on the wage basis can be made only if the wage offered represents a substantial decrease. As to what constitutes a substantial decrease, the court ruled in *Groner v. Corsi*²⁰ that an employee would be justified in refusing jobs paying one-third to one-half of the previous wage, or where there was a strong indication that a position almost identical to the one previously held soon would be available.²¹

(Continued from preceding page)

was attacked as unconstitutional. It was resolved, however, in *Fowler v. R. I.*, 345 U. S. 67, 73 S. Ct. 526, 97 L. Ed. 828 (1953), that although the government may not discriminate against individuals because of their religious views, it is proper to inquire into a claimant's beliefs in order to determine the credibility of his assertions. See also re the Establishment clause of the Constitution, *McGowan v. Maryland*, 366 U. S. 420, 81 S. Ct. 1101, 6 L. Ed. 2d 393 (1961).

¹⁷ *Sherbert v. Verner*, 374 U. S. 398, 83 S. Ct. 1790 (1963); law cannot constitutionally be applied in such a way as to force a worker to choose between compensation benefits or abandonment of the cardinal rules of her religion.

¹⁸ *W. T. Grant Co. v. Bd. of Rev. of Unempl. Comp. Comm. of New Jersey*, 129 N. J. L. 402, 29 A. 2d 858 (1943); *Heater v. Corsi*, 270 App. Div. 311, 59 N. Y. S. 2d 793 (1946).

¹⁹ *Fegely v. Empl. Comp. Bd. of Rev. of Pa.*, 192 Pa. Super. 141, 159 A. 2d 574 (1960).

²⁰ *Groner v. Corsi*, 267 App. Div. 1021, 48 N. Y. S. 2d 194 (1944).

²¹ *Ibid.*

The "prevailing wage" rule of the labor standards provisions allows a wage-based refusal where the pay in the new job is less than that prevailing in the community.²² If, however, the offer is one of a former job, at the rate at which the claimant had performed the said job during the last base period, the wages will be deemed apparently adequate even though lower than those generally prevailing.²³

When new work is involved, and when the "prior earnings" test is applied, if the wage is substantially below the prior earnings or the prevailing wage the job may be rejected. The length of time considered in applying the prior earnings test varies considerably. It may be as short as three days or as long as seven months, or more. The probable expectancy of high paying employment varies inversely with the length of time of unemployment; *ergo*, a claimant must eventually lower his sights or be held disqualified by reason of lack of availability.

Wages are not the sole remunerative aspect considered by a claimant. The claimant will certainly also consider that area of ever-growing importance—fringe benefits. This aspect is not generally considered by administrators at present; however, it may well be a proper area for consideration by administrators as well as by claimants.

Union Aspects. The Labor Standards Provisions which the states must incorporate into their statutes in order to receive a tax offset say that a claimant may refuse a job if, as a condition of being employed, he would have to join a company union or resign from or refrain from joining any bona fide organization. The Provisions further specify that he need not accept the job if the wage is below the prevailing scale. However, except in highly unionized areas, a claimant's disqualification on grounds of unavailability is automatic where he restricts his availability to union jobs and union wages. Obviously, the decision must be made with regard for the degree of unionization in the market area, for upon this will depend the actual degree of restriction which the claimant seeks to place upon his availability.

Transportation, Location, and Distance. The decisions are strict concerning location, transportation, and distance. A claimant is generally disqualified if he refuses on these grounds. The administrator decides the extent of the market area, and the

²² Labor Standards Div., I. R. C., Sec. 3304 (a) (5) (1954).

²³ *Stella v. Downyflake Restaurant*, 126 Conn. 441, 11 A. 2d 848 (1940).

claimant must be available for any and all suitable jobs therein. A claimant will not be required to go beyond the market area.²⁴

Lack of transportation, poor transportation, or loss of transportation,²⁵ are not accepted as excuses for refusal of a job; neither is fear of the neighborhood surrounding the place of employment sufficient to allow refusal.²⁶ If a claimant cannot get transportation for himself he usually is considered to be not available.²⁷

Where claimants have moved from the market area, leaving jobs for that reason, they have been declared ineligible for compensation at their new locations.²⁸ In determining whether or not work was suitable, the administrator considers, with respect to distance qualifications, the distance between the work abandoned and the old residence. Some states (Ohio for example²⁹) have revised their statutes to allow for moving from the market area. In others the claimant's loss of eligibility is temporary and can be overcome by meeting the availability requirements in the new location.³⁰

Labor Disputes and Lockouts. A "labor dispute" is a controversy concerning terms or conditions of employment such as wages, hours, working conditions, or matters related to collective bargaining. It may be caused by either the employer or the employee. A "lockout" is caused by management, and in some jurisdictions is not considered to be a dispute. However, the majority view is that it is a dispute. This is important in determining whether or not a claimant falls within the statutory provisions which provide that a labor dispute must be in progress in order

²⁴ *Industrial Commission of Colorado v. Lazar*, 111 Colo. 69, 137 P. 2d 405 (1943).

²⁵ *Kontner v. Unemployment Comp. Bd. of Rev. of Ohio*, 148 Ohio St. 614, 76 N. E. 2d 611 (1947).

²⁶ *Beall v. Bureau of Unemp. Comp. of Ohio*, 60 Ohio Abs. 444, 101 N. E. 2d 780 (1951).

²⁷ *Kontner v. Unemployment Compensation Board of Review*, *supra* n. 25; 81 C. J. S., *Social Security and Public Welfare*, Sec. 208; but if travel involves expense substantially greater than before, unless provision is made for reimbursement, it may be proper grounds for refusal, as in: *Claim of Canale*, 277 App. Div. 960, 99 N. Y. S. 2d 634 (1950).

²⁸ *Call v. Luten*, 219 Ark. 640, 244 S. W. 2d 130 (1951); *Wolf's v. Iowa Empl. Security Comm.*, 244 Iowa 999, 59 N. W. 2d 216 (1953); *Brown-Brockmeyer Co. v. Holmes*, 152 Ohio St. 411, 89 N. E. 2d 580 (1949) where one regularly employed removed to a point where work was unavailable while his former employment continued to be available.

²⁹ Ohio Rev. Code, Sec. 4141.29.

³⁰ *Dept. of Labor and Industry of Pa., Bur. of Empl. and Unempl. Comp. v. Unempl. Comp. Bd. of Rev.*, 154 Pa. Super 250, 35 A. 2d 739 (1944).

for the provisions to be applicable. A job may not be refused on this ground unless a dispute has resulted in work stoppage; the fact that a dispute is imminent is not a sufficient excuse.

The Labor Standards Provisions allow a claimant to refuse new work which arose as a direct result of a dispute; however, strikers are not entitled to benefits. After a strike is broken by resumption of production by strikebreakers, a refusal to return to work has been held to be good and proper cause, rendering the employees legally unemployed from that time on.³¹

Ill Health. Under the provisions of the unemployment compensation statutes, one must be able to work and be available for work in order to be entitled to unemployment benefits.³² A claimant who is not able to accept substantial employment because of ill health is not available for work.³³ Unemployment insurance, it must be remembered, is not health insurance.³⁴ Thus, for example, one unemployed because of pregnancy is not eligible any more than one unemployed for any other health reason.³⁵

Conclusion. In general, what constitutes good cause for refusal of proffered employment must be determined from the facts in each case.³⁶ The rules in determining qualification for benefits under unemployment insurance provisions do permit some consideration of individual preference in that a claimant may refuse "suitable" work for "good cause."³⁷ However, these rules are not so well-defined as to make for easy determinations.

³¹ Sakrison v. Pierce, 66 Ariz. 162, 185 P. 2d 528 (1947).

³² 81 C. J. S., Social Security and Public Welfare, Sec. 202.

³³ *Id.* at Sec. 205; see also: Borough of Hasbrouck Heights v. Division of Tax Appeals, 48 N. J. Super. 328, 137 A. 2d 585 (1958); State v. Hix, 132 W. Va. 516, 54 S. E. 2d 198 (1949); Brown-Brockmeyer Co. v. Board of Review, Bureau of Unemployment Comp., 70 Ohio App. 370, 45 N. E. 2d 152 (1942).

³⁴ Broadway & Fourth Avenue Realty Co. v. Allen, 365 S. W. 2d 302 (Ky., 1963); Rivers v. Director of Div. of Employment Security, 323 Mass. 339, 82 N. E. 2d 1 (1948).

³⁵ Packard Motor Car Co. v. Michigan Unemployment Compensation Comm., 320 Mich. 358, 31 N. W. 2d 83 (1948); but see, Alabama Mills, Inc. v. Carnley, 35 Ala. App. 46, 44 So. 2d 622, cert. den. 253 Ala. 426, 44 So. 2d 627, 14 A. L. R. 2d 1301 (1949), wherein a statute provided that if a woman was unable to work three months before and three months after a childbirth, she might again become eligible on expiration of three months after the birth.

³⁶ Barclay White Co. v. Unemployment Compensation Board of Review, Dept. of Labor and Industry of Pa., 356 Pa. 43, 50 A. 2d 336 (1947); 81 C. J. S., Social Security and Public Welfare, Sec. 200.

³⁷ For a definition of what constitutes "good cause" and "suitability," as well as for an interesting discussion of refusal to work and the administration of Taft-Hartley and unemployment compensation law, see, Mandelker, Refusals to Work and Union Objectives in the Administration of Taft-Hartley and Unemployment Compensation, 44 Cornell L. Q. 477 (1959).